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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[Doc. AMS–CN–12–0005]

RIN 0581–AD23

User Fees for 2012 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) will maintain user fees for cotton producers for 2012 crop cotton classification services under the Cotton Statistics and Estimates Act and the Cotton Standards Act of 1923 at $2.20 per bale—the same level as in 2011. This fee and the existing reserve are sufficient to cover the costs of providing classification services for the 2012 crop, including costs for administration and supervision.

DATES: *Effective Date:* June 7, 2012.

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton & Tobacco Programs, AMS, USDA, 3275 Appling Road, Room 11, Memphis, TN 38133. Telephone (901) 384–3060, facsimile (901) 384–3021, or email *darryl.earnest@ams.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866; and, therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 25,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Continuing the user fee at the 2011 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (According to USDA's Economic Research Service, the U.S. average total cost of production in 2010 was $483 per bale. The user fee for classification services of $2.20 per bale represents less the one half percent of this average U.S. per-bale cost of production.);

(2) The fee for services will not affect competition in the marketplace;

(3) The use of classification services is voluntary. For the 2011 crop, approximately 15.1 million bales were produced; and, almost all of these bales were voluntarily submitted by growers for the classification service; and

(4) Based on the average price paid to growers for cotton from the 2010 crop of 0.8212 cents per pound, 500 pound bales of cotton are worth an average of $410 each. The user fee for classification services, $2.20 per bale, is less than one percent of the value of an average bale of cotton.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), the information collection requirements contained in the regulation to be amended is currently approved under OMB control number 0581–0008, Cotton Classing, Testing and Standards.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

This final rule establishes the 2012 user fee charged to producers for cotton classification at $2.20 per bale—the same as the 2011 user fee. The 2012 user fee was set in accordance to section 14201 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234) (2008 Farm Bill). Section 14201 of the 2008 Farm Bill provides that: (1) The Secretary shall make available cotton classification services to producers of cotton, and provide for the collection of classification fees from participating producers or agents that voluntarily agree to collect and remit the fees on behalf of the producers; (2) classification fees collected and the proceeds from the sales of samples submitted for classification shall, to the extent practicable, be used to pay the cost of the services provided, including administrative and supervisory costs; (3) the Secretary shall announce a uniform classification fee and any applicable surcharge for classification services not later than June 1 of the year in which the fee applies; and (4) in establishing the amount of fees under this section, the Secretary shall consult with representatives of the United States cotton industry. At pages 313–314, the Joint Explanatory Statement of the committee of conference for section 14201 stated the expectation that the cotton classification fee would be established in the same manner as was applied during the 1992 through 2007 fiscal years. Specifically, it states that the classification fee should continue to be a basic, uniform fee per bale fee as determined necessary to maintain cost-effective cotton classification service. Further, in consulting with the cotton industry, the Secretary should demonstrate the level of fees necessary to maintain effective cotton classification services and provide the Department of Agriculture with an adequate operating reserve, while also working to limit adjustments in the year-to-year fee.

Under the provisions of section 14201, a user fee (dollar amount per bale classed) is established for the 2012 cotton crop that, when combined with other sources of revenue, will result in

projected revenues sufficient to reasonably cover budgeted costs—adjusted for inflation—and allow for adequate operating reserves to be maintained. Costs considered in this method include salaries, costs of equipment and supplies, and other overhead costs, such as facility costs and costs for administration and supervision. In addition to covering expected costs, the user fee is set such that projected revenues will generate an operating reserve adequate to effectively manage uncertainties related to crop size and cash-flow timing while meeting minimum reserve requirements set by the Agricultural Marketing Service, which require maintenance of a reserve fund amount equal to at least four months of projected operating costs.

The user fee charged to cotton producers for cotton classification in 2012 is $2.20 per bale, which is the same fee charged for the 2011 crop. This fee is based on the preseason projection that 14,475,000 bales will be classed by the United States Department of Agriculture during the 2012 crop year.

Accordingly, § 28.909, paragraph (b) reflects the continuation of the cotton classification fee at $2.20 per bale.

As provided for in the 1987 Act, a 5 cent per bale discount will continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents receiving classification data will continue to incur no additional fees if classification data is requested only once. The fee for each additional retrieval of classification data in § 28.910 will remain at 5 cents per bale. The fee in § 28.910(b) for an owner receiving classification data from the National Database will remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period will remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the National Database for the business convenience of an owner without reclassification of the cotton will remain the same at 15 cents per bale or a minimum of $5.00 per sheet.

The fee for review classification in § 28.911 is maintained at $2.20 per bale.

The fee for returning samples after classification in § 28.911 will remain at 50 cents per sample.

Summary of Comments

A proposed rule was published in the **Federal Register** on April 11, 2012, with a comment period of April 11, 2012 through April 26, 2012 (77 FR 21684). AMS received two comments: One from a national trade organization that represents approximately 80 percent of the U.S. cotton industry, including cotton producers, ginners, warehousemen, merchants, cooperatives, cottonseed processors, and textile manufacturers from Virginia to California; and one from a national trade organization comprised of eight state and regional membership organizations that represent approximately 680 individual cotton ginning operations in 17 cotton-producing states. Comments from the national trade organizations expressed support for the decision to maintain the fee at the level established for the 2011 crop. Comments may be viewed at *www.regulations.gov*.

Pursuant to 5 U.S.C. 533, good cause exists for not postponing the effective date of this final rule until 30 days after publication in the **Federal Register** because this rule maintains uniform user fees for 2012 crop cotton classification services as mandated by the Cotton Statistics and Estimates Act, at the same level as 2011.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Reporting and recordkeeping requirements, Warehouses.

For the reasons set forth in the preamble, 7 CFR part 28 is amended to read as follows:

PART 28—[AMENDED]

Subpart D—[Amended]

■ 1. The authority citation for 7 CFR part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 51–65; 7 U.S.C. 471–476.

■ 2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $2.20 per bale.

* * * * *

■ 3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $2.20 per bale.

* * * * *

Dated: May 30, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–13527 Filed 6–5–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–09–0074; NOP–09–01FR]

RIN 0581–AC96

National Organic Program (NOP); Sunset Review (2012)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule addresses recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on April 29, 2010, October 28, 2010, and April 29, 2011. These recommendations pertain to the 2012 Sunset Review of substances on the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List). Consistent with the NOSB recommendations, this final rule continues, without change, the exemptions (use) and prohibitions for multiple listings on the National List for 5 years after their respective sunset dates. This final rule also amends the exemptions (use) for 7 substances and removes the exemptions for 3 substances on the National List.

DATES: *Effective Dates:* This rule is effective June 27, 2012, except for the amendments to §§ 205.601(g) and 205.605(a), which are effective October 21, 2012. For more information on these effective dates and renewals, see the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Melissa R. Bailey, Ph.D., Director, Standards Division, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

The Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6501–6522) authorizes the establishment of the National List of Allowed and Prohibited Substances (National List). The National List identifies synthetic substances that may be used in organic production and nonsynthetic (natural) substances that are prohibited in organic crop and livestock production. The National List also identifies nonagricultural nonsynthetic, nonagricultural synthetic and nonorganic agricultural substances that may be used in organic handling.

The exemptions and prohibitions granted under the OFPA are required to be reviewed every 5 years by the National Organic Standards Board

(NOSB). The Secretary of Agriculture has authority under the OFPA to renew such exemptions and prohibitions. If the substances are not reviewed by the NOSB within 5 years of their inclusion on the National List and addressed by the Secretary, then their authorized use or prohibition expires under OFPA's sunset provision.

In response to the sunset provisions in the OFPA, this final rule addresses multiple recommendations submitted to the Secretary by the NOSB pertaining to substances due to expire from the National List in 2012. AMS published an Advanced Notice of Proposed Rulemaking (ANPR) in the **Federal Register** on March 26, 2010 (75 FR 14500), announcing the NOSB's review of exempted and prohibited substances codified at the National List of the National Organic Program (NOP) regulations and set to expire in 2012. AMS provided the comments received in response to the ANPR to the NOSB in advance of their review of these substances. Based upon the NOSB's recommendations, AMS published a proposed rule in the **Federal Register** on January 12, 2012, (77 FR 1996) to address the continued use of these substances on the National List in organic production and handling.

Consistent with the recommendations from the NOSB, this final rule renews, without change, multiple exemptions (uses) and prohibitions on the National List (along with any restrictive annotations) for 5 years. This final rule also amends the exemptions for 7 substances and removes the exemptions for 3 substances on the National List. A list of these substances is provided in the Appendix to this final rule. As referenced in the proposed rule for this 2012 Sunset Review, AMS notes that the listings for nutrient vitamins and minerals at section 205.605(b) and sodium nitrate at section 205.602 will be dealt with in separate actions.

Under the authority of the OFPA, the National List can be amended by the Secretary based on recommendations developed by the NOSB. Since established, the NOP has published multiple amendments to the National List: October 31, 2003 (68 FR 61987); November 3, 2003 (68 FR 62215); October 21, 2005 (70 FR 61217); June 7, 2006 (71 FR 32803); September 11, 2006 (71 FR 53299); June 27, 2007 (72 FR 35137); October 16, 2007 (72 FR 58469); December 10, 2007 (72 FR 69569); December 12, 2007 (72 FR 70479); September 18, 2008 (73 FR 54057); October 9, 2008 (73 FR 59479); July 6, 2010 (75 FR 38693); August 24, 2010 (75 FR 51919), December 13, 2010 (75 FR 77521); March 14, 2011 (76 FR 13501); August 3, 2011 (76 FR 46595); and February 14, 2012 (77 FR 8089). Additionally, proposed amendments to the National List were published on May 5, 2011 (76 FR 25612); November 8, 2011 (76 FR 69141); January 12, 2012 (77 FR 1980); and February 6, 2012 (77 FR 5717).

II. Overview of Final Actions

A complete overview of final actions for designated sections of the National List regulations is presented in the Appendix.[1] In the proposed rule, AMS indicated that proposed actions for each listing would be effective on the sunset date in 2012 for that listing (e.g. a listing due to sunset on October 21, 2012 would be renewed effective October 21, 2012). However, AMS determined that the effective dates for this sunset review should be streamlined to the extent possible through this final rule. Therefore, the actions pertaining to all listings, with the exception of the amendment to yeast at section 205.605(a) and the removal of sulfur dioxide at section 205.601, will be effective on one date, June 27, 2012. The effective date for each listing is specified in the Appendix. In accordance with the sunset provisions in the OFPA, the new sunset date for all listings is five years from the effective date of their renewal or amendment.

Renewals

Consistent with the NOSB recommendations and in consideration of the public comments received on the proposed rule (77 FR 1996), AMS is renewing multiple listings pertaining to the National List through this final rule.

This final rule continues the exemptions at section 205.601, along with any restrictive annotations, for the synthetic substances allowed for use in organic crop production as shown in the Appendix.

This final rule continues the prohibitions at section 205.602, along with any restrictive annotations, for the nonsynthetic substances prohibited for use in organic crop production as shown in the Appendix. It should be noted that the nonsynthetic, prohibited substance ''Ash from manure burning'' was listed incorrectly in Table 1 of the proposed rule as ''Ash *for* manure burning'' (emphasis added). The correct listing is included in the Appendix of this final rule.

This final rule continues the exemptions at section 205.603, along with any restrictive annotations, for the synthetic substances allowed for use in organic livestock production as shown in the Appendix.

This final rule continues the prohibition at section 205.604, for the nonsynthetic substance prohibited for use in organic livestock production as shown in the Appendix.

This final rule continues the exemptions at section 205.605(a), along with any restrictive annotations, for the nonsynthetic, nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s))'' as shown in the Appendix.

This final rule continues the exemptions at section 205.605(b), along with any restrictive annotations, for the synthetic, nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s))'' as shown in the Appendix.

This final rule continues the exemptions at section 205.606, along with any restrictive annotations, for the nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as ''organic'' as shown in the Appendix.

Nonrenewals

This final rule amends the National List by removing the exemptions as shown in the Appendix for the following 3 substances in organic production and handling:

Section 205.601 Synthetic Substances Allowed for Use in Organic Crop Production

This final rule amends section 205.601 of the National List regulations by removing the exemption for sulfur dioxide at paragraph (g)(1) and redesignating current paragraph (g)(2) as (g) to read: (g) As rodenticides. Vitamin D_3. This amendment is effective on the sunset date for sulfur dioxide, October 21, 2012.

Section 205.605 Nonagricultural (Nonorganic) Substances Allowed as Ingredients in or on Processed Products Labeled as ''Organic'' or ''Made With Organic (Specified Ingredients or Food Group(s))''

This final rule amends section 205.605(b) of the National List regulations by removing the exemption for pectin (low-methoxy), and the exemption, along with its restrictive annotation, for potassium iodide. These amendments are effective on June 27, 2012.

[1] The Appendix shows a simplified listing for each substance; use categories and any restrictive annotations are not included in this overview.

Renewals With Amendment

This final rule amends the National List regulations by amending the exemptions as shown in the Appendix for the following 7 substances in organic production and handling:

Section 205.601 Synthetic Substances Allowed for Use in Organic Crop Production.

This final rule amends the listing for chlorine materials at section 205.601(a)(2) to read as follows: Chlorine materials—For pre-harvest use, residual chlorine levels in the water in direct crop contact or as water from cleaning irrigation systems applied to soil must not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act, except that chlorine products may be used in edible sprout production according to EPA label directions. (i) Calcium hypochlorite. (ii) Chlorine dioxide. (iii) Sodium hypochlorite. This amendment is effective on June 27, 2012.

This final rule amends section 205.601(i)(11) to add an expiration date to the listing for streptomycin to read as follows: Streptomycin, for fire blight control in apples and pears only until October 21, 2014. This amendment is effective on June 27, 2012.

This final rule amends the listing for lignin sulfonate at section 205.601(j)(4) to remove the words ''floatation agent.'' The new listing will read: Lignin sulfonate—chelating agent, dust suppressant. This amendment is effective on June 27, 2012. It should be noted that the amendatory language for lignin sulfonate was incorrectly listed in the proposed rule as ''Lignin *sulfate*—chelating agent, dust suppressant'' (emphasis added). This error is corrected in this final rule.

Section 205.605 Nonagricultural (Nonorganic) Substances Allowed as Ingredients in or on Processed Products Labeled as ''Organic'' or ''Made With Organic (Specified Ingredients or Food Group(s))''

This final rule amends the listing for yeast section 205.605(a) to read as follows: Yeast—When used as food or a fermentation agent in products labeled as ''organic,'' yeast must be organic if its end use is for human consumption; nonorganic yeast may be used when organic yeast is not commercially available. Growth on petrochemical substrate and sulfite waste liquor is prohibited. For smoked yeast, nonsynthetic smoke flavoring process must be documented. This amendment is effective on the sunset date for yeast, October 21, 2012.

Section 205.606 Nonorganically Produced Agricultural Products Allowed as Ingredients in or on Processed Products Labeled as ''Organic''

This final rule adds a restrictive annotation to the listing for colors at section 205.606(d) to read as follows: Colors derived from agricultural products—Must not be produced using synthetic solvents and carrier systems or any artificial preservative. This amendment is effective on the sunset date for colors derived from agricultural products, June 27, 2012.

This final rule adds an expiration date to the listing for hops at section 205.606(l) to read as follows: Hops (*Humulus lupulus*) until January 1, 2013. This amendment is effective on the sunset date for hops, June 27, 2012.

This final rule amends the listing for pectin at section 205.606(t) to read as follows: Pectin (non-amidated forms only). This amendment is effective on June 27, 2012.

III. Related Documents

An Advance Notice of Proposed Rulemaking with request for comments was published in the **Federal Register** on March 26, 2010 (75 FR 14500), to make the public aware that the exemptions and prohibitions for over 200 listings of synthetic and nonsynthetic substances in organic production and handling would expire, if not reviewed by the NOSB and addressed by the Secretary. Substances and recommendations addressed through this final rule were announced for NOSB deliberation in the following **Federal Register** notices: (1) March 17, 2010 (75 FR 12723); September 20, 2010 (75 FR 57194); and (2) March 4, 2011 (76 FR 12013). The proposal to address the substances in this final rule was published as a proposed rule in the **Federal Register** on January 12, 2012 (77 FR 1996).

IV. Statutory and Regulatory Authority

The OFPA authorizes the Secretary to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. The National List petition process is implemented under section 205.607 of the NOP regulations. The current petition process (72 FR 2167, January 18, 2007) can be accessed through the NOP Web site at *http://www.ams.usda.gov.*

A. Executive Order 12866

This action has been determined not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This final rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in the OFPA (7 U.S.C. 6514(b)). States are also preempted by the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to the OFPA (7 U.S.C. 6519(f)), this final rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301–399), nor the authority of the Administrator of EPA under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 136–136(y)).

The OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small business will not be unduly or disproportionately burdened. 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.

Pursuant to the requirements set forth in the RFA, AMS performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). AMS has also considered the economic impact of this final rule on small entities and has determined that this rule would not have a significant economic impact on a substantial number of small entities. The effect of this final rule would be to allow the continued use of multiple substances in agricultural production and handling. AMS concludes that the economic impact of the renewals and renewals with amendment of allowed substances, if any, would be minimal and beneficial to small agricultural service firms. For the substances removed or further restricted through this final action, AMS determined that their use is either not prevalent or that alternatives to their use are available to organic producers and handlers.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000.

According to NOP's Accreditation and International Activities Division, the number of certified U.S. organic crop and livestock operations totaled over 17,000 in 2010. According to USDA, Economic Research Service (ERS) data based on information from USDA-accredited certifying agents, certified organic acreage exceeded 4.8 million acres in 2008.[2] In 2009, U.S. certified organic apple acreage exceeded 21,000 acres, primarily concentrated in Washington and California.[3] ERS, based upon the list of certified operations maintained by the NOP, estimated the number of certified handling operations was 3,225 in 2007.[4] AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

The U.S. sales of organic food and beverages have grown from $3.6 billion in 1997 to nearly $21.1 billion in 2008.[5] The organic industry is viewed as the fastest growing sector of agriculture, representing over 3 percent of overall food sales in 2009. Between 1990 and 2008, organic food sales historically demonstrated a growth rate between 15 to 24 percent each year. In 2010, organic food sales grew 7.7%.[6]

In addition, USDA has 93 accredited certifying agents who provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop.* AMS believes that most of these accredited certifying agents would be considered small entities under the criteria established by the SBA.

D. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this final rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, Chapter 35.

E. Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

F. Comments Received on Proposed Rule NOP–09–01

AMS received approximately 40 comments on the proposed rule. AMS received comments from consumers, organic producers and handlers, trade representatives, certifying agents, ingredient manufacturers, consultants, and an environmental organization. Most comments specifically addressed proposed amendments for individual substances. A few comments were received in support of multiple or all of the substances under this sunset review. A few comments presented concerns that were not within the scope of the sunset review action.

All comments on the proposed amendments for hops and lignin sulfonate and the proposed removal of potassium iodide were supportive of the actions as proposed. Therefore, AMS is finalizing the amendments and removals as proposed through this final rule.

Some comments suggested changes to the proposal rule for specific substances. These comments are described below in conjunction with AMS' response, including any amendments that will be addressed through this final rule.

Chlorine Materials

AMS received six comments regarding the amendment for chlorine materials allowed in crop production at section 205.601(a)(2). Comments were received from trade associations, an environmental organization and a sprout producer. Four comments supported the proposed amendment for chlorine materials, while two comments raised issues associated with the use of chlorine in sprouts.

AMS requested comments in the proposed rule on the use of chlorine in treatment of seeds for organic sprout production. Consistent with the NOSB recommendation, the proposed rule included an annotation change which, in part, intended to clarify the use of chlorine in edible sprout production. AMS specifically asked commenters to provide information on whether using

[2] U.S. Department of Agriculture, Economic Research Service. 2009. *Data Sets: U.S. Certified Organic Farmland Acreage, Livestock Numbers and Farm Operations, 1992–2008. http://www.ers.usda.gov/Data/Organic/.*

[3] Kirby, Elizabeth, and David Granatstein. *Status of Organic Tree Fruit in Washington State—2009,* Washington State University, March 2010.

[4] U.S. Department of Agriculture, Economic Research Service, 2009. *Data Sets: Procurement and Contracting by Organic Handlers: Documentation. http://www.ers.usda.gov/Data/OrganicHandlers/Documentation.htm.*

[5] Dimitri, C., and L. Oberholtzer. 2009. *Marketing U.S. Organic Foods: Recent Trends From Farms to Consumers,* Economic Information Bulletin No. 58, U.S. Department of Agriculture, Economic Research Service, *http://www.ers.usda.gov/Publications/EIB58.*

[6] Organic Trade Association's *2011 Organic Industry Survey, http://www.ota.com.*

the Environmental Protection Agency (EPA) labeled rate of chlorine for sprouts (20,000 ppm), followed by a rinse of potable water, is appropriate for organic production. AMS also sought input from commenters on whether there are other Food and Drug Administration (FDA) and EPA approved materials or methods suitable for sprout treatment.

One commenter responded that methods to ensure sprout safety are complex and stated that no single practice will completely eliminate pathogens. This commenter supported the clarification on chlorine as proposed and urged further development of criteria and procedures for assessing alternatives that would be both acceptable to FDA and in organic products.

One commenter stated that there are other equally effective alternatives that would be more consistent with organic principles. This commenter, however, noted that the 20,000 ppm soak in calcium hypochlorite, a chlorine material currently allowed under the NOP regulations, is the only treatment for sprouts addressed by FDA in their guidance document.[7] This commenter recommended that FDA clarify other treatment options that are permitted and effective for sprout treatment. AMS believes that this comment is pertinent to FDA's guidance, rather than AMS' proposed amendment for chlorine. In the absence of comments demonstrating acceptable alternatives for treatment of seed for sprouting, AMS concludes that the annotation change on chlorine specifying its allowance in spout production is appropriate and will codify this change through this final rule.

One commenter opposed all uses of chlorine in organic production, other than unavoidable residues of chlorine from its use in treated drinking water. This commenter stated that chlorine is a reactive chemical that can combine with organic matter to form persistent organochlorines and other disinfection byproducts. For this reason, the commenter felt that added chlorine should not be used in organic crop production. The commenter requested that AMS amend the annotation for chlorine to restrict all chlorine used in direct contact with crops, in irrigation systems, and in disinfection of equipment or tools to levels no greater than the maximum residual disinfectant limit under the Safe Drinking Water Act.

AMS disagrees with the commenter on this issue. The NOSB reviewed and recommended chlorine for inclusion on the National List in 1995, 2003, 2006 and 2011, according to the OFPA evaluation criteria in 7 U.S.C. 6517 and 6518. In these reviews, the NOSB assessed the impact of using chlorine on the environment and human health, but concluded that the need for this substance in some instances is necessary to ensure prevention of food borne pathogens. Consistent with the April 2011 NOSB recommendation, AMS proposed an annotation to chlorine, which would limit its direct use on crops and in soil contact to levels no higher than those found in municipal drinking water. The NOSB has not recommended any limitation on the use of chlorine for disinfecting tools and equipment when necessary to prevent spread of plant diseases. Therefore, AMS is codifying the annotation change to chlorine as proposed through this final rule.

Pheromones

AMS received one comment about the continued allowance for pheromones for insect management at section 205.601(f). The commenter objected to the categorical relisting of pheromones and indicated that the NOSB acted without sufficient information. The commenter indicated that although pheromone products are valuable to organic producers, there are many types of pheromones, and that the different types of pheromones were not reviewed by the NOSB. The commenter also indicated that the NOSB should address the use of additional ingredients in pheromone product formulations. The commenter suggested that the annotation be changed to list pheromones for insect management on section 205.601, provided that they are exempt from regulation under FIFRA (7 U.S.C. 136–136(y)) by 40 CFR 152.25(b).

AMS disagrees with the commenter on this issue. The NOSB is responsible for reviewing generic materials, not specific product formulations. The NOSB has previously reviewed and recommended pheromones for inclusion on the National List according to the OFPA criteria. The NOP regulations currently allow the use of inert ingredients in pesticide formulations under a separate listing at section 205.601(m). During their sunset deliberations, the NOSB reviewed pheromones against the evaluation criteria in 7 U.S.C. 6517 and 6518 of the OFPA and concluded that they remain essential to organic production since no organic alternatives exist. The NOSB recommended that the exemption for pheromones continue as previously allowed. AMS concurs with the NOSB's evaluation and recommendation of this substance, and therefore, does not find that sufficient information was provided by the commenter to justify the addition of an annotation to the listing for pheromones on the National List. Consistent with the NOSB recommendation, AMS is renewing the listing for pheromones through this final rule as proposed.

Sulfur Dioxide

AMS received one comment that objected to the removal of sulfur dioxide from section 205.601(g) based upon its use for rodent control on organic farms. However, AMS did not receive any comments from organic producers that this substance is commonly used. Furthermore, as explained in the proposed rule, the NOSB determined that the EPA does not register any products for use as a rodenticide that contain sulfur dioxide as an active ingredient. Therefore, consistent with the NOSB recommendation, AMS is removing the listing for sulfur dioxide as a rodenticide from the National List through this final rule.

EPA List 4—Inerts of Minimal Concern

AMS received one comment about the continued allowance for synthetic inert ingredients under the listing at section 205.601(m)(1) for ''EPA List 4—Inerts of Minimal Concern.'' The commenter opposes the inclusion of EPA List 4 as a category on the National List and indicated that all substances included on EPA List 4 should be individually considered by the NOSB. The commenter also objected to the use of the term ''inert'' in describing other ingredients in pesticide products. The commenter noted that ''inert'' ingredients may be biologically active or have toxicological affects. AMS disagrees with the commenter on this issue of redefining the term ''inert ingredient'' at this time. The term ''inert ingredient,'' is defined under the NOP regulations for consistency with EPA regulations under FIFRA. AMS does not conclude that sufficient information was provided by the commenter to justify the removal of this listing from the National List. Therefore, AMS is renewing the listing for EPA List 4 through this final rule as proposed.

The commenter also suggested that the NOSB adopt a policy to transition to the individual review of inert ingredients. This comment is outside the scope of this rulemaking; however,

[7] FDA, Guidance for Industry: Microbial Food Safety Hazards for Sprouted Seeds. October 27, 1999. *http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/ProduceandPlanProducts/ucm120244.htm.*

AMS notes that a working group is currently in place to address the allowance of inerts that were previously classified as EPA List 4, since the EPA is no longer maintaining this list.

Streptomycin

AMS received eight comments on the proposed rule to relist streptomycin at section 205.601(i)(11) with an expiration date of October 21, 2014. Comments were received from a university-affiliated researcher, an agricultural pest and disease management specialist, an apple producer, a trade association, certifying agents, a streptomycin product manufacturer and an environmental organization.

One comment supported the proposal to set October 21, 2014, as the expiration date for the use of streptomycin as recommended by the NOSB.[8] This comment cited the following factors in support of phasing out streptomycin in organic apple and pear production: (i) Potential for the substance's continued use to result in antibiotic resistance in human pathogens; (ii) inconsistency with the prohibition on antibiotic use in organic livestock production; and, (iii) incompatibility with organic and sustainable agriculture. The commenter further clarified the third point by stating that streptomycin use discourages cultural and biological controls, such as disease-resistant varieties and rootstock, site selection, careful fertilization, adequate tree spacing, proper pruning, as well as newer biological control products.

Seven comments supported the proposal to relist streptomycin, but opposed the addition of the October 21, 2014 expiration date. These commenters stated that a longer allowance time is needed and provided the following reasons for this opinion: (i) In practice, applications of streptomycin are coupled with management strategies to reduce susceptibility to fire blight and are generally limited to situations when computer models warn that an infection is likely to occur; (ii) there is a lack of viable, commercially available alternatives to streptomycin for fire blight control in apple and pear production; (iii) the research community is engaged in an ongoing effort to develop alternatives to antibiotics for controlling fire blight; (iv) streptomycin is particularly effective in humid areas where fire blight has not developed resistance; and, (v) without the availability of streptomycin to treat fire blight, some U.S. organic apple and pear producers may exit organic production and imported products could compensate for any decrease in U.S. production.

These commenters further stated that there is no assurance that current research efforts will yield any commercially viable alternative(s) to streptomycin in time for the October 21, 2014, expiration date. A number of commenters specifically cited a USDA-Organic Agriculture Research and Extension Initiative grant for the development of non-antibiotic programs for fire blight control in organic apple and pear production. Commenters explained that the findings of this project, which started in September 2011, will not be available until 2016, and would enable the NOSB to assess the strategies for controlling fire blight without antibiotics after that time.

Comments also addressed the efficacy of several of alternatives to streptomycin, including resistant rootstocks and varieties, and biological controls, all of which the NOSB cited in its justification for recommending an expiration date. Several commenters explained that resistant rootstocks are still in development and that resistance would not convey to the upper part of the tree where the fire blight infection takes hold. Some commenters stated that apple and pear varieties have varying degrees of susceptibility to fire blight, but none are immune. One commenter reported that consumers demand newer apple and pear varieties, which are susceptible to fire blight, and stated that there is no market for other varieties. One commenter noted the slow progress in developing new varieties that exhibit favorable eating and storage qualities, as well as fire blight resistance. Some comments described biological controls as a component of an overall fire blight management strategy, which are most effective when supplemented with antibiotics. Comments also contended that years of research have not yielded any biological control product that matches the effectiveness of streptomycin.

Commenters specifically requested that the proposed expiration date for streptomycin be deleted. In effect, such an action would renew the current listing for streptomycin on the National List for five years, until 2017, when it would be subject to sunset review.

Consistent with the NOSB recommendation, AMS is maintaining the proposed amendment to allow streptomycin for fire blight control in organic apple and pear production until October 21, 2014. During deliberations, the NOSB reviewed technical information on streptomycin in accordance with the criteria in OFPA (7 U.S.C. 6517–6518) and the NOP regulations for synthetic substances on the National List (§ 205.600). The Technical Report considered by the NOSB addressed the same issues raised by the commenters to the proposed rule concerning the efficacy of alternatives to streptomycin.[9] These alternatives include biological controls, allowed synthetic substances, the selection of varieties with low susceptibility to fire blight, and agronomic practices including careful and timely pruning, maintaining well-drained soil, limiting or excluding the use of manure and blossom removal. The NOSB is mandated by OFPA to evaluate whether alternative practices make the use of a substance such as streptomycin unnecessary. In this case, the NOSB found widespread fire blight resistance to streptomycin in apple production and continued use of apple and pear varieties that are highly susceptible to fire blight. Ultimately, the NOSB recommendation conveyed the expectation that preparation for the removal of streptomycin would augment the development and use of resistant rootstocks and cultivars, preventive management methods and the use of allowed biological and chemical controls.

The NOSB also considered additional factors in its decision, including antibiotic resistance in humans and the high susceptibility of leading varieties of organic apple and pears, in terms of acreage, to fire blight. Consistent with the OFPA, the NOSB evaluated the effects of the use of streptomycin upon human health. The NOSB considered information from the Technical Report that streptomycin sprays can leave detectable residues in apple cores and skins. Based on this information, the NOSB was concerned that the continued use of streptomycin could contribute to antibiotic resistance which would be inconsistent with the principles of organic production and the OFPA criteria. The NOSB also stated that consumers expect that organic products are not produced with antibiotics.

At the April 2011 meeting, the NOSB Crops Committee put forth a proposal to extend the exemption for streptomycin until October 21, 2014. This proposal was intended to phase out use of this

[8] NOSB Formal Recommendation on Streptomycin Sunset. April 29, 2011. Available on the NOP Web site: *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5091714.*

[9] Technical Report on Streptomycin. March 8, 2011. Available in petitioned substances database, under ''S,'' at the NOP Web site: *www.ams.usda.gov/nop.*

substance while providing a sufficient timeframe for industry members to prepare for the removal of streptomycin from the National List. At the April 2011 NOSB meeting, the NOSB took two votes on the proposal for streptomycin: one vote on their recommendation to list streptomycin with the October 21, 2014, expiration date, and one ''back up vote'' to relist streptomycin without restriction. The NOSB conducted these votes in accordance with their sunset review process.[10] The April 2011 NOSB recommendation for streptomycin specified their intent to phase out use of the substance over time through addition of the October 21, 2014, expiration date.[11] Therefore, consistent with the recommendation of the NOSB, AMS published a rule proposing the October 21, 2014, expiration date for streptomycin.

While some commenters submitted comments advocating for relisting streptomycin without restriction, AMS did not receive any new information from commenters on this issue that the NOSB had not considered during their April 2011 deliberations on streptomycin. Furthermore, AMS believes that relisting streptomycin without an expiration date would not meet the intent of the NOSB to phase out the use of this substance in organic apple and pear production over time. Therefore, consistent with the NOSB recommendation, AMS is codifying the addition of an expiration date to the listing for streptomycin through this final rule. Finally, AMS notes that extending the allowance for the use of streptomycin after the October 21, 2014, expiration date would require a petition to the NOSB. This process can be initiated in accordance with the Notice of Guidelines on Procedures for Submitting National List Petitions (72 FR 2167).

Flavors

AMS received one comment from a trade association that specifically addressed the proposed relisting of flavors, nonsynthetic sources only, on section 205.605(a). The commenter supported the continued listing of nonsynthetic flavors with the existing restriction, ''must not be produced using synthetic solvents and carrier system or any artificial preservatives.'' AMS is renewing the listing for flavors as proposed through this final rule.

The commenter, however, further requested that the NOP issue a guidance document to request that certifying agents use a standardized industry questionnaire to verify compliance of the use of nonsynthetic flavors in organic handling. AMS concludes this request is beyond the scope of this final rule.

Yeast

AMS received over twenty comments in response to the proposed amendment for yeast. The majority of comments were supportive of the amendment in the proposed rule.

One commenter noted that the proposed amendment for yeast would require producers of products labeled ''made with organic (specified ingredients or food group(s))'' to be subject to commercial availability before using a nonorganic ingredient, which is not required for products in this labeling category. Under section 205.301(c) of the NOP regulations, products sold, labeled, or represented as ''made with organic (specified ingredients or food group(s))'' are not subject to the requirement that the product must not be produced using nonorganic ingredients when organic ingredients are available. AMS concludes that a modification to the proposed amendment for yeast is necessary to ensure consistency with the NOP regulations. Therefore, AMS has amended the yeast annotation through this final rule to clarify that the requirement that yeast be organic when commercially available is only applicable to products labeled ''organic.''

One commenter noted that the use of the term ''equivalent organic yeast'' in the proposed amendment was unclear since ''equivalent'' was not defined. The commenter noted that organic yeast may have lower leavening activity than conventional yeast, or may only be available in a specific form (e.g. dry and not fresh), and therefore would not be considered ''equivalent.'' AMS notes that the amendment allows the use of conventional yeast when organic yeast is not commercially available. Under the NOP regulations, ''commercially available'' is defined as the ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system of organic production or handling, as determined by the certifying agent in the course of reviewing the organic plan. Thus, organic yeast is not required to be used if it is not available in the appropriate form or quality, as noted in the commenter's examples. To reduce confusion over the use of the term ''equivalent,'' AMS has removed this term from the amendment in the final rule as we believe the inclusion is redundant with the existing criteria for commercial availability.

One commenter requested that AMS develop guidelines specifically for changes to the National List for which label revisions will be necessary. The commenter specifically noted that an operator presently using nonorganic yeast that successfully sources organic yeast will need to update the ingredient statement in their product labels to indicate the yeast is organic. The commenter suggested these guidelines allow at least one year for label revisions.

AMS notes that the effective date of this amendment requires that product formulations be compliant by October 21, 2012. The publication of this final rule provides almost four months of notice to the industry about this change. Sections 205.304–205.306 of the NOP regulations require that each organic ingredient in the ingredient statement be identified with the word, ''organic,'' or with an asterisk or other reference mark which is defined below the ingredient statement to indicate the ingredient is organically produced. Therefore, if product formulations must be compliant by October 21, 2012, then the labels for these products should also be compliant with the regulations at sections 205.304–205.306 by the effective date for this amendment. Products entering the stream of commerce prior to the effective date do not have to be relabeled. AMS further notes that development of broad guidelines on label use up for any National List change is beyond the scope of this rulemaking.

Two commenters requested that yeast be moved from section 205.605 of the National List to section 205.606, as an agricultural product. One commenter noted that listing yeast on section 205.605 would allow products labeled ''made with organic (specified ingredients or food group(s))'' to use non-organic yeast without the requirements for documenting commercial availability. The NOP has addressed the concerns for products labeled ''made with organic (specified ingredients or food group(s))'' by clarifying that the annotation which requires organic yeast is applicable only to products labeled ''organic.'' One commenter noted that yeast is an

[10] The NOSB sunset review process is described on pg. 54 of the NOSB Policy and Procedures Manual. Available at NOP Web site: *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELDEV3013893*. This process is further described in the October 28, 2010, NOSB Recommendation on Sunset Review Process. Available at NOP Web site: *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5088004&acct=nosb*.

[11] NOSB Recommendation on Streptomycin, April 29, 2011. Available at NOP Web site: *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5091714*.

organism grown for food and that it should be considered an agricultural product for listing on section 205.606, rather than section 205.605. Based on review of the record, the NOSB considered this perspective during its deliberations before issuing its formal recommendation to the NOP; therefore, AMS has chosen to retain the listing on section 205.605, as recommended by the NOSB, rather than moving the listing to section 205.606.

One commenter was opposed to the proposed amendment for yeast and supported the existing listing. The commenter noted that organic yeast is only available in dry form, not fresh. In addition, the commenter claimed that leavening activity in organic yeast is much lower than conventional yeast and that organic yeast is costly, and, therefore, is not equivalent in performance and cost. AMS notes that the current annotation permits the use of nonorganic yeast when organic yeast is not commercially available. Under the NOP regulations, section 205.2, commercially available is defined as the ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system of organic production or handling, as determined by the certifying agent in the course of reviewing the organic plan. The commenter's concern about sourcing an appropriate form (e.g. fresh, rather than dry) or quality (e.g. better leavening activity) could be considered by the certifying agent to determine whether nonorganic yeast would be allowed under the regulations in specific applications. The higher cost of organic yeast is not one of the permitted criteria for determining commercial availability under the NOP regulations. The NOSB considered the issues raised by the commenters, and AMS concludes that the inclusion of a commercial availability clause addresses the commenter's concern about the allowance for conventional yeast when organic yeast is not available in an appropriate form, quality, or quantity.

Silicon Dioxide

The NOP received one comment stating that the listing for silicon dioxide at section 205.605(b) should be amended to reflect a December 2011 NOSB recommendation on this substance. In their December 2011 recommendation, the NOSB recommended the addition of a restrictive annotation to specify that silicon dioxide, a synthetic used in processed products, could only be used if a nonsynthetic alternative for certain uses is not commercially available. However, the December 2011 NOSB recommendation was not available when drafting the proposed rule for this 2012 Sunset Review. Therefore, consistent with the October 2010 NOSB recommendation pertaining to the 2012 Sunset Review for this substance, AMS published a proposed rule on January 12, 2012, to renew silicon dioxide at section 205.605(b) as currently listed (i.e. without annotation). Because the proposal to amend the annotation for silicon dioxide was not included in the proposed rule and AMS did not receive public comment on such a change, AMS is not amending the annotation in this final rule. AMS is, therefore, renewing the existing listing for silicon dioxide through this final rule as proposed. AMS intends to address the December 2011 NOSB recommendation for this substance through a separate rulemaking action for National List amendments.

Xanthan Gum

AMS received one comment from a trade association in support of relisting xanthan gum; however, this commenter also suggested reclassifying the substance as nonsynthetic and relisting it at section 205.605(a) of the National List. This commenter describes xanthan gum as a natural extracellular polysaccharide. The NOSB reviewed xanthan gum in April 2010 and did not propose any change in classification at that time. Therefore, AMS is renewing the listing for xanthan gum as codified.

Pectin

In accordance with the October 2010 NOSB recommendation, the NOP proposed to remove the listing of synthetic pectin (low methoxy) at section 205.605(b), and to amend the listing for pectin (high-methoxy) at section 205.606(t) to ''Pectin (non-amidated forms only).'' The NOP received five comments in support of these proposed changes from trade associations, a beverage and dairy products manufacturer, and a consulting firm. The commenters agreed generally that non-amidated forms of pectin are adequate for use in organic products.

One commenter opposed the proposed changes for technical reasons. This commenter disagreed with the October 2010 NOSB recommendation that considered both low-methoxy and high-methoxy pectin to be derived from a similar non-synthetic extraction process, with the difference in the final substance resulting from a longer extraction period. The commenter pointed out that the low-methoxy pectin is produced as a result of esterification (by removal of methyl groups, or demethylation) of high-methoxy pectin which is initially derived from citrus peel or apple pomace.[12] This commenter agreed that amidated forms of pectin (forms treated with ammonia) are not necessary for use in organic production, but noted that only low-methoxy pectin is available in amidated form. This commenter suggested that the listing at section 205.605(b) be amended to: ''Low-methoxy pectin, non-amidated forms only'' and that the existing listing for high-methoxy pectin be retained at section 205.606.

While AMS believes that the commenter has merit regarding technical classification of the substance, the intent of the NOSB was to require that all forms of pectin used in organic products be subject to the requirement that organic sources be used when commercially available. Therefore, consistent with the intent of the NOSB, we have retained the proposed amendments for pectin in this final rule.

Colors

AMS received four comments in support of the proposed amendment to the listing for colors at section 205.606(d). The proposed listing was ''Colors derived from agricultural products—Must not be produced using synthetic solvents and carrier systems or any artificial preservative.'' These commenters, however, requested that AMS clarify whether synthetic substances allowed under section 205.605(b) for solvent extraction, or as carriers, preservatives or stabilizers, and which are currently allowed for use in organic colors, would also be allowed for use in nonorganic colors at section 205.606. Commenters specifically referenced ascorbic acid, carbon dioxide, glycerin, silicon dioxide and tocopherols, as examples of substances listed at section 205.605(b), which are currently allowed to produce organic colors. These substances were previously recommended by the NOSB and are currently codified as allowed synthetics at section 205.605(b) of the National List. The commenters requested clarification as to whether such substances at section 205.605(b) would still be allowed in the production of nonorganic colors under the proposed amendment.

At their October 2010 meeting, the NOSB discussed the need for an annotation to clarify the allowance of synthetic solvents in the preparation of

[12] This process is also described in the 2009 Technical Report for Non Amidated Low Methoxyl Pectin. Available at NOP Web site: *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5087206.*

the colors listed on section 205.606.[13] The NOSB recommended an amendment to restrict the use of synthetic solvents, carrier systems and artificial preservatives in the production of colors. However, in their recommendation, the NOSB did not address whether this restriction would apply to synthetics already listed at section 205.605(b).

The NOSB has already reviewed and recommended the synthetics listed at section 205.605(b) of the National List. Therefore, the synthetics listed at section 205.605(b) of the National List are already allowed in organic processed products, including in the formulation of colors. AMS believes the intent of the NOSB recommendation for colors is to prevent the use of synthetic substances that are not on the National List in the formulation of colors. Substances at section 205.605(b) of the National List will still be allowed in the production of nonorganic colors under the amendment.

One commenter stated that unrestricted use of synthetic solvents or carriers permitted by FDA should be acceptable in colors used for organic production. AMS disagrees with this comment. While certain synthetic solvents or carriers may be permitted by FDA, these synthetics would need to be petitioned and reviewed by the NOSB for inclusion on the National List under the NOP regulations.

Some commenters requested that AMS provide a one year compliance date from the effective date of the amendment to colors. Commenters stated that, while they believe that colors that comply with the amendment are available, manufacturers will need time to reformulate products that contained colors produced with synthetic solvents or carrier systems no longer allowed under the amendment. Based on the comments received, AMS understands that some product reformulation may be necessary. The effective date for this amendment is June 27, 2012, the sunset date for the current listing for colors. While this amendment is effective on June 27, 2012, AMS considers a one year period from that date as reasonable and appropriate for the industry to reformulate products in order to ensure that the amendment is effectively and rationally implemented. AMS will be conducting outreach to the industry and training for certifying agents as appropriate.

[13] This NOSB discussion is available on the NOP Web site in the meeting transcript for Oct. 26, 2010 at *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5088302&acct=nosb.*

Cornstarch

AMS received one comment opposed to the continued listing of cornstarch (native) at section 205.606(w)(1) of the National List. This commenter cited several sources for organic cornstarch that include a number of types for different applications, and suggested that nonorganic cornstarch should no longer be given an exemption for organic use. The commenter also believes that nonorganic cornstarch should not be included on the National List since most nonorganic sources could be derived from genetically engineered corn.

During the October 2010 NOSB deliberations on the 2012 Sunset Review for cornstarch, the NOSB did not receive public comments objecting to relisting of cornstarch, and received several in support of relisting on section 205.606. In their review, the NOSB did not identify risks to the environment, human or animal health resulting from the use or manufacture of the substance. Based upon the NOSB's recommendation, AMS is relisting cornstarch as codified at section 205.606. AMS notes that all nonorganic ingredients, including cornstarch, used in products labeled ''organic'' or ''made with organic (specified ingredients or food group(s)'' must not be produced using excluded methods, and that organic cornstarch should be used if commercially available.

F. Effective Date

This final rule reflects recommendations submitted to the Secretary by the NOSB for the purpose of fulfilling the requirements of 7 U.S.C. 6517(e) of the OFPA. Section 7 U.S.C. 6517(e) requires the NOSB to review each substance on the National List within 5 years of its publication. The substances being renewed or reauthorized with amended annotations on the National List were most recently reauthorized for use in organic agriculture on June 27, 2007, October 21, 2007, December 11, 2007, and December 13, 2007. In the case of substances reauthorized for use on June 27, 2007 and due to expire on June 27, 2012, the substances being renewed and amended are critical to organic production and handling operations.

Accordingly, pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date for amendments and renewals contained in this rule that are due to expire on June 27, 2012, until 30 days after publication in the **Federal Register**. The effective dates for all substances are indicated in the Appendix.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205 is amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

■ 2. Section 205.601 is amended by:
■ A. Revising paragraph (a)(2);
■ B. Revising paragraph (g);
■ C. Revising paragraph (i)(11); and
■ D. Revising paragraph (j)(4) to read as follows:

§ 205.601 Synthetic substances allowed for use in organic crop production.

* * * * *

(a) * * *

(2) Chlorine materials—For pre-harvest use, residual chlorine levels in the water in direct crop contact or as water from cleaning irrigation systems applied to soil must not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act, except that chlorine products may be used in edible sprout production according to EPA label directions.

(i) Calcium hypochlorite.

(ii) Chlorine dioxide.

(iii) Sodium hypochlorite.

* * * * *

(g) As rodenticides. Vitamin D_3.

* * * * *

(i) * * *

(11) Streptomycin, for fire blight control in apples and pears only until October 21, 2014.

* * * * *

(j) * * *

(4) Lignin sulfonate—chelating agent, dust suppressant.

* * * * *

■ 3. Section 205.605 is amended by:
■ A. Revising the annotation for ''Yeast'' under paragraph (a);
■ B. Removing ''Pectin (low-methoxy)'' from paragraph (b); and
■ C. Removing the paragraph for ''Potassium iodide'' from paragraph (b).

The revision reads as follows:

§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s)).''

* * * * *

(a) * * *

* * * * *

Yeast—When used as food or a fermentation agent in products labeled as ''organic,'' yeast must be organic if its end use is for human consumption; nonorganic yeast may be used when organic yeast is not commercially available. Growth on petrochemical substrate and sulfite waste liquor is prohibited. For smoked yeast, nonsynthetic smoke flavoring process must be documented.

* * * * *

■ 4. Section 205.606 is amended by:
■ A. Revising paragraph (d);
■ B. Revising paragraph (l); and
■ C. Revising paragraph (t).
■ The revisions read as follows:

§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled ''organic''.

* * * * *

(d) Colors derived from agricultural products—Must not be produced using synthetic solvents and carrier systems or any artificial preservative.

* * * * *

(l) Hops (*Humulus lupulus*) until January 1, 2013.

* * * * *

(t) Pectin (non-amidated forms only).

* * * * *

Dated: May 30, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

Note: The following Appendix will not appear in the Code of Federal Regulations.

APPENDIX—OVERVIEW OF FINAL ACTIONS FOR SUNSET 2012 [14]

National list section	Substance	NOSB meeting	Effective date	Final action
§ 205.601 Synthetic substances allowed for use in organic crop production.	Alcohols (Ethanol; Isopropanol)	April 2011	June 27, 2012	Renew.
	Ammonium carbonate	April 2010 *	June 27, 2012	Renew.
	Aquatic plant extracts (other than hydrolyzed).	April 2010 *	June 27, 2012	Renew.
	Boric acid	April 2010 *	June 27, 2012	Renew.
	Chlorine materials at § 205.601(a)(2) (Calcium hypochlorite; chlorine dioxide; sodium hypochlorite).	April 2011	June 27, 2012	Amend: Chlorine materials—For pre-harvest use, residual chlorine levels in the water in direct crop contact or as water from cleaning irrigation systems applied to soil must not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act, except that chlorine products may be used in edible sprout production according to EPA label directions.
	Coppers, fixed (Copper hydroxide; copper oxide; copper oxychloride, includes products exempted from EPA tolerance).	April 2011	June 27, 2012	Renew.
	Copper sulfate	April 2011	June 27, 2012	Renew.
	Elemental sulfur (3 uses)	April 2010 *	June 27, 2012	Renew.
	EPA List 4—Inerts of Minimal Concern.	October 2010	June 27, 2012	Renew.
	Ethylene gas	April 2011	June 27, 2012	Renew.
	Herbicides, soap-based	April 2010 *	June 27, 2012	Renew.
	Humic acids	April 2010 *	June 27, 2012	Renew.
	Hydrated lime	April 2010 *	June 27, 2012	Renew.
	Hydrogen peroxide (2 uses)	April 2010 *	June 27, 2012	Renew.
	Lignin sulfonate at § 205.601(j)(4).	April 2011	June 27, 2012	Amend: Lignin sulfonate—chelating agent, dust suppressant.
	Lignin sulfonate at § 205.601(l)(1).	April 2011	June 27, 2012	Renew.
	Lime sulfur (2 uses)	April 2010 *	June 27, 2012	Renew.
	Liquid fish products	April 2010 *	June 27, 2012	Renew.
	Magnesium sulfate	April 2011	June 27, 2012	Renew.
	Micronutrients (Soluble boron products; Sulfates, carbonates, oxides, or silicates of zinc, copper, iron, manganese, molybdenum, selenium, and cobalt).	April 2010 *	June 27, 2012	Renew.

[14] This Appendix shows a simplified listing for each substance; use categories and any restrictive annotations are not included in this overview.

APPENDIX—OVERVIEW OF FINAL ACTIONS FOR SUNSET 2012 [14]—Continued

National list section	Substance	NOSB meeting	Effective date	Final action
	Mulches (Newspapers or other recycled paper, without glossy or colored inks; Plastic mulch and covers).	April 2011	June 27, 2012	Renew.
	Newspapers or other recycled paper, without glossy or colored inks.	April 2011	June 27, 2012	Renew.
	Oils, horticultural-narrow range oils as dormant, suffocating, and summer oils (2 uses).	April 2010*	June 27, 2012	Renew.
	Pheromones	April 2011	June 27, 2012	Renew.
	Potassium bicarbonate	April 2010*	June 27, 2012	Renew.
	Soap-based algicide/demossers	April 2010*	June 27, 2012	Renew.
	Soaps, ammonium	April 2010*	June 27, 2012	Renew.
	Soaps, insecticidal	April 2010*	June 27, 2012	Renew.
	Sodium silicate	April 2011	June 27, 2012	Renew.
	Sticky traps/barriers	April 2010*	June 27, 2012	Renew.
	Streptomycin	April 2011	June 27, 2012	Amend: Streptomycin, for fire blight control in apples and pears only until October 21, 2014.
	Sucrose octanoate esters (CAS #s—42922–74–7; 58064–47–4).	April 2010*	June 27, 2012	Renew.
	Sulfur dioxide	April 2011	October 21, 2012	Remove.
	Vitamin B_1, C, and E	April 2010*	June 27, 2012	Renew.
	Vitamin D_3	April 2011	June 27, 2012	Renew.
§ 205.602 Nonsynthetic substances prohibited for use in organic crop production.	Arsenic	April 2010*	June 27, 2012	Renew.
	Ash from manure burning	April 2010*	June 27, 2012	Renew.
	Lead salts	April 2010*	June 27, 2012	Renew.
	Potassium chloride	April 2010*	June 27, 2012	Renew.
	Sodium fluoaluminate (mined)	April 2010*	June 27, 2012	Renew.
	Sodium nitrate	April 2011		Addressed in separate rulemaking action.
	Strychnine	April 2010*	June 27, 2012	Renew.
	Tobacco dust (nicotine sulfate)	April 2010*	June 27, 2012	Renew.
§ 205.603 Synthetic substances allowed for use in organic livestock production.	Alcohols (Ethanol; Isopropanol)	October 2010	June 27, 2012	Renew.
	Aspirin	October 2010	June 27, 2012	Renew.
	Atropine (CAS #–51–55–8)	April 2010*	June 27, 2012	Renew.
	Biologics—Vaccines	April 2010*	June 27, 2012	Renew.
	Butorphanol (CAS #–42408–82–2).	April 2010*	June 27, 2012	Renew.
	Chlorhexidine	April 2010*	June 27, 2012	Renew.
	Chlorine materials (Calcium hypochlorite; chlorine dioxide; sodium hypochlorite).	October 2010	June 27, 2012	Renew.
	Copper sulfate	October 2010	June 27, 2012	Renew.
	Electrolytes	April 2010*	June 27, 2012	Renew.
	EPA List 4—Inerts of Minimal Concern.	October 2010	June 27, 2012	Renew.
	Excipients	April 2010*	June 27, 2012	Renew.
	Flunixin (CAS #–38677–85–9)	April 2010*	June 27, 2012	Renew.
	Furosemide	October 2010	June 27, 2012	Renew.
	Glucose	October 2010	June 27, 2012	Renew.
	Glycerine	October 2010	June 27, 2012	Renew.
	Hydrogen peroxide	April 2010*	June 27, 2012	Renew.
	Iodine (2 uses)	April 2010*	June 27, 2012	Renew.
	Ivermectin	April 2010*	June 27, 2012	Renew.
	Lidocaine	April 2010*	June 27, 2012	Renew.
	Lime, hydrated	April 2010*	June 27, 2012	Renew.
	Magnesium hydroxide (CAS #–1309–42–8).	April 2010*	June 27, 2012	Renew.
	Magnesium sulfate	October 2010	June 27, 2012	Renew.
	Mineral oil	April 2010*	June 27, 2012	Renew.
	Oxytocin	April 2010*	June 27, 2012	Renew.
	Peroxyacetic/peracetic acid (CAS #–79–21–0).	April 2010*	June 27, 2012	Renew.
	Phosphoric acid	April 2010*	June 27, 2012	Renew.
	Poloxalene (CAS #–9003–11–6).	April 2010*	June 27, 2012	Renew.
	Procaine	April 2010*	June 27, 2012	Renew.

APPENDIX—OVERVIEW OF FINAL ACTIONS FOR SUNSET 2012 [14]—Continued

National list section	Substance	NOSB meeting	Effective date	Final action
	Sucrose octanoate esters (CAS #s—42922–74–7; 58064–47–4).	April 2010 *	June 27, 2012	Renew.
	Tolazoline (CAS #–59–98–3)	April 2010 *	June 27, 2012	Renew.
	Trace minerals	April 2010 *	June 27, 2012	Renew.
	Vitamins	April 2010 *	June 27, 2012	Renew.
	Xylazine (CAS #–7361–61–7)	April 2010 *	June 27, 2012	Renew.
§ 205.604 Nonsynthetic substances prohibited for use in organic livestock production.	Strychnine	April 2010 *	June 27, 2012	Renew.
§ 205.605(a) Nonsynthetic, nonagricultural substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s))''.	Acids (Alginic; citric; lactic)	April 2010 *	June 27, 2012	Renew.
	Bentonite	April 2010 *	June 27, 2012	Renew.
	Calcium carbonate	April 2010 *	June 27, 2012	Renew.
	Calcium chloride	April 2010 *	June 27, 2012	Renew.
	Dairy cultures	April 2010 *	June 27, 2012	Renew.
	Diatomaceous earth	April 2010 *	June 27, 2012	Renew.
	Enzymes	April 2011	June 27, 2012	Renew.
	Flavors	October 2010	June 27, 2012	Renew.
	Kaolin	April 2010 *	June 27, 2012	Renew.
	Magnesium sulfate	October 2010	June 27, 2012	Renew.
	Nitrogen	April 2010 *	June 27, 2012	Renew.
	Oxygen	April 2010 *	June 27, 2012	Renew.
	Perlite	April 2010 *	June 27, 2012	Renew.
	Potassium chloride	April 2010 *	June 27, 2012	Renew.
	Potassium iodide	April 2011	June 27, 2012	Renew.
	Sodium bicarbonate	April 2010 *	June 27, 2012	Renew.
	Sodium carbonate	April 2010 *	June 27, 2012	Renew.
	Waxes (Carnauba wax; Wood resin).	April 2010 *	June 27, 2012	Renew.
	Yeast (Autolysate; Bakers; Brewers; Nutritional; Smoked).	October 2010	October 21, 2012	Amend: Yeast—When used as food or a fermentation agent in products labeled ''organic'', yeast must be organic if its end use is for human consumption; nonorganic yeast may be used when organic yeast is not commercially available. Growth on petrochemical substrate and sulfite waste liquor is prohibited. For smoked yeast, nonsynthetic smoke flavoring process must be documented.
§ 205.605(b) Synthetic, nonagricultural substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s))''.	Alginates	April 2010 *	June 27, 2012	Renew.
	Ammonium bicarbonate	April 2010 *	June 27, 2012	Renew.
	Ammonium carbonate	April 2010 *	June 27, 2012	Renew.
	Ascorbic Acid	April 2010 *	June 27, 2012	Renew.
	Calcium citrate	April 2010 *	June 27, 2012	Renew.
	Calcium hydroxide	April 2010 *	June 27, 2012	Renew.
	Calcium phosphates (monobasic; dibasic; tribasic).	April 2010 *	June 27, 2012	Renew.
	Carbon dioxide	April 2010 *	June 27, 2012	Renew.
	Chlorine materials (Calcium hypochlorite; chlorine dioxide; sodium hypochlorite).	October 2010	June 27, 2012	Renew.
	Ethylene	April 2010 *	June 27, 2012	Renew.
	Ferrous sulfate	October 2010	June 27, 2012	Renew.
	Glycerides (mono; di)	April 2010 *	June 27, 2012	Renew.
	Glycerin	April 2010 *	June 27, 2012	Renew.
	Hydrogen peroxide	April 2010 *	June 27, 2012	Renew.
	Magnesium carbonate	April 2010 *	June 27, 2012	Renew.
	Magnesium chloride	April 2010 *	June 27, 2012	Renew.
	Magnesium stearate	April 2010 *	June 27, 2012	Renew.
	Nutrient vitamins and minerals	April 2011		Addressed in separate rulemaking action.
	Ozone	April 2010 *	June 27, 2012	Renew.
	Pectin (low-methoxy)	October 2010	June 27, 2012	Remove.
	Phosphoric acid	October 2010	June 27, 2012	Renew.
	Potassium acid tartrate	April 2010 *	June 27, 2012	Renew.
	Potassium carbonate	April 2010 *	June 27, 2012	Renew.
	Potassium citrate	April 2010 *	June 27, 2012	Renew.
	Potassium hydroxide	April 2010 *	June 27, 2012	Renew.

APPENDIX—OVERVIEW OF FINAL ACTIONS FOR SUNSET 2012 [14]—Continued

National list section	Substance	NOSB meeting	Effective date	Final action
	Potassium iodide	April 2011	June 27, 2012	Remove.
	Potassium phosphate	April 2010 *	June 27, 2012	Renew.
	Silicon dioxide	October 2010	June 27, 2012	Renew.
	Sodium citrate	October 2010	June 27, 2012	Renew.
	Sodium hydroxide	October 2010	June 27, 2012	Renew.
	Sodium phosphates	October 2010	June 27, 2012	Renew.
	Sulfur dioxide	October 2010	June 27, 2012	Renew.
	Tocopherols	April 2011	June 27, 2012	Renew.
	Xanthan gum	April 2010 *	June 27, 2012	Renew.
§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as "organic".	Casings, from processed intestines.	April 2010 *	June 27, 2012	Renew.
		April 2010 *	June 27, 2012	Renew.
	Celery powder	April 2010 *	June 27, 2012	Renew.
	Chia (*Salvia hispanica L.*)	October 2010	June 27, 2012	Amend: Colors derived from agricultural products—Must not be produced using synthetic solvents and carrier systems or any artificial preservative.
	Colors (Annatto extract color; Beet juice extract color; Beta-carotene extract color; Black currant juice color; Black/purple carrot juice color; Blueberry juice color; Carrot juice color; Cherry juice color; Chokeberry—Aronia juice color; Elderberry juice color; Grape juice color; Grape skin extract color; Paprika color; Pumpkin juice color; Purple potato juice color; Red cabbage extract color; Red radish extract color; Saffron extract color; Turmeric extract color). CAS numbers are provided in the Renewals with Amendment section.			
	Cornstarch (native)	October 2010	June 27, 2012	Renew.
	Dillweed oil (CAS # 8006–75–5)	April 2010 *	June 27, 2012	Renew.
	Fish oil (Fatty acid CAS #'s 10417–94–4 and 25167–62–8).	April 2010 *	June 27, 2012	Renew.
	Fructooligosaccharides (CAS # 308066–66–2).	October 2010	June 27, 2012	Renew.
	Galangal, frozen	April 2010 *	June 27, 2012	Renew.
	Gelatin (CAS # 9000–70–8)	April 2010 *	June 27, 2012	Renew.
	Gums (Arabic; Guar; Locust bean; Carob bean).	April 2010 *	June 27, 2012	Renew.
	Hops (*Humulus luplus*) at § 205.606(l).	October 2010	June 27, 2012	Amend: Hops (*Humulus lupulus*) until January 1, 2013.
	Inulin, oligofructose enriched (CAS # 9005–80–5)	October 2010	June 27, 2012	Renew.
	Kelp	April 2010 *	June 27, 2012	Renew.
	Konjac flour (CAS # 37220–17–0).	April 2010 *	June 27, 2012	Renew.
	Lemongrass, frozen	April 2010 *	June 27, 2012	Renew.
	Orange shellac—unbleached (CAS # 9000–59–3).	April 2010 *	June 27, 2012	Renew.
	Pectin (high-methoxy)	October 2010	June 27, 2012	Amend: Pectin (non-amidated forms only).
	Peppers (chipotle chile)	April 2010 *	June 27, 2012	Renew.
	Sweet potato starch	April 2010 *	June 27, 2012	Renew.
	Turkish bay leaves	April 2010 *	June 27, 2012	Renew.
	Wakame seaweed (*Undaria pinnatifida*).	April 2010 *	June 27, 2012	Renew.
	Whey protein concentrate	October 2010	June 27, 2012	Renew.

* The NOSB originally recommended that these substances be relisted during their April 2010 meeting. Since public comments were still being accepted for these substances, the NOSB decided to reaffirm their recommendations on these substances at the October 2010 meeting after analyzing all public comments.

[FR Doc. 2012–13523 Filed 6–5–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AO–370–A9; 11–0093; AMS–FV–10–0087; FV10–930–5]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Order Amending Marketing Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Marketing Order No. 930 (order), which regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. These amendments were proposed by the Cherry Industry Administrative Board (CIAB), which is responsible for local administration of the order. These amendments revise: the definition of ''Handle''; and regulations concerning ''Marketing Policy'' and ''Grower Diversion Privilege.'' The amendments are intended to improve the operation and administration of the order.

DATES: This rule is effective June 7, 2012.

FOR FURTHER INFORMATION CONTACT: Parisa Salehi, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 270–9918, Fax: (202) 720–8938, or Email: *Parisa.Salehi@ams.usda.gov*; or Martin Engeler, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 2202 Monterey Street, Fresno, California, 93721; Telephone: (559) 487–5110, Fax: (559) 487–5110, or Email: *Martin.Engeler@ams.usda.gov*.

Small businesses may request information on this proceeding by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Laurel.May@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on March 4, 2011, and published in the March 14, 2011, issue of the **Federal Register** (76 FR 13528). The Recommended Decision was issued on November 3, 2011, and published in the November 9, 2011, issue of the **Federal Register** (76 FR 69673), and a Secretary's Decision and Referendum Order issued on February 28, 2012, and published in the March 5, 2012 issue of the **Federal Register** (77 FR 13015).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated on the record of a public hearing held April 20 and 21, 2011, in Grand Rapids, Michigan, and a second public hearing held April 26, 2011, in Provo, Utah. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act'', and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900). Notice of this hearing was published in the **Federal Register** on March 14, 2011 (76 FR 13528). The notice of hearing contained the proposal submitted by CIAB and one proposal by the Agricultural Marketing Service (AMS).

Upon the basis of evidence introduced at the hearings and the record thereof, the Administrator of AMS issued a Recommended Decision published in the **Federal Register** on November 9, 2011 (76 FR 69673). An opportunity to file written exceptions was provided through November 25, 2011. Two comments were received during that period in support of these amendments.

A Secretary's Decision and Referendum Order was issued on February 28, 2012, and published in the March 5, 2012, issue of the **Federal Register** (77 FR 13015). This document directed that a referendum among tart cherry growers and processors be conducted during the period March 19, 2012, through March 30, 2012, to determine whether they favor the proposed amendments to the order. To become effective, the amendments had to be approved by at least two-thirds of the growers voting in the referendum or two thirds of the production represented by such growers. In addition, processors who had frozen or canned at least fifty percent of the volume of tart cherries had to vote in favor of the amendments for them to become effective. All of the proposed amendments were approved by growers and processors. The amendments included in this final order will:

1. Amendment 1 revises the term ''handle'' within the order. This amendment revises existing section 930.10, Handle, to exclude handler acquisition of grower diversion certificates from the definition of handle.

2. Amendment 2 revises the ''marketing policy'' provisions in section 930.50 of the order so that grower-diverted cherries are not counted as production in the volume control formula.

3. Amendment 3 revises the existing section 930.58, so grower-diverted cherries are not treated as actual harvested cherries.

In addition to the proposed amendments to the order, AMS proposed to make any additional changes to the order as may be necessary to conform to any amendment that may result from the hearings.

A marketing agreement was subsequently mailed to all tart cherry handlers in the production area for their approval. The marketing agreement was approved by handlers representing more than 50 percent of the volume of tart cherries handled by all handlers during the representative period of July 1, 2010, to June 30, 2011.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

There are approximately 40 handlers of tart cherries subject to regulation under the order and approximately 600 producers of tart cherries in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the tart cherry

producers and handlers are considered small entities under the SBA standards.

The geographic region regulated by the order includes the states of Michigan, New York, Oregon, Pennsylvania, Utah, Washington, and Wisconsin. Acreage devoted to tart cherry production in the regulated area has declined in recent years. According to data presented at the hearings, bearing acreage in 1987–88 totaled 50,050 acres; by 2010–11 it had declined to 35,650 acres. Michigan accounts for 73 percent of total U.S. bearing acreage with 26,200 bearing acres. Utah is second, with a reported 3,300 acres, or approximately nine percent of the total. The remaining states' acreage ranges from 600 to 1,800 acres. The order includes authority for (1) volume regulation, (2) promotion and research, and (3) grade and quality standards. Volume regulation is used under the order to augment supplies during low supply years, with product placed in reserves during large supply years.

Production of tart cherries can fluctuate widely from year to year. The magnitude of these fluctuations is one of the most pronounced for any agricultural commodity in the United States, and is due in large part to weather related conditions during the bloom and growing seasons. This fluctuation in supply presents a marketing challenge for the tart cherry industry because demand for the product is relatively inelastic, meaning a change in supply has a proportionately larger change in price.

According to data presented at the hearing, production has ranged from a low of 62.5 million pounds in 2002–03 to a high of 395.6 million pounds in 1995–96. For 2010–11, Michigan accounted for 71 percent of total U.S. production with 135 million pounds. Utah is second, with a reported 23 million pounds, or approximately twelve percent of the total. The remaining states produce between 15.4 and 1.2 million pounds.

During the hearings, multiple witnesses testified that they did not believe that these amendments will have any adverse impacts on small agricultural service firms or small agricultural producers as defined by the SBA. According to the record, these amendments will help agricultural businesses and growers by encouraging growers to divert some of their tart cherries in the orchard during years of extremely large supply and result in higher grower returns during years of extremely large supply. Furthermore, the growers who divert their crop do not incur harvest and transportation costs. These amendments will result in a lower possibility of market saturation. Overall the supply of tart cherries in extremely large supply years results in higher returns for growers.

These amendments provide additional flexibility in administering the volume control provisions of the order, and improve its operation and administration. Record evidence indicates that these amendments benefit all producers and handlers under the order, regardless of size.

The amendments in this final order are: Amendment 1 revises Section 930.10 of the order to change the definition of ''handle,'' so that handler acquisition of grower diversion certificates is not considered handling. Amendment 2 revises the ''marketing policy'' provisions in Section 930.50 of the order so that grower-diverted cherries are not counted as production in the OSF. Amendment 3 revises section 930.58 of the order so that grower-diverted cherries are not treated as actual harvested cherries. These amendments modify how grower diversions are accounted for under the order.

Evidence presented when the order was promulgated indicated that a grower diversion program benefits the industry by managing fluctuating supply. Witnesses indicated that the order has been successful in this regard. However, the record indicated that the order should be more flexible in addressing how grower diversions are utilized under the order.

The most efficient method to deal with a surplus is at the lowest level of the production and processing chain. The industry wastes the least amount of resources if it diverts cherries in the orchard. Once they are harvested, chilled, washed, de-stemmed, sorted, pitted, and packed, significantly higher costs are incurred and there is a greater risk of waste. Diverting surplus cherries in the orchard is the most cost effective method of dealing with a surplus situation and provides the largest benefit to growers through lower costs.

The order establishes an opportunity for growers to undertake in-orchard diversions of cherries (section 930.58). These diversions are done during harvest in accordance with procedures defined under the order and are overseen by the CIAB. The CIAB issues grower diversion certificates to the growers that represent the pounds of cherries that were left in the orchard.

Growers redeem the diversion certificates with handlers, who use them as one of their compliance alternatives to meet their reserve or restricted obligation. However, under the previous order definition of ''handle,'' handlers must include the pounds of cherries represented by the certificates as part of the total cherries that have been delivered and processed.

Consequently, grower in-orchard diversions effectively increased the supply of restricted cherries even though none of those cherries were delivered for processing. Grower diversion certificates are considered to be part of the total quantity of cherries that a handler receives and processes, and contribute to the total supply of restricted cherries in the OSF. This creates confusion in accounting for the cherries in years when cherries are restricted for both the growers and processors.

The OSF is the mechanism specified in the order and used by CIAB to determine the relationship between the demand and supply of tart cherries in a given year. When the supply of tart cherries exceeds the average demand, volume regulation is implemented.

In an effort to stabilize supply and prices, the tart cherry industry uses volume regulation, which allows the industry to set free and restricted percentages. Free percentage cherries can be marketed by handlers to any outlet, while restricted percentage cherries are placed in a reserve inventory. The primary purpose of setting restricted percentages and placing cherries in a reserve inventory is to attempt to balance supply with demand.

A related component of the OSF under the order involves growers diverting cherries by leaving them un-harvested in the orchard. Handlers can coordinate with their growers in large crop years by encouraging them to divert cherries from production. Handlers can then acquire the diversion certificates issued to growers and use them as credit toward their restriction or reserve obligations.

Prior to implementation of these amendments, the interaction of sections 930.10 and 930.50 of the order established that grower in-orchard diversion is subject to the restriction percentage calculated for the year. Because of this, grower diversion certificates had less value when growers redeemed them with handlers. Therefore, when a handler utilized the grower diversion certificates received from growers, the certificates had a reduced value as a compliance tool in meeting the restricted obligation. Because the certificates have a reduced value, growers delivered most of their crop to handlers instead of diverting cherries in the orchard in large crop years.

The implementation of these amendments will remove the grower disincentive for in-orchard diversion. Because the way grower diversions are accounted for will change, the grower diversion program helps mitigate the negative effects of oversupply by increasing the amount of cherries diverted from production.

This action will have a positive impact on growers. The value of the grower diversion certificates will increase. As the value of the certificates increases, grower diversion of cherries in large crop years will increase. Increased grower diversion activity will help reduce excess supplies, which in turn will have a positive impact on grower returns. In addition, grower costs associated with harvesting and transporting cherries to handlers will be reduced as more cherries are diverted.

This action will also have a positive impact on handlers. As more fruit is diverted in the orchard, handlers will avoid the processing and storage costs that they would otherwise incur if growers harvested and delivered the fruit. Reducing the available supply of cherries will mitigate the price depressing effects that oversupply typically has on the market, resulting in a positive effect for both growers and handlers.

Testimony at the hearing suggested that the amendments, which encourage grower diversions, will not have a negative impact on small growers or handlers. The hearing record suggests that these amendments will benefit small growers by providing better opportunities to divert cherries in the orchard in large crop years. Small handlers are not always able to ship to export markets or have as much new product activity as larger handlers. Small handlers will benefit from these amendments by providing diversion credits as a way to meet their restrictions.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0177, (Tart cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin). No changes in those requirements is necessary a result of this action. Should any change become necessary, it would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. All of these amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

The implementation of these requirements will not impose any additional costs on handlers. In fact, these amendments will reduce costs for both growers and handlers.

AMS is committed to complying with the E–Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Civil Justice Reform

The amendments to Marketing Order 930 stated herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not in accordance with the law, and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United Sates in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

Order Amending the Order Regulating the Handling of Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary to the findings and determinations that were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–612), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon proposed further amendment of Marketing Agreement and Order No. 930, regulating the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

1. The marketing agreement and order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

2. The marketing agreement and order, as amended, and as hereby further amended, regulate the handling of tart cherries grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

3. The marketing agreement and order, as amended, and as hereby further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The marketing agreement and order, as amended, and as hereby further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of tart cherries grown in the production area; and

5. All handling of tart cherries grown in the production area as defined in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional Findings.*

It is necessary and in the public interest to make these amendments effective not later than one day after publication in the **Federal Register**. A later effective date would unnecessarily delay implementation of the

amendments. These amendments should be in place as soon as possible, as the new production year begins on July 1.

In view of the foregoing, it is hereby found and determined that good cause exists for making these amendments effective one day after publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

1. Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping tart cherries covered by the order as hereby amended) who, during the period July 1, 2010, through June 30, 2011, handled 50 percent or more of the volume of such cherries covered by said order, as hereby amended, have signed a marketing agreement, and

2. The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period of July 1, 2010, through June 30, 2011 (which has been determined to be a representative period), have been engaged within the production area in the production of such cherries, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

3. The issuance of this amendatory order is favored or approved by processors who, during the period of July 1, 2010, through June 30, 2011 (which has been determined to be a representative period), have engaged in canning or freezing cherries for market and have frozen or canned more than 50 percent of the total volume of cherries regulated which were canned or frozen within the production area.

Order Relative to Handling of Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin

It is therefore ordered, That on and after the effective date hereof, all handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin shall be in conformity to, and in compliance with the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing order amending the order contained in the Secretary's Decision issued on February 28, 2012 and published in the **Federal Register** on March 5, 2012 (77 FR 13015) shall be and are the terms and provisions of this order amending the order and are set forth in full below.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons stated in the preamble, the Agricultural Marketing Service amends 7 CFR part 930 as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise the introductory text in § 930.10 to read as follows:

§ 930.10 Handle.

Handle means the process to brine, can, concentrate, freeze, dehydrate, pit, press or puree cherries, or in any other way convert cherries commercially into a processed product, or divert cherries pursuant to § 930.59, or to otherwise place cherries into the current of commerce within the production area or from the area to points outside thereof: *Provided,* That the term handle shall not include:

* * * * *

■ 3. Revise paragraphs (d) and (e) of § 930.50 to read as follows:

§ 930.50 Marketing policy.

* * * * *

(d) *Final percentages.* No later than September 15 of each crop year, the Board shall review the most current information available including, but not limited to, processed production and grower diversions of cherries during the current crop year. The Board shall make such adjustments as are necessary between free and restricted tonnage to achieve the optimum supply and recommend such final free market tonnage and restricted percentages to the Secretary and announce them in accordance with paragraph (h) of this section. The difference between any final free market tonnage percentage designated by the Secretary and 100 percent shall be the final restricted percentage. With its recommendation, the Board shall report on its consideration of the factors in paragraph (e) of this section.

(e) *Factors.* When computing preliminary and interim percentages, or determining final percentages for recommendation to the Secretary, the Board shall give consideration to the following factors:

(1) The estimated total production of cherries;

(2) The estimated size of the crop to be handled;

(3) The expected general quality of such cherry production;

(4) The expected carryover as of July 1 of canned and frozen cherries and other cherry products;

(5) The expected demand conditions for cherries in different market segments;

(6) Supplies of competing commodities;

(7) An analysis of economic factors having a bearing on the marketing of cherries;

(8) The estimated tonnage held by handlers in primary or secondary inventory reserves;

(9) Any estimated release of primary or secondary inventory reserve cherries during the crop year; and

(10) The quantity of grower-diverted cherries during the crop year.

* * * * *

■ 4. Revise paragraph (a) of § 930.58 to read as follows:

§ 930.58 Grower diversion privilege.

(a) *In general.* Any grower may voluntarily elect to divert, in accordance with the provisions of this section, all or a portion of the cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting grower a grower diversion certificate which such grower may deliver to a handler. Any grower diversions completed in accordance with this section, but which are undertaken in districts subsequently exempted by the Board from volume regulation under § 930.52(d), shall qualify for diversion credit.

* * * * *

Dated: May 31, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–13645 Filed 6–5–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0595]

RIN 1625–AA08

Columbia Unlimited Hydroplane Races; Kennewick, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Special Local Regulation for the Columbia Unlimited Hydroplane Races from Tuesday, July 24th through Sunday July 29th, 2012. This action is necessary to ensure the safety of persons and vessels involved in the Annual Kennewick, Washington, Columbia Unlimited Hydroplane Races (Water Follies). During the enforcement period, no vessel may operate in this area without permission from the on scene Patrol Commander.

DATES: The regulations in 33 CFR 100.1303 will be enforced from Tuesday, July 24th through Sunday July 29th, 2012 from 8:30 a.m. until the last race is completed each day at approximately 7:30 p.m., unless sooner terminated by the Patrol Commander.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email BM1 Silvestre Suga III, Coast Guard Marine Safety Unit Portland; telephone 503–240–9327, email *Silvestre.G.Suga@USCG.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the regulations found in 33 CFR 100.1303 restricting regular navigation and anchoring activities on the Columbia River near Kennewick, Washington during the periods specified in the **DATES** section.

Under the provisions of 33 CFR 100.1303, no person or vessel may enter or remain in the regulated area without permission of the Captain of the Port, Columbia River or his designated on-scene Patrol Commander. Persons or vessels wishing to enter the area may request permission to do so from the on-scene Patrol Commander via VHF Channel 16 or 13. The Coast Guard may be assisted by other Federal, State, or local enforcement agencies in enforcing this regulation.

This notice is issued under authority of 5 U.S.C. 552(a).

In addition to this notice in the **Federal Register,** the Coast Guard will provide the maritime community with notification of these enforcement periods via Local Notice to Mariners.

Dated: May 3, 2012.

B.C. Jones,

Captain, U.S. Coast Guard, Captain of the Port, Columbia River.

[FR Doc. 2012–13683 Filed 6–5–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0487]

Drawbridge Operation Regulation; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Montlake Bridge across the Lake Washington Ship Canal, mile 5.2, at Seattle, WA. This deviation is necessary to accommodate maintenance to the metro trolley system which crosses the bridge.

DATES: This deviation is effective from 10 p.m. on June 16, 2012 through 8 a.m. June 24, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0487 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0487 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282, email *randall.d.overton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Washington State Department of Transportation (WSDOT) has requested that the Montlake Bridge temporarily remain in the down or closed position to facilitate maintenance of the King County Metro Trolley system. The scheduled maintenance will take place on two separate nights in June 2012. The first maintenance period will be the night of June 16, 2012 starting at 10 p.m. lasting until 8 a.m. June 17, 2012. The second maintenance period will be June 23, 2012 starting at 10 p.m. lasting until 8 a.m. June 24, 2012. During these maintenance periods WSDOT has requested that the Montlake Bridge remain in the closed position. King County Metro Transit will be replacing the electrical cables and installing new electrical switches for the Metro Trolley system. King County will have electrical equipment and associated maintenance vehicles staged on the Montlake Bridge during these maintenance periods. The Montlake Bridge crosses the Lake Washington Ship Canal at mile 5.2 and while in the closed position provides 30 feet of vertical clearance throughout the navigation channel and 46 feet of vertical clearance throughout the center 60-feet of the bridge; vertical clearance referenced to the Mean Water Level of Lake Washington. Vessels which do not require a bridge opening may continue to transit beneath the bridge during these closure periods. Under normal conditions this bridge operates in accordance with 33 CFR 117.1051(e) which requires the bridge to open on signal, except that the bridge need not open for vessels less than 1,000 gross tons between 7 a.m. and 9 a.m. and 3:30 p.m. and 6:30 p.m. Monday through Friday. This deviation period is from 10 p.m. June 16, 2012 through 8 a.m. June 24, 2012. This deviation allows the bascule span of the Montlake Bridge to remain in the closed position and need not open for maritime traffic from 10 p.m. on June 16, 2012 until 8 a.m. on June 17, 2012, and also from 10 p.m. on June 23, 2012 until 8 a.m. June 24, 2012. The bridge shall operate in accordance to 33 CFR 117.1051(e) at all other times. Waterway usage on the Lake Washington Ship Canal ranges from commercial tug and barge to small pleasure craft. Mariners will be notified and kept informed of the bridge's operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The draw span will be required to open, if needed, for vessels engaged in emergency response operations during the closure periods.

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

Dated: May 24, 2012.

Randall D. Overton,

Bridge Administrator.

[FR Doc. 2012–13741 Filed 6–5–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0063]

Safety Zones; Annual Firework Displays Within the Captain of the Port, Puget Sound Area of Responsibility

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zones for annual firework displays in the Captain of the Port, Puget Sound area of responsibility during the dates and times noted below. This action is necessary to prevent injury and to protect life and property of the maritime public from the hazards associated with the firework displays. During the enforcement periods, entry into, transit through, mooring, or anchoring within these zones is prohibited unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

DATES: The regulations in 33 CFR 165.1332 will be enforced during the dates and times noted below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email ENS Anthony P. LaBoy, Sector Puget Sound Waterways Management, Coast Guard; telephone 206–217–6323, *SectorPugetSoundWWM@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones established for Annual Fireworks Displays within the Captain of the Port, Puget Sound Area of Responsibility in 33 CFR 165.1332 during the dates and times noted below.

The following safety zone will be enforced from 5:00 p.m. on June 30, 2012 through 1:00 a.m. on July 1, 2012:

Event name	Location	Latitude	Longitude	Radius
Langlie's Old Fashioned Independence Celebration.	Indianola	47°44.817′ N	122°31.533′ W	250 yds.

The following safety zones will be enforced from 5:00 p.m. on July 3, 2012 through 1:00 a.m. on July 4, 2012:

Event name	Location	Latitude	Longitude	Radius
Liberty Bay Fireworks	Liberty Bay	47°43.917′ N	122°39.133′ W	300 yds.
Alderbrook Resort & Spa Fireworks	Hood Canal	47°21.033′ N	122°13.233′ W	350 yds.
Deer Harbor Annual Fireworks Display	Deer Harbor	48°37.000′ N	123°00.250′ W	150 yds.

The following safety zones will be enforced from 5:00 p.m. on July 4, 2012 through 1:00 a.m. on July 5, 2012.

Event name	Location	Latitude	Longitude	Radius
Port Angeles Chamber of Commerce	Port Angeles Harbor	48°07.033′ N	123°24.967′ W	300 yds.
Sheridan Beach Community	Lake Forest Park	47°44.783′ N	122°16.917′ W	200 yds.
Brewster Fire Department Fireworks	Brewster	48°06.367′ N	119°47.15′ W	250 yds.
City of Mount Vernon Fireworks	Edgewater Park	48°25.178′ N	122°20.424′ W	150 yds.
Tacoma Freedom Fair	Commencement Bay	47°16.817′ N	122°27.933′ W	300 yds.
City of Renton Fireworks	Renton, Lake Washington	47°30.386′ N	122°12.502′ W	150 yds.
Des Moines Fireworks	Des Moines	47°24.117′ N	122°20.033′ W	150 yds.
Vashon Island Fireworks	Quartermaster Harbor	47°24.0′ N	122°27.0′ W	450 yds.
City of Kenmore Fireworks	Lake Forest Park	47°45.25′ N	122°15.75′ W	300 yds.
Yarrow Point Community	Yarrow Point	47°38.727′ N	122°13.466′ W	150 yds.
Kirkland Fireworks	Kirkland, Lake Washington	47°40.583′ N	122°12.84′ W	250 yds.
Three Tree Point Community Fireworks	Three Tree Point	47°27.033′ N	122°23.15′ W	200 yds.
Kingston Fireworks	Appletree Cove	47°47.65′ N	122°29.917′ W	150 yds.
Bainbridge Island Fireworks	Eagle Harbor	47°37.142′ N	122°30.397′ W	300 yds.
City of Anacortes Fireworks	Fidalgo Bay	48°30.016′ N	122°36.154′ W	350 yds.
Chase Family Fourth at Lake Union	Lake Union	47°38.418′ N	122°20.111′ W	300 yds.
Port Townsend Sunrise Rotary	Port Townsend	48°08.413′ N	122°45.531′ W	200 yds.
Friday Harbor Independence Day Fireworks.	Friday Harbor	48°32.600′ N	122°00.467′ W	250 yds.
Steilacom Independence Day Fireworks	Steilacom Bay	47°10.400′ N	122°36.200′ W	350 yds.
Port Orchard Independence Day Fireworks.	Port Orchard Bay	47°32.883′ N	122°37.917′ W	350 yds.
East Sound Independence Day Fireworks	Orcas Island	48°41.317′ N	122°54.467′ W	150 yds.

The following safety zone will be enforced from 5:00 p.m. on July 7, 2012 through 1:00 a.m. on July 8, 2012:

Event name	Location	Latitude	Longitude	Radius
Mercer Island Celebration	Mercer Island	47°35.517′ N	122°13.233′ W	450 yds.

The following safety zone will be enforced from 5:00 p.m. on July 27, 2012 through 1:00 a.m. on July 28, 2012:

Event name	Location	Latitude	Longitude	Radius
Whaling Days	Dyes Inlet	47°38.65′ N	122°41.35′ W	450 yds.

The following safety zone will be enforced from 5:00 p.m. on August 11, 2012 through 1:00 a.m. on August 12, 2012:

Event name	Location	Latitude	Longitude	Radius
Medina Days	Medina Park	47°36.867′ N	122°14.5′ W	300 yds.

The special requirements listed in 33 CFR 165.1332, which can be found in the **Federal Register** (75 FR 33698) published on June 15, 2010, apply to the activation and enforcement of these safety zones.

All vessel operators who desire to enter the safety zone must obtain permission from the Captain of the Port or Designated Representative by contacting either the on-scene patrol craft on VHF Ch 13 or Ch 16 or the Coast Guard Sector Puget Sound Joint Harbor Operations Center (JHOC) via telephone at (206) 217–6002.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.1332 and 5 U.S.C. 552(a). In addition to this notice, the Coast Guard will provide the maritime community with extensive advanced notification of the safety zones via the Local Notice to Mariners and marine information broadcasts on the day of the events.

Dated: May 22, 2012.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2012–13684 Filed 6–5–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0347]

RIN 1625–AA00

Safety Zone; Race on the Lake, Onondaga Lake, Syracuse, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Onondaga Lake, Syracuse, NY. This safety zone is intended to restrict vessels from a portion of Onondaga Lake during the Race on the Lake powerboat races. This temporary safety zone is necessary to protect participants, spectators, and vessels from the hazards associated with hydroplane and powerboat races.

DATES: This rule is effective between 8:30 a.m. and 6:30 p.m. on June 15–17, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG–2012–0347 and are available online by going to *http://www.regulations.gov*, inserting USCG–2012–0347 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Christopher Mercurio, Chief of Waterway Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public

interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a power boat race, which are discussed further below.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for 30 day notice period run would also be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect the public and vessels from the hazards associated with power boat races. Between 9:00 a.m. and 6:00 p.m. on June 15–17, 2012 a series of hydroplane and powerboat races will take place on Onondaga Lake near Syracuse, NY. The Captain of the Port Buffalo has determined that hydroplane and powerboat races create a significant risk of collisions between participants and the boating public.

C. Discussion of the Final Rule

With the aforementioned risks in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of participants and the boating public during the Race on the Lake.

The safety zone will be effective and enforced from 8:30 a.m. until 6:30 p.m. on June 15–17, 2012.

The safety zone will encompass all waters of Onondaga Lake, Syracuse, NY starting from position 43°6′49.63″ N and 76°14′8.82″ W then South East to 43°6′9.79″ N and 76°13′5.07″ W then West to 43°5′57.22″ N and 76°13′33.64″ W then North to 43°6′44.01″ N and 76°14′28.24″ W then returning to the point of origin to form a square (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This temporary final rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Onondaga Lake, Syracuse, NY between 8:30 a.m. and 6:30 p.m. on June 15–17, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for approximately ten hours each day in an area with low commercial vessel traffic. Also, in the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Buffalo to transit through the safety zone. Additionally, the Coast Guard will give advanced notice to the public via a local Broadcast Notice to Mariners that the regulation is in effect. Moreover, the COTP will suspend enforcement of the safety zone if the event for which the zone is established ends earlier than the expected time.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness.

If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Christopher Mercurio, Chief of Waterway Management, U.S. Coast Guard Sector Buffalo; email *SectorBuffaloMarineSafety@uscg.mil*; telephone 716–843–9343. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Protest Activities

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0347 to read as follows:

§ 165.T09–0347 Safety Zone; Race on the Lake, Onondaga Lake, Syracuse, NY.

(a) Location. The safety zone will encompass all waters of Onondaga Lake, Syracuse, NY starting from position 43°6′49.63″ N and 76°14′8.82″ W then South East to 43°6′9.79″ N and 76°13′5.07″ W then West to 43°5′57.22″ N and 76° 13′33.64″ W then North to 43°6′44.01″ N and 76°14′28.24″ W then returning to the point of origin to form a square. (NAD 83)

(b) Effective and Enforcement Period. This regulation is effective and will be enforced from 8:30 a.m. to 6:30 p.m. on June 15–17, 2012.

(c) Regulations.

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''*on-scene representative*'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the

Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: May 16, 2012.

S.M. Wischmann,

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

[FR Doc. 2012–13685 Filed 6–5–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0462]

RIN 1625–AA00

Safety Zone; Marine Week Cleveland, Lake Erie, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Erie and Cleveland Harbor at Burke Lakefront Airport, Cleveland, Ohio. This safety zone is intended to restrict vessels from a portion of Lake Erie and Cleveland Harbor near Burke Lakefront Airport. This temporary safety zone is necessary to protect participants, spectators, and vessels from the hazards associated with aerial insertions and aircraft maneuvers.

DATES: This rule is effective from 10 a.m. on June 15, 2012 until 3:30 p.m. on June 17, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG–2012–0462 and are available online by going to *http://www.regulations.gov*, inserting USCG–2012–0462 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Christopher Mercurio, Chief of Waterway Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with aerial insertions and aircraft maneuvering, which are discussed further below.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for 30 day notice period run would also be impracticable and contrary to the public interest.

Basis and Purpose

Beginning at 10 a.m. on June 15, 2012, through 3:30 p.m. on June 17, 2012, there will be Marine Air Ground Task Force movement on and over Burke Lakefront to include Recon Insertions (parachuting), and various maneuvers by USMC aircraft and personnel on the Burke Lakefront Airport grounds. A heavy amount of recreational boat traffic is expected for this event. The Captain of the Port Buffalo has determined that the Marines' maneuvers combined with a high concentration of recreational vessels will create significant risks for the boating public.

Discussion of Rule

With the aforementioned risks in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of participants and the boating public during the Marine Event. This temporary safety zone will be effective from 10 a.m. on June 15, 2012 until 3:30 p.m. on June 17, 2012. It will be enforced from 10 a.m. to 11:30 a.m. and 3 p.m. to 4:30 p.m. on June 15, 2012, 2 p.m. to 3:30 p.m. on June 16, 2012, and 2 p.m. to 3:30 p.m. on June 17, 2012.

The safety zone will encompass a portion of Lake Erie and Cleveland Harbor near Burke Lakefront Airport from position 41°30′20″ N and 081°42′20″ W, to 41°30′50″ N and 081°42′49″ W, to 41°32′09″ N and 081°39′49″ W, to 41°31′53″ N and 081°39′24″ W, then return to the original position. (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene Patrol Commander (PATCOM). Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. Only state, federal, and local vessels will be allowed in the safety zone. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866, or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the

budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This temporary final rule may affect the following entities, some of which might be small entities: The owners of operators of vessels intending to transit or anchor in a portion of Lake Erie and Cleveland Harbor from 10 a.m. to 11:30 a.m. and 3 p.m. to 4:30 p.m. on June 15, 2012, 2 p.m. to 3:30 p.m. on June 16, 2012, and 2 p.m. to 3:30 p.m. on June 17, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced for approximately three hours each day in an area with low commercial vessel traffic. Also, in the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Buffalo to transit through the safety zone. Additionally, the Coast Guard will give advanced notice to the public via a local Broadcast Notice to Mariners that the regulation is in effect. Moreover, the COTP will suspend enforcement of the safety zone if the event for which the zone is established ends earlier than the expected time.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness.

If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Christopher Mercurio, Chief of Waterway Management, U.S. Coast Guard Sector Buffalo; email *SectorBuffaloMarineSafety@uscg.mil*; telephone 716–843–9343. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these

standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0462 to read as follows:

§ 165.T09–0462 Safety Zone; Marine Week Cleveland, Lake Erie, Cleveland, OH

(a) *Location.* The safety zone will encompass a portion of Lake Erie and Cleveland Harbor near Burke Lakefront Airport from position 41°30′20″ N and 081°42′20″ W, to 41°30′50″ N and 081°42′49″ W, to 41°32′09″ N and 081°39′49″ W, to 41°31′53″ N and 081°39′24″ W, then return to the original position (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective from 10 a.m. on June 15, 2012 until 3:30 p.m. on June 17, 2012. It will be enforced from 10 a.m. to 11:30 a.m. and 3 p.m. to 4:30 p.m. on June 15, 2012, 2 p.m. to 3:30 p.m. on June 16, 2012, and 2 p.m. to 3:30 p.m. on June 17, 2012.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''*on-scene representative*'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: May 21, 2012.

S.M. Wischmann,

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

[FR Doc. 2012–13687 Filed 6–5–12; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

POSTNET Barcode Discontinuation

AGENCY: Postal Service.™

ACTION: Final rule; correction.

SUMMARY: This document corrects an earlier revision to the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) which discontinued price eligibility based on the use of POSTNET™ barcodes on all types of mail. The correction adds DMM revisions that were inadvertently omitted in the original final rule.

DATES: *Effective date:* January 28, 2013.

FOR FURTHER INFORMATION CONTACT: Bill Chatfield, 202–268–7278 or Jeff Freeman, 202–268–2922.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2012, the Postal Service published a final rule in the **Federal Register** (77 FR 26185–26191) to discontinue price eligibility for POSTNET barcodes for all types of mail. This revision adds DMM revisions (regarding Periodicals automation letters and flats) that were inadvertently omitted in the original final rule, but does not change any of the DMM revisions previously published in that rule.

Implementation

Effective January 28, 2013, the Postal Service will discontinue price eligibility for the use of POSTNET barcodes and allow only Intelligent Mail barcodes (IMbs) for automation price eligibility purposes, including Qualified Business Reply Mail (QBRM) prices. The Postal Service understands that some mailers currently use POSTNET barcodes and we are committed to providing information to and working with individual mailers and software providers to ensure that the use of an Intelligent Mail barcode is achievable for all mailing customers.

Change for Letters and Flats

For the past several years, both USPS and the mailing industry have used the IMb to gain information about letters and flats as they move from induction to delivery. As of January 28, 2013, the use of the IMb will be required for all automation letters, including Business Reply Mail® letters that qualify for Qualified Business Reply Mail prices, Permit Reply Mail letters, and automation flats.

The Postal Service adopts the following additional changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), which is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR Part 111 is further amended as follows:

PART 111—[AMENDED]

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

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

2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

700 Special Standards

* * * * *

707 Periodicals

* * * * *

12.0 Nonbarcoded (Presorted) Eligibility

12.1 Basic Standards

* * * * *

12.1.3 Barcode Quality

[*Revise the text of 12.1.3 as follows:*]

Any Intelligent Mail barcode on a mailpiece must be correct for the delivery address and meet the standards in 708.4.0 and 708.3.0.

* * * * *

13.0 Carrier Route Eligibility

13.1 Basic Standards

* * * * *

13.1.3 Barcode Quality

[*Revise the text of 13.1.3 as follows:*]

Any Intelligent Mail barcode on a mailpiece must be correct for the delivery address and meet the standards in 708.4.0 and 708.3.0.

* * * * *

14.0 Barcoded (Automation) Eligibility

[*Revise 14.1 to include the standards in current 14.1.1, with revised text as follows:*]

14.1 Basic Standards

[*Revise the introductory text of 14.1 as follows:*]

All pieces in a Periodicals barcoded (automation) mailing must:

* * * * *

[*Revise the first sentence of item 14.1.1c as follows:*]

c. Bear an accurate Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meeting the standards in 202.5.0 (for letters), 302.4.0 (for flats), and 708.4.0.

* * * * *

[*Delete the heading of current 14.1.1, and delete current 14.1.2, Enclosed Reply Cards and Envelopes, in its entirety.*]

* * * * *

14.5 Address Standards for Barcoded Pieces

* * * * *

14.5.3 Numeric Delivery Point Barcode

[*Revise the text of 14.5.3 as follows:*]

A numeric equivalent of the delivery point routing code is formed by adding two digits directly after the ZIP+4 code.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–13636 Filed 6–5–12; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2004–0488; FRL–9668–8]

RIN 2060–AM54

Protection of Stratospheric Ozone: Alternative for the Motor Vehicle Air Conditioning Sector Under the Significant New Alternatives Policy (SNAP) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the U.S. Environmental Protection Agency (EPA)'s Significant New Alternatives Policy (SNAP) program, this action lists carbon dioxide (CO_2) or R–744, as acceptable substitute, subject to use conditions, in the motor vehicle air conditioning (MVAC) end-use for motor vehicles (i.e., passenger cars, light-duty and heavy-duty vehicles) within the refrigeration and air-conditioning sector. This final rule only concerns the use of CO_2 in MVAC systems designed specifically for the use of CO_2 refrigerant. The substitute is non-ozone-depleting and therefore does not contribute to stratospheric ozone depletion.

DATES: This final rule is effective on August 6, 2012. The incorporation by reference of a certain publication listed in this rule is approved by the Director of the Federal Register as of May 31, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0488. 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, e.g., 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 from the EPA Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. This Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Yaidi Cancel, Stratospheric Protection Division, Office of Air and Radiation, MC 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9512; fax number: (202) 343–2338; email address: *cancel.yaidi@epa.gov.*

SUPPLEMENTARY INFORMATION: This final action provides motor vehicle manufacturers and their suppliers with a refrigerant option subject to use conditions for motor vehicle air conditioning systems for use in new vehicles. The refrigerant discussed in this action, carbon dioxide (R–744, CO_2) is non-ozone-depleting and has a global warming potential (GWP) [1] of 1.

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[1] GWP, is defined as the ratio of heat trapped by one unit mass of the greenhouse gas to that of one unit mass of CO_2 over a specified period of time. Consistent with the international standards under the United Nations Framework Convention on Climate Change (UNFCCC), all GWPs in this rule are given using a 100-year period (IPCC, 1996).

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I. Does this action apply to me?

This final rule lists carbon dioxide (CO_2)[2], also known as R–744, as an acceptable substitute subject to use conditions for use as a refrigerant in new motor vehicle air conditioning (MVAC) systems designed specifically for the use of CO_2 refrigerant in motor vehicles[3]. Businesses in this end-use that may want to use CO_2 in MVAC systems include:

- Motor vehicle manufacturers
- Motor vehicle air conditioning service and repair shops

Regulated entities may include:

TABLE 1—POTENTIALLY REGULATED ENTITIES, BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE

Category	NAICS code	Description of regulated entities
Industry	336111, 336112, 336120	Motor Vehicle Manufacturing.
Services	811198	Vehicle Air Conditioning Repair.

This table is not intended to be exhaustive, but rather a guide regarding entities likely to be regulated by this action. If you have any questions about whether this action applies to a particular entity, consult the person listed in the preceding section, **FOR FURTHER INFORMATION CONTACT**.

II. What abbreviations and acronyms are used in this action?

ACGIH—American Conference of Governmental Industrial Hygienists
ASE—National Institute for Automotive Service Excellence
CAA—Clean Air Act
CAS—Chemical Abstracts Service
CBI—confidential business information
CFC—chlorofluorocarbon
CFC-12—the chemical dichlorodifluoromethane, CAS Reg. No. 75–71–8
CFD—computational fluid dynamics
CFR—Code of Federal Regulations
CNS—central nervous system
CO_2—carbon dioxide, CAS Reg. No. 124–38–9, also known as R–744
CRP—Cooperative Research Program
EPA—the United States Environmental Protection Agency
EO—Executive Order
FMEA—Failure Mode and Effect Analysis
FR—**Federal Register**
FTA—fault-tree analysis
GWP—Global warming potential
HCFC-22—the chemical chlorodifluoromethane, CAS Reg No. 75–45–6
HCFC-142b—the chemical 1-chloro-1,1-difluoroethane, CAS Reg No. 75–68–3
HFC—hydrofluorocarbon
HFC-134a—the chemical 1,1,1,2-tetrafluoroethane, CAS Reg. No. 811–97–2
HFC-152a—the chemical 1,1-difluoroethane, CAS Reg. No. 75–37–6
HFO—hydrofluoroolefin
HFO-1234yf—the chemical 2,3,3,3-tetrafluoroprop-1-ene, CAS Reg. No. 754–12–1
IDLH—Immediately Dangerous to Life and Health
MVAC—motor vehicle air conditioning
NIOSH—National Institute for Occupational Safety and Health
NODA—Announcement of Data Availability, formerly known as Notice of Data Availability
NPRM—Notice of Proposed Rulemaking
NTTAA—National Technology Transfer and Advancement Act
ODP—ozone depletion potential
ODS—ozone-depleting substance
OEM—original equipment manufacturer
OMB—the United States Office of Management and Budget
OSHA—the United States Occupational Safety and Health Administration
PEL—Permissible Exposure Level
ppm—parts per million
RDECOM—U.S. Army Research, Development and Engineering Command
REL—Recommended Exposure Level
RFA—Regulatory Flexibility Act
SAE—SAE International, formerly the Society of Automotive Engineers
SAE CRP—SAE Cooperative Research Program
SBREFA—Small Business Regulatory Enforcement Fairness Act
SNAP—Significant New Alternatives Policy
STEL—Short Term Exposure Limit
TWA—Time Weighted Average
UMRA—Unfunded Mandates Reform Act

III. How does the SNAP program work?

A. What are the statutory requirements and authority for the SNAP program?

Section 612 of the Clean Air Act (CAA) requires U.S. Environmental Protection Agency (EPA) to develop a program for evaluating alternatives to ozone-depleting substances (ODS). EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

1. Rulemaking

Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (i.e., chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (i.e., hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

2. Listing of Unacceptable/Acceptable Substitutes

Section 612(c) requires EPA to publish a list of the substitutes unacceptable for specific uses and to publish a corresponding list of acceptable alternatives for specific uses. The list of acceptable substitutes is

[2] Chemical Abstracts Service [CAS] Registry: No. 124–38–9.

[3] This final action applies only to air conditioning systems in motor vehicles consistent with the definition of light duty vehicles and heavy-duty vehicles under 40 CFR 86.1803–01, with the exception of passenger busses.

found at *http://www.epa.gov/ozone/snap/lists/index.html* and the lists of ''unacceptable,'' ''acceptable subject to use conditions,'' and ''acceptable subject to narrowed use limits'' substitutes are found in the appendices to 40 CFR part 82 subpart G.

3. Petition Process

Section 612(d) grants the right to any person to petition EPA to add a substance, add or delete use restrictions, or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

4. 90-Day Notification

Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

5. Outreach

Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

6. Clearinghouse

Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. What are EPA's regulations implementing section 612 of the Clean Air Act?

On March 18, 1994, EPA published the original rulemaking (59 FR 13044) which established the process for administering the SNAP program and issued EPA's first lists identifying acceptable and unacceptable substitutes in the major industrial use sectors (40 CFR part 82, subpart G). These sectors include: refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed the largest volumes of ODS.

Section 612 of the CAA requires EPA to list as acceptable those substitutes that do not present a significantly greater risk to human health and the environment as compared with other substitutes that are currently or potentially available.

C. How do the regulations for the SNAP program work?

Under the SNAP regulations, anyone who produces a substitute to replace a class I or II ODS in one of the eight major industrial use sectors must provide notice to the Agency, including health and safety information on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. 40 CFR 82.176(a). This requirement applies to the person planning to introduce the substitute into interstate commerce,[4] typically chemical manufacturers, but may also include importers, formulators, equipment manufacturers, or end-users[5] when they are responsible for introducing a substitute into commerce. The 90-day SNAP review process begins once EPA receives the submission and determines that the submission includes complete and adequate data. 40 CFR 82.180(a). The CAA and the SNAP regulations, 40 CFR 82.174(a), prohibit use of a substitute earlier than 90 days after notice has been provided to the Agency.

The Agency has identified four possible decision categories for substitutes: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable.[6] 40 CFR 82.180(b).Use conditions and narrowed use limits are both considered ''use restrictions'' and are explained below. Substitutes that are deemed acceptable with no use restrictions (no use conditions or narrowed use limits) can be used for all applications within the relevant end-uses within the sector. Substitutes that are acceptable subject to use restrictions may be used only in accordance with those restrictions.

After reviewing a substitute, the Agency may determine that a substitute is acceptable only if certain conditions in the way that the substitute is used are met to minimize risks to human health and the environment. EPA describes such substitutes as ''acceptable subject to use conditions.'' Entities that use these substitutes without meeting the associated use conditions are in violation of section 612 of the Clean Air Act and EPA's SNAP regulations. 40 CF 82.174(c).

For some substitutes, the Agency may permit a narrow range of use within an end-use or sector. For example, the Agency may limit the use of a substitute to certain end-uses or specific applications within an industry sector. The Agency requires a user of a narrowed use substitute to demonstrate that no other acceptable substitutes are available for their specific application by conducting comprehensive studies. EPA describes these substitutes as ''acceptable subject to narrowed use limits.'' A person using a substitute that is acceptable subject to narrowed use limits in applications and end-uses that are not consistent with the narrowed use limit is using these substitutes in an unacceptable manner and is in violation of section 612 of the CAA and EPA's SNAP regulations. 40 CFR 82.174(c).

The Agency publishes its SNAP program decisions in the **Federal Register** (FR). EPA publishes decisions concerning substitutes that are deemed acceptable subject to use restrictions (use conditions and/or narrowed use limits), or for substitutes deemed unacceptable, as proposed rulemakings to allow the public opportunity to comment, before publishing final decisions.

In contrast, EPA publishes substitutes that are deemed acceptable with no restrictions in ''notices of acceptability,'' rather than as proposed and final rules. As described in the preamble to the rule initially implementing the SNAP program (59 FR 13044; March 18, 1994), EPA does not believe that rulemaking procedures are necessary to list alternatives that are acceptable without restrictions because such listings neither impose any sanction nor prevent anyone from using a substitute.

Many SNAP listings include ''comments'' or ''further information'' to provide additional information on substitutes. Since this additional information is not part of the regulatory

[4] As defined at 40 CFR 82.104 ''interstate commerce'' means the distribution or transportation of any product between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one state, territory, possession or District of Columbia. The entry points for which a product is introduced into interstate commerce are the release of a product from the facility in which the product was manufactured, the entry into a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States Customs clearance.

[5] As defined at 40 CFR 82.172 ''end-use'' means processes or classes of specific applications within major industrial sectors where a substitute is used to replace an ozone-depleting substance.

[6] The SNAP regulations also include ''pending,'' referring to submissions for which EPA has not reached a determination, under this provision.

decision, these statements are not binding for use of the substitute under the SNAP program. However, regulatory requirements so listed are binding under other regulatory programs. The ''further information'' classification does not necessarily include all other legal obligations pertaining to the use of the substitute. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''further information'' column in their use of these substitutes. In many instances, the information simply refers to sound operating practices that have already been identified in existing industry and/or building-codes or standards. Thus, many of the statements, if adopted, would not require the affected user to make significant changes in existing operating practices.

D. Where can I get additional information about the SNAP program?

For copies of the comprehensive SNAP lists of substitutes or additional information on SNAP, refer to EPA's Ozone Depletion Web site at *www.epa.gov/ozone/snap/index.html.* For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published March 18, 1994 (59 FR 13044), codified at 40 CFR part 82, subpart G. A complete chronology of SNAP decisions and the appropriate citations are found at *http://www.epa.gov/ozone/snap/chron.html.*

IV. What is EPA's final decision for CO_2 as an alternative for MVAC?

In this final rule, EPA is modifying its previous determination that listed CO_2 as an acceptable substitute for CFC–12 in new MVAC systems (59 FR 13044; March 18, 1994) and is listing CO_2 acceptable, subject to use conditions, as a substitute for CFC–12 in new MVAC systems. This final action does not apply to the use of CO_2 as a conversion or retrofit for existing MVAC systems. In addition, it does not apply to the use of CO_2 in the air conditioning or refrigeration systems of buses, trains, rail or subway cars, or appliances such as refrigerated transport. This refrigerant may be used only in equipment designed specifically and clearly identified for this refrigerant (i.e., it may not be used as a conversion or ''retrofit'' refrigerant for existing equipment). EPA is not mandating the use of CO_2 or any other alternative to ODS in MVAC systems. Vehicle manufacturers have the option of using any refrigerant listed as acceptable for this end-use, so long as they meet the applicable use conditions. This action removes CO_2 from the list of acceptable substitutes for MVAC systems and instead lists it as acceptable subject to the following use conditions:

1. Engineering strategies and/or mitigation devices shall be incorporated such that in the event of refrigerant leaks the resulting CO_2 concentrations do not exceed:

- The short term exposure level (STEL) of 3% or 30,000 ppm averaged over 15 minutes in the passenger free space; and
- The ceiling limit of 4% or 40,000 ppm in the passenger breathing zone.

2. Vehicle manufacturers (i.e., original equipment manufacturers [OEMs]) must keep records of the tests performed for a minimum period of three years demonstrating that CO_2 refrigerant levels do not exceed the STEL of 3% averaged over 15 minutes in the passenger free space, and the ceiling limit of 4% in the breathing zone.

3. The use of CO_2 in MVAC systems must adhere to the standard conditions identified in SAE[7] Standard J639 (2011 version) including:

- Installation of a high pressure system warning label;
- Installation of a compressor cut-off switch;[8] and
- Use of unique fittings with:

i. Outside diameter of 16.6 +0/−0.2 mm (0.6535 +0/−0.0078 inches) for the MVAC low-side service port;

ii. Outside diameter of 18.1 +0/−0.2 mm (0.7126 +0/−0.0078 inches) for the MVAC high-side service port; and

iii. Outside diameter of 20.955 +0/−0.127 mm (0.825 +0/−0.005 inches) and right-hand thread direction for CO_2 refrigerant service containers.[9]

To help ensure that the first use condition is met, we are including several recommendations in the listing decision. First, OEMs should conduct and keep on file Failure Mode and Effect Analysis (FMEA) on the MVAC as stated in SAE J1739 (Potential Failure Mode and Effects Analysis in Design [Design FMEA], Potential Failure Mode and Effect Analysis in Manufacturing and Assembly Process [Process FMEA]), or equivalent. Second, OEMs should factor in background CO_2 concentrations that come about from normal respiration by the maximum number of vehicle occupants.[10] Third, EPA recommends the use of the following industry standards as additional references when locating the driver's and passengers' breathing zone consistent with the head and seating position, measuring refrigerant concentrations at different locations inside the passenger compartment including the breathing zone, and addressing risks associated with MVAC use:

- *SAE J1052*—Motor Vehicle Driver and Passenger Head Position;
- *SAE J2772*—Measurement of Passenger Compartment Refrigerant Concentrations under System Refrigerant Leakage Conditions; and
- *SAE J2773*—Standard for Refrigerant Risk Analysis for Mobile Air Conditioning Systems.

Fourth, EPA recommends additional training for MVAC service technicians that will service MVAC systems using CO_2 as the refrigerant.

V. Why is EPA establishing these final use conditions for the use of CO_2 in new MVAC?

Summary of SNAP Actions on the Use of CO_2 as a Refrigerant in MVAC

In the initial SNAP rulemaking issued on March 18, 1994 (59 FR 13044), EPA found CO_2 acceptable as a substitute for CFC-12 in new MVAC systems. In that final rule, EPA also found other substitutes (i.e., HFC–134a and R–401C, evaporative cooling and stirring cycle) acceptable for use in new MVAC systems. On June 13, 1995 (60 FR 31092) and October 16, 1996 (61 FR 54040) EPA took two separate actions requiring the use of unique fittings for several refrigerants then currently listed as acceptable for use in new MVAC systems (60 FR 31092) and for refrigerants subsequently found acceptable for use in MVAC (61 FR 54040). The use conditions requiring unique fittings were codified at 40 CFR Part 82, Subpart G, Appendix D. None of these actions applied to CO_2. However, in the preamble to the October 16, 1996 SNAP rule, EPA stated that for any decision made under SNAP, the Agency may, on its own, determine that additional conditions or restrictions should be added or removed through future rulemaking (61 FR 54032). Also, EPA stated in the October 16, 1996 SNAP rule that due concerns about potential cross-contamination as a result of the large number of MVAC refrigerants, the Agency may choose to list a substitute as acceptable subject to

[7] SAE International, formerly the Society of Automotive Engineers.

[8] A compressor cut-off switch causes a device to stop compressor operation before activation of any pressure relief device.

[9] The refrigerant service containers fitting requirement applies only to refrigerant service containers used during servicing of the MVAC, in accordance with the provisions established for MVAC servicing under 40 CFR part 82, subpart B.

[10] Maximum number of vehicle occupants includes the maximum number of passengers in a normal seating position inside the passenger compartment. This may vary between vehicle types.

use the conditions listed (in that rule, i.e., use of unique fittings) while proceeding with notice-and-comment rulemaking to impose other restrictions (61 FR 54034).

Although the initial SNAP rulemaking listed CO_2 as acceptable for use in new MVAC systems, at that time, EPA was not aware of any interest in using CO_2 in MVAC systems and did not receive any submission for unique fittings to be used on CO_2 MVAC systems or any information specified in 40 CFR Part 82, Subpart G, Appendix D. EPA was subsequently made aware through risk screens of concerns regarding health risks to exposure of CO_2 from refrigerant leaks into the passenger compartment (EPA–HQ–OAR–2004–0488–0025.2). EPA was also made aware of potential interest in using CO_2 as a refrigerant for MVAC systems and of technology being developed (71 FR 55141; September 21, 2006). On September 21, 2006, we issued a Notice of Proposed Rulemaking (referred to hereinafter as ''the proposal'' or NPRM) proposing to find CO_2 acceptable as a substitute for CFC–12 in new MVAC systems, subject to the use conditions specified at 40 CFR part 82, subpart G, appendix D (71 FR 55140). In addition, due to concerns regarding the possibility of driver performance decrement and adverse effects on passengers if exposed to concentrations of CO_2 above 3% during a short period of time (e.g., 15 minutes), we proposed use conditions restricting CO_2 refrigerant concentrations to a STEL of 3% averaged over 15 minutes in the passenger free space caused by leaks from the MVAC.[11] Subsequently, on September 17, 2009 (74 FR 47774), EPA issued a notice of data availability (NODA) making available to the public additional information received supporting a ceiling limit of 4% CO_2 as a level that should not be exceeded for any period of time due to possible adverse health effects. We also requested public comment on whether EPA should include in a final rule, listing CO_2 as acceptable subject to use conditions for new MVAC systems, a ceiling limit of 4% CO_2 in addition to the proposed STEL of 3% averaged over 15 minutes inside the passenger compartment, and whether the proposed use conditions should apply when the ignition is off.

Basis for Use Conditions Included in This Final Rule

EPA proposed three use conditions in the NPRM. One use condition required that systems be designed to avoid occupant exposure to CO_2 concentrations above a STEL of 3% CO_2 averaged over 15 minutes in the passenger free space, during the event of a leak. The passenger free space is the space inside the passenger compartment excluding the space enclosed by the ducting in the HVAC module (71 FR 55149). The proposal also stated that a breathing zone ceiling limit may provide additional assurance regarding vehicle driver alertness and requested comment on whether a maximum limit should be applied in the driver and passenger breathing zone, in addition to the 3% CO_2 free space limit averaged over 15 minutes. In the NODA, we defined the breathing zone as the space where people breathe (74 FR 47775), and data received during the public comment period defined this zone as the area inside the passenger compartment where the driver's and passengers' heads are located during a normal sitting position.[12]

The other proposed use conditions required OEMs to: (1) Keep records of the test performed to ensure that MVAC systems are safe and designed with sufficient safety mitigation devices so that occupants are not exposed to levels above the CO_2 STEL; and (2) adhere to all the safety requirements listed in the SAE Standard J639, in addition to the use conditions already established under Appendix D to Subpart G of 40 CFR part 82, for MVAC substitutes: unique fittings,[13] label, and a compressor cut-off switch.

We received a number of public comments on the proposed use conditions and subsequent data announced in the NODA regarding the 4% CO_2 ceiling limit. Some commenters claimed that the proposed STEL of 3% CO_2 averaged over 15 minutes was enough to protect passengers and ensure driver alertness (EPA–HQ–OAR–2004–0448–0025.1, –0032, –0044). Other commenters stated that there are sufficient arguments for choosing percent concentration limits higher than the proposed STEL of 3% CO_2 averaged over 15 minutes (EPA–HQ–OAR–2004–0448–0043, –0049). Alternatively, some commenters requested a maximum CO_2 ceiling limit in the passenger breathing zone (EPA–HQ–OAR–2004–0448–0030, –0035, –0047.1) and one commenter considered appropriate the 4% CO_2 ceiling limit as an additional use condition (EPA–HQ–OAR–2004–0448–0047.1).

After considering the information in the docket at the time of proposal, comments received on the proposed rule, and additional information we have received in response to the NODA, we have decided to finalize the use conditions as proposed in the September 21, 2006, NPRM, and to add a ceiling limit of 4% CO_2, which would apply in addition to the 3% averaged over 15-minute CO_2 STEL. We believe that requiring a CO_2 ceiling limit is necessary because it is possible for a time-weighted average concentration, such as the STEL, to be under 3%, while peak concentrations could reach higher limits resulting in possible hearing and vision effects that could distract and endanger a driver, or cause other, potentially more severe adverse health effects (EPA–HQ–OAR–2004–0488–0041). Thus, the proposed use condition requiring mitigation strategies for MVAC systems, to prevent leaks of CO_2 refrigerant reaching concentrations above 3% averaged over 15 minutes inside the passenger compartment free space, may not be sufficient on its own to protect drivers and passengers. This further protective limit is necessary to ensure that overall risks to human health and the environment from CO_2 will be similar to or less than those of other available refrigerants that EPA has already listed as acceptable for MVAC.

In the final rule, we also revised the proposed use condition on recordkeeping to refer to the 4% ceiling limit. The September 21, 2006 NPRM proposed requiring OEMs to keep records demonstrating they have met the use condition requiring safety mitigation devices to avoid occupant exposure above the 3% CO_2 STEL in the passenger compartment. The final use condition addressing recordkeeping requires OEMs to keep records of the tests performed for a minimum period of three years demonstrating that MVAC systems are designed incorporating engineering devices or mitigation strategies so that in the event of refrigerant leak, the resulting concentrations of CO_2 in the passenger free space do not exceed the STEL of 3% averaged over 15 minutes and do not exceed the ceiling limit of 4% in the passenger breathing zone. Keeping records of tests performed evaluating system safety is a customary practice for OEMs while vehicles are in production

[11] In the same NPRM, EPA also proposed to find HFC-152a acceptable subject to use conditions. On June 12, 2008, EPA published a final rule listing HFC-152a as an acceptable substitute, subject to use conditions, for new MVAC (73 FR 33304), but deferred final ruling on the use of CO_2 in new MVAC systems.

[12] This was the location considered in the U.S. Army risk assessment, in addition to the rest of the vehicle occupant compartment (EPA–HQ–OAR–2004–0488–0025.2)

[13] The unique fittings provision applies for MVAC service ports and containers intended for servicing of the MVAC (Appendix D to Subpart G of 40 CFR part 82, 61 FR 54040; October 16, 2006).

and for several years afterward (EPA–HQ–OAR–2004–0488–0057).

For purposes of the final rule, we are referencing to the 2011 version of SAE J639 instead of the 2005 version referenced in the proposed rule. The SAE J639 2011 version added new provisions designed specifically to address use of another refrigerant, HFO–1234yf (EPA–HQ–OAR–2004–0488–0059). The provisions under the 2011 version of SAE J639 for high pressure system warning label, compressor cut-off switch, and unique fittings, remain unchanged. Consistent with the proposed rule, the criteria for uniqueness of fittings under Appendix H to Subpart G of 40 CFR Part 82, and the provisions of Appendix D to Subpart G of 40 CFR Part 82 and SAE J639 (2011 version), in this final rule we specify that the CO_2 refrigerant fittings must have: (1) An outside diameter of 16.6 +0/−0.2 mm (0.6535 +0/−0.0078 inches) for the MVAC low-side, (2) an outside diameter of 18.1 +0/−0.2 mm (0.7126 +0/−0.0078 inches) for the MVAC high-side, and (3) an outside diameter of 20.955 +0/−0.127 mm (0.825 +0/−0.005 inches) and right-hand thread direction for refrigerant service containers.[14]

VI. Why is EPA listing CO_2 acceptable subject to use conditions?

EPA is listing CO_2 acceptable subject to use conditions because the use conditions are necessary to ensure that use of CO_2 will not present greater risk to human health and the environment than other available substitutes acceptable for use in new MVAC systems. Examples of other substitutes that EPA has already found acceptable subject to use conditions for use in new MVAC systems include HFC-152a and HFO-1234yf.[15] A list of acceptable substitutes subject to use conditions for use in new MVAC systems can be found at Appendix B to Subpart G of 40 CFR, Part 82 and *http://www.epa.gov/ozone/snap/refrigerants/lists/mvacs.html.*

EPA is requiring the use of unique fittings for CO_2 refrigerant consistent with Appendix D to Subpart G of 40 CFR part 82 (61 FR 54040; October 16, 1996). All acceptable substitutes for use in MVAC systems are subject to those use conditions (and thus are identified as acceptable subject to use conditions). For CO_2, the unique fittings that must be used for MVAC systems are those identified in the industry standard SAE J639 (2011 version).

In addition to the use conditions regarding unique fittings, EPA is requiring OEMs to adhere to all the safety requirements of SAE J639 (2011 version) for the safe design of new MVAC systems using CO_2. We are establishing this as a use condition to ensure that new MVAC systems that use CO_2 are specifically designed to minimize release of the refrigerant into the passenger cabin. Adherence to the standard will minimize the risks that CO_2 refrigerant levels in the passenger compartment and breathing zone would exceed the CO_2 limits of 3% averaged over 15 minutes in the passenger cabin free space and the 4% ceiling limit in the passenger breathing zone.

Environmental Impacts

EPA finds that CO_2 does not pose greater risk to the environment than other substitutes that are currently available in the end-use being evaluated in this rulemaking. In at least one aspect, CO_2 is significantly better for the environment than most alternatives currently listed as acceptable subject to use conditions in the MVAC end-use. CO_2 has a hundred-year time horizon (100-yr) global warming potential (GWP) of one, compared with a GWP of four for HFO-1234yf, 124 for HFC-152a, and 1,430 for HFC-134a. Further, CO_2 has an ozone depletion potential (ODP) of zero, comparable to HFO-1234yf, HFC-152a, and HFC-134a. Other SNAP-approved refrigerant blends containing HCFCs have ODPs ranging from 0.065 to 0.022. Additionally, CO_2 is excluded from the definition of volatile organic compound (VOC) under CAA regulations (*see* 40 CFR 51.100(s)).

Human Health and Safety Impacts

Carbon dioxide is not flammable, similar to HFC-134a and most other acceptable alternatives for MVACs. Therefore, it does not add risks of fire in a vehicle when used. For the MVAC end-use, the EPA has listed two flammable alternatives (HFC-152a and HFO-1234yf) acceptable, subject to use conditions to mitigate flammability risks.

CO_2 is an asphyxiant that obstructs the oxygen flow into the body (OSHA, 1996; as cited in EPA–HQ–OAR–2004–0488–0041). However, it is not the only gas that may cause asphyxia. Releasing almost any gas[16] into an unventilated or poorly ventilated space can lower the oxygen concentration to a level that poses significant health risks (EPA–HQ–OAR–2004–0488–0041). Health risks could occur to drivers or vehicle occupants during release of CO_2 refrigerant into the passenger compartment. Additionally, occupational risks could occur during the manufacture of the refrigerant, initial installation of the refrigerant into the MVAC system at the vehicle assembly plant, servicing of the MVAC system, or final disposition of the MVAC system (i.e., recycling or disposal).

We evaluated potential human health and safety impacts, including the short- and long-term toxicity of CO_2 and risk of injury to service personnel from high-pressure CO_2 MVAC systems, and considered detailed risk assessments with fault-tree analysis (FTA), (EPA–HQ–OAR–2004–0488–0017, –0022, and –0025.2), scientific data provided in public comments (EPA–HQ–OAR–2004–0488–0037.1) and other information obtained during the notice of data availability (EPA–HQ–OAR–2004–0488–0041). We also reviewed a risk assessment with fault-tree analysis from the SAE Corporate Research Program (CRP) for HFO-1234yf and CO_2, submitted during the public comment period for another SNAP rulemaking[17] (EPA–HQ–OAR–2004–0488–0051, EPA–HQ–OAR–2008–0664–0008, and –0056). We also evaluated and provided additional information on the health effects and risks to CO_2 exposure through a contractor-authored report ''Review of Health Impacts from Short-Term Carbon Dioxide Inhalation Exposures'' (EPA–HQ–OAR–2004–0488–0041). This report revealed that exposures over 4% (40,000 ppm) CO_2 are likely to cause discomfort and signs of intoxication that could impair the driver's response to road and driving conditions, and could create safety and health risks to the passengers. In addition to this report, a revised risk analysis performed by the U.S. Army Research, Development and Engineering Command (herein referred as U.S. Army risk analysis),[18] submitted during the

[14] The SAE J639 standard specifies unique fittings for high-side and low-side service ports and makes reference to SAE J2683 ''Refrigerant Purity and Container requirements for Carbon Dioxide (CO_2 R–744) Used in Mobile Air Conditioning Systems'' which specifies that the unique fitting for CO_2 refrigerant service containers must be consistent with the Cylinder Gas Association's fitting CGA 320 (for 0–3000 psi) which has an outside diameter of 0.825 +0/-0.005 inches (20.955 +0/−0.127 mm) and right-hand thread direction (EPA–HQ–OAR–2004–0488–0059, –0060).

[15] HFO-1234yf was found acceptable only for MVAC systems in new passenger cars and light duty trucks (76 FR 17488, March 29, 2011).

[16] Any refrigerant can act as an asphyxiant by limiting available oxygen in a space. When oxygen levels in air are reduced to 12–14% by displacement, symptoms of asphyxiation, loss of concentration, increased pulse rate and deeper respiration will occur.

[17] SNAP rule listing as acceptable subject to use conditions HFO-1234yf for MVACs in new passenger cars and light-duty vehicles (76 FR 17488, March 29, 2011).

[18] Blackwell et. al 2006; *Risk Analysis for Alternative Refrigerant in Motor Vehicle Air Conditioning* (revised risk analysis made in

public comment period, indicated that limiting passenger exposure to 4% CO_2 is sufficiently protective to avoid serious or irreversible health effects in potentially sensitive subpopulations (EPA–HQ–OAR–2004–0488–0025.2). Also, the U.S. Army risk analysis selected the 4% CO_2 level based on the lowest level at which performance decrements were observed in studies by Wong, 1992 (EPA–HQ–OAR–2004–0488–0025.2).

Vehicle Driver and Passenger Risks

EPA's review of vehicle driver and passenger risks from CO_2 refrigerant exposure indicated that a potential refrigerant leak into the vehicle passenger compartment is not expected to present an unreasonable exposure risk if engineering strategies or mitigation strategies are applied (EPA–HQ–OAR–2004–0488–0025, –0037.1). The U.S. Army risk assessment indicated a possible strategy to limit refrigerant leakage into the passenger compartment by installing a device referred as a ''3-second squib valve'' to discharge refrigerant to a location outside the passenger compartment three seconds after a major leak is detected.[19] The assessment showed that for CO_2 MVAC systems, using a squib valve to evacuate the charge in three seconds after a leak is detected kept passenger exposure to below levels of concern (i.e., 3% over 15 minutes in the passenger compartment, as a whole, and 4% in the breathing zone).We listed in the proposal additional possible mitigation strategies that may reduce the likelihood of exceeding refrigerant levels of concern inside the passenger compartment, including within the breathing zone. We also received information from commenters on additional engineering strategies and mitigation strategies (EPA–HQ–OAR–2004–0488–0037.1, –0025.2, –0030, –0050). In this final rule, we are not establishing a use condition requiring a specific mitigation strategy, but instead leaving to vehicle manufacturers the choice of which mitigation strategy to use in order to ensure that in the event of refrigerant leak, the resulting concentrations of CO_2 in the passenger free space above 3% or 30,000 ppm averaged over 15 minutes are avoided and the resulting concentrations of CO_2 in the passenger breathing zone do not exceed the ceiling limit of 4% or 40,000 ppm at any time.

Occupational Risks

EPA evaluated risks of injury and refrigerant exposure to workers by examining risk screens, published research information and data made available during the public comment period (EPA–HQ–OAR–2004–0017, –0025.2, –0041, –0022, –0015, –0051). We compared long-term occupational exposures to CO_2 to a workplace exposure limit of 5,000 ppm (or 0.5%) time weighted average CO_2 concentration over a period of eight hours, consistent with the Occupational Safety and Health Administration (OSHA) Permissible Exposure Limit-Time Weighted Average (PEL–TWA),[20] the Centers for Disease Control and Prevention's (CDC's) National Institute for Occupational Safety and Health (NIOSH) Recommended Exposure Limit-Time Weighted Average (REL–TWA),[21] and the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Value-Time Weighted Average (TLV–TWA).[22 23] Additionally, we compared short-term occupational worker exposures to CO_2 to a workplace short-term exposure limit of 30,000 ppm (or 3%) time weighted average CO_2 concentration over a 15-minute period during a workday, consistent with NIOSH's Recommended Exposure Limit-Short term Exposure Limit (REL–STEL) [24] and ACGIH's Threshold Limit Value-Short Term Exposure Limit (TLV–STEL).[25 26]

The U.S. Army risk assessment (EPA–HQ–OAR–2004–0488–0025.2) evaluated occupational risks for the MVAC service sector using FTA. The FTA found probabilities of refrigerant exposure while servicing CO_2 MVAC systems of approximately 10^{-5} cases per year (i.e., approximately 5 annual cases per 100,000 technicians) (EPA–HQ–OAR–2004–0488–0025). This figure is significantly lower when compared to the general injury and illness rate for auto repair technicians, which is approximately 4 annual cases per 100 full time technicians (BLS, 2003; EPA–HQ–OAR–2004–0488–0025); thus risks from CO_2 exposures in the MVAC service field are expected to be significantly less than the risks of injury already present in shops (EPA–HQ–OAR–2004–0488–0025). The U.S. Army risk assessment additionally found that the chances of refrigerant exposure for persons servicing an MVAC system do not vary considerably by the type of refrigerant used and found similar results for end-of-life (i.e., recycling or disposal) activities (EPA–HQ–OAR–2004–0488–0025).

EPA notes that occupational risks could occur during the manufacture of the refrigerant and initial installation of the refrigerant into the MVAC system at the vehicle assembly plant. Although we did not analyze the risk of exposure during refrigerant manufacture and initial installation of CO_2 refrigerant into the MVAC system at the vehicle assembly plant, we expect risks at the vehicle assembly plant, and at other workplaces were CO_2 refrigerant handling will occur (e.g., service shops, and recycling or disposal facilities), to be similar to or lower than the risks from other refrigerants used for these purposes due to occupational safety practices (e.g., proper ventilation, use of personal protective equipment) established for these type of facilities and subject to occupational safety and health standards under 29 CFR Part 1910, which are intended to address risk to such workers.

Overall Conclusion

EPA finds that the overall environmental and human health risks posed by the use of CO_2 in new MVAC systems, subject to the use conditions being adopted in this final rule, is lower than or comparable to the risks posed by other substitutes found acceptable subject to use conditions in the same end-use.

VII. What is the relationship between this SNAP rule and other EPA rules?

Rules Under Sections 609 and 608 of the Clean Air Act

This final SNAP rule addresses the conditions for safe use of CO_2 in new MVAC systems. Thus, the requirements in this rule apply primarily to OEMs, except for specific requirements for unique fittings required under Appendix D to Subpart G of 40 CFR part 82 which also applies for servicing of

collaboration with EPA and several stakeholders, EPA–HQ–OAR–2004–0488–0025.2). The original risk screen referred in the NRPM (71 FR 55140) contained technical errors (EPA–HQ–OAR–2004–0488–0017). This final rule relies on the results of the revised U.S. Army risk analysis.

[19] Refers to the assessment by Blackwell, et al., 2006 (EPA–HQ–OAR–2004–0488–0025).

[20] PELs are based on an eight hour TWA exposure (OSHA, 1988a).

[21] REL–TWAs are concentrations for up to 10-hour workday during a 40-hour workweek (NIOSH, 2005).

[22] TLV–TWAs are concentrations for an eight hour workday and a 40-hour workweek, to which is believed that nearly all workers may be repeatedly exposed, day after day, for a working lifetime without adverse effect (ACGIH, 2005).

[23] OSHA's PEL–TWA, NIOSH's REL–TWA, and ACGIH'S TLV–TWA are all the same, 5,000 ppm (0.5%), for CO_2 (EPA–HQ–OAR–2004–0488–0041).

[24] REL–STELs are 15-minute TWA exposure limits that should not be exceeded at any time during a workday (NIOSH, 2005).

[25] TLV–STELs are 15-minute exposure that should not be exceeded at any time during a workday, even if the eight hour TWA is within the TLV–TWA (ACGIH, 2005).

[26] NIOSH's REL–STEL, and ACGIH'S TLV–STEL for CO_2 are all 30,000 ppm (3%) 15-minute TWA (EPA–HQ–OAR–2004–0488–0041).

the MVAC. Section 609 of the CAA establishes standards and requirements regarding servicing of MVAC systems. These requirements include training and certification of any person that services MVAC systems for consideration,[27] as well as standards for certification of equipment for refrigerant recovery and recycling. EPA has issued regulations implementing these statutory requirements and those regulations are codified at subpart B of 40 CFR part 82. MVAC end-of-life disposal and recycling specifications are covered under section 608 of the CAA and our regulations are codified at subpart F of 40 CFR part 82. The statutory and regulatory provisions regarding MVAC servicing, refrigerant recovery, and refrigerant venting prohibition apply to any refrigerant alternative and are not limited to refrigerants that are also ODS. CO_2 is exempted from the refrigerant venting prohibition provisions promulgated under CAA 608 (40 CFR 82.154 and 70 FR 19278; April 13, 2005).

VIII. What is EPA's response to public comments on the proposal?

This section summarizes EPA's response to significant comments received during the public comment periods for the NPRM and the NODA. EPA's response to all comments received can also be found in a response to comments document in docket EPA–HQ–OAR–2004–0488.

A. Use Conditions

Comment: Some commenters claimed that the proposed STEL of 3% CO_2 averaged over 15 minutes in the cabin free space is enough to protect passengers and ensure driver alertness. One commenter suggested to consider a 3% CO_2 concentration limit averaged over 15 minutes in the breath level (i.e., breathing zone) instead of 3% in the cabin free space. The commenter considered the breathing zone to be a relevant point for measurement and claimed that high refrigerant concentrations lower in the vehicle would not impair vehicle operation. Other commenters supported higher CO_2 concentration limits but over a shorter period of time (e.g., 5.5% CO_2 for 5 minutes and 9% CO_2 as a ceiling limit). Other commenters requested that EPA include a CO_2 ceiling limit in the passenger breathing zone and one commenter considered appropriate a 4% CO_2 ceiling limit (i.e., a limit not to be exceeded at any time) as an additional use condition. Another commenter stated that use conditions requiring mitigation strategies are not necessary for low probability events (i.e., exceeding 4% CO_2 for any duration) and that requiring such conditions would prevent the use of this refrigerant.

Response: After evaluating the comments and risk screens (EPA–HQ–OAR–2004–0488–0025.2, –0041, 0051), EPA is revising the proposed use conditions to add a ceiling limit of 4% CO_2, in addition to the CO_2 STEL of 3% averaged over 15 minutes. We believe that the original proposed use condition requiring mitigation strategies for MVAC systems, to prevent leaks of CO_2 refrigerant reaching concentrations above 3% averaged over 15 minutes inside the passenger compartment free space, may not be sufficient on its own to protect drivers and passengers. We also believe that requiring a CO_2 ceiling limit of 4% is necessary because it is possible for a time-weighted average concentration, such as the STEL, to be under 3%, while peak concentrations could reach higher limits for a few minutes. As shown in published data, CO_2 concentration peaks above 4% could result in effects on hearing and vision that could distract and endanger a driver, or other, potentially more severe adverse health effects (EPA–HQ–OAR–2004–0488–0041).

CFD modeling showed that during unmitigated refrigerant leak scenarios, CO_2 refrigerant concentrations in the passenger breathing zone can reach up to 10.2% in 50 seconds (0.83 minutes) and 8.0% in 200 seconds (3.33 minutes) (EPA–HQ–OAR–2004–0488–0025.2). The U.S. Army risk analysis's FTA showed that unmitigated leak scenario occurrences for CO_2 systems (reaching concentrations above 4% CO_2) could reach 4,300 per year for the vehicle fleet (EPA–HQ–OAR–2004–0488–0025.2). These occurrences are about 10,000 higher than the expected occurrences associated with leaks of a fluorinated refrigerant (e.g., HFC-134a, HFC-152a, or HFO-1234yf) breakdown product (i.e., hydrogen fluoride) exposure above health based limits.[28] Several studies reported that exposure ranging from 7% to 10% CO_2 for few minutes (e.g., 2–3 minutes) resulted in loss of consciousness (EPA–HQ–OAR–2004–0488–0441).[29]

EPA disagrees with the commenter stating that use conditions requiring mitigation strategies are not necessary for low probability events and that requiring such conditions would prevent the use of this refrigerant. Consistent with the information above, we believe that unmitigated exposure occurrences are not rare. We believe the use conditions required in this final rule are necessary to ensure that overall risks to human health and the environment from CO_2 will be similar to or less than those of other available refrigerants that EPA has already listed as acceptable for MVAC. We also believe that requiring the use conditions listed in this final rule would not make the refrigerant use less practicable. Use conditions imposed on other acceptable alternatives for MVACs (e.g., adherence to all safety requirements under SAE standard J639, use of unique fittings and labels, use of pressure relief devices) has not prevented use of such alternatives.[30]

Comment: Several commenters indicated that concentration measurements of CO_2 inside the passenger compartment should consider passenger respiration in addition to a refrigerant leak from the A/C system. Another commenter indicated that the MVAC recirculation mode operates with at least 1% of fresh air. One commenter suggested changing the text of the proposed use condition indicating the STEL for CO_2 refrigerant inside the passenger compartment to state that the STEL is ''3% v/v fully-occupied-volume, time averaged over 15 minutes'' and to clarify that the calculation of such value is based on a double average consisting of the average CO_2 concentration over the air volume of a fully occupied car and a time-average of

[27] Service for consideration means receiving something of worth or value to perform service, whether in money, credit, goods, or services (*see* 40 CFR 82.32 (g)).

[28] The risk due to exposure to HF when using HFO-1234yf is approximately the same as that with the current use of HFC-134a (on order of 10^{-12} occurrences per operating hour, or one in one trillion). (76 FR 17488; March 29, 2011). When this factor is multiplied by the approximate vehicle fleet and annual vehicle operating hours (250 million and 500 hr/yr, respectively) the occurrences per year are in the order of 10^{-1}.

[29] Unconsciousness caused by short term exposure (e.g., 2–3 minutes) of CO_2 concentration ranging from 7 to 10% was reported in studies by Aero Medical Association (1953), Flury and Zernik (1931), Hunter (1975), Schaefer (1951), and NIOSH (1996), as cited in *Review of Health Impacts for Short-Term Carbon Dioxide Inhalation Exposures* (2009). EPA–HQ–OAR–2004–0488–0041.

[30] On March 29, 2011, EPA issued a final rule listing HFO-1234yf as acceptable subject to use conditions for MVACs in new passenger car and light duty trucks. One of the use conditions in that rule require OEMs to perform and keep on file an FMEA. In an FMEA vehicle designers analyze all the ways in which parts of the MVAC system could fail and identify how they will address those risks in design of the system. (76 FR 17488). If the FMEA reports that mitigation strategies are necessary in the MVAC for safety reasons, manufacturers are required to design safety components (e.g., mitigation strategies) to comply with the use condition of that rule. In the U.S. an OEM publicly announced that it will be using HFO-1234yf in some vehicles starting 2013 model year (EPA–HQ–OAR–2004–0488–0062).

volume-average over 15 minutes.[31] Another commenter suggested alternative language for the use condition specifying a ceiling limit of 4% CO_2 applicable in any part of the free space inside the passenger compartment for a time period of 60 seconds when the car ignition is on. The suggested language reads:

''Engineering strategies and/or devices shall be incorporated into the system such that foreseeable leaks into the passenger compartment do not result in R744 concentrations of 4.0% v/v or above in any part of the free space inside the passenger compartment for more than 60 seconds when the car ignition is on.''

Response: EPA notes that the U.S. Army risk analysis assumed that a maximum number of passengers were in the vehicle before the release of refrigerant into the passenger compartment, allowing for some build-up of respiratory CO_2 (EPA–HQ–OAR–2004–0488–0025.2). Thus, that analysis recognized that CO_2 concentrations can occur from human respiration in a space with limited exchange of outside air and may consequently build up in the passenger cabin. For that reason, in the proposal, we indicated that OEMs should account for background CO_2 concentrations in the passenger compartment that can result from human respiration when designing their systems and mitigation devices (71 FR 55140; September 21, 2006). However, we did not specify whether the vehicle should be fully occupied to account for CO_2 background concentrations. We believe that CO_2 refrigerant concentrations may reach levels of concern (i.e., above 4% CO_2) during an unmitigated event of refrigerant leak either when the vehicle is fully occupied or when not fully occupied (e.g., the vehicle is occupied by the driver only). Thus we do not agree with the commenter's suggestion to state that the STEL is ''3% v/v fully-occupied-volume, time averaged over 15 minutes''. In this final rule, we recommend but do not require, consistent with the NPRM, to account for background CO_2 concentrations from human respiration, in addition to refrigerant leaks when designing the MVAC.

EPA notes that the proposal (79 FR 55140; September 21, 2006) specifies the CO_2 STEL as a concentration limit averaged over 15 minutes, in the event of a refrigerant leak. The STEL is determined from the sum of concentration and exposure time products (e.g., concentration 1 times exposure time 1 plus concentration 2 times exposure time 2), divided by the total exposure time which shall not exceed 15 minutes (EPA–HQ–OAR–2004–0448–0041). Thus the STEL is a time-weighted average concentration and not necessarily a time-average of a volume-average as indicated by the commenter since STEL refers to a total exposure time (i.e., 15 minutes) and not an average time. For this reason, we do not agree with the commenter's suggestion to clarify that the calculation of the 3% STEL is based on a double average consisting of the average CO_2 concentration over the air volume of a fully occupied car and a time-average of volume-average over 15 minutes since the approach does not provide further clarity of the use condition. In this final rule, the CO_2 STEL of 3% averaged over 15 minutes considers the average CO_2 concentration in a passenger cabin over a total time period of 15 minutes during the event of refrigerant leak; and the ceiling limit of 4% CO_2 considers the total CO_2 in the passenger breathing zone at any one moment in a passenger compartment during the event of a leak.

Regarding the alternative language suggested by the other commenter specifying a ceiling limit of 4% CO_2 applicable in any part of the free space inside the passenger compartment for a time period of 60 seconds when the car ignition is on, we note that the commenter did not provided information supporting his suggestion that the ceiling limit apply in areas other than the passenger breathing zone for the specified 60-second time period.

Comment: Two commenters indicated the need for clarity on whether the use conditions apply when the ignition is off as well as when the ignition is on. Other commenters suggested considering the results of a risk assessment performed by SAE's CRP indicating a significantly low probability for a leak when the ignition is off, and several other commenters stated that the use conditions should only apply when the ignition is on.

Response: The NODA provided data and requested additional comment on whether the use conditions should apply when the engine is off. In December, 2009, after the public comment period closed on the NODA, SAE issued a report, ''Risk Assessment for HFO-1234yf and R-744 (CO_2) Phase III'' (referred herein after as SAE CRP report), that evaluated toxicity effects and quantitative risks of CO_2, similarly to the U.S. Army risk analysis. This report was submitted to EPA during the public comment period for another SNAP rulemaking.[32] The report evaluates CO_2 exposure estimations due to leaks into the passenger compartment during different modeled scenarios such as different MVAC operation mode, system failure, and during a collision (EPA–HQ–OAR–2008–0664–0056.2, EPA–HQ–OAR–2004–0488–0025.2, –0051). The SAE CRP report also evaluated refrigerant release into the passenger compartment during a scenario where the engine is expected to be off (EPA–HQ–OAR–2004–0488–0051, EPA–HQ–OAR–2008–0664–0056.2). For this scenario, which involves passengers sleeping inside a vehicle with the windows closed while refrigerant leaks occur, the SAE CRP report showed a probability for occurrences of CO_2 refrigerant exposure above 6% (a threshold limit used by the CRP for this scenario) to be in the order of 10^{-12} per vehicle/hour/occupant (EPA–HQ–OAR–2004–0488–0051, EPA–HQ–OAR–2008–0664–0056.2). We believe that exposures of concern inside the passenger compartment are more likely to result from a large, sudden release of refrigerant inside the passenger compartment and that such a situation is most likely during a collision while the ignition is on, as described on the U.S. Army risk analysis (EPA–HQ–OAR–2004–0488–0025.2) and consistent with the SAE CRP report (EPA–HQ–OAR–2004–0488–0051, EPA–HQ–OAR–2008–0664–0056.2). In addition, even if a rupture on the evaporator line is large, the overall leak rate is limited to the maximum flow rate of refrigerant through the fixed orifice tube opening of the MVAC (EPA–HQ–OAR–2004–0488–0025.2). The maximum flow rate is determined by the differential compressor discharge pressure, which is only available when the vehicle ignition is on and MVAC system is running. Therefore, EPA finds that the overall risks to human health and the environment from CO_2 will be similar to or less than those of other available refrigerants that EPA has already listed as acceptable for MVAC when the ignition is off. Thus, consistent with a SNAP rule issued in June 12, 2008 (73 FR 33304) listing HFC-152a[33] as acceptable subject to use conditions for use in new MVAC systems, the use

[31] Fully occupied is defined as the maximum design occupancy determined by the number of sets of seat belts (EPA–HQ–OAR–2004–0488–0025.1—0025.2).

[32] We refer here to the SNAP rule listing HFO-1234yf as acceptable subject to use conditions for MVACs in new passenger cars and light duty vehicles (EPA–HQ–OAR–2008–0644, 74 FR 17488; March 29, 2011).

[33] HFC-152a poses risks comparable to CO_2 and other available refrigerants found acceptable subject to use conditions under SNAP (73 FR 33304; June 12, 2008).

conditions in this final rule apply only when the ignition is on.

Comment: One commenter suggested that the regulation should precisely define the area in the vehicle being regulated and indicated that SAE is working on a standard to establish standards for passenger compartment refrigerant concentration measurement. Another commenter indicated that a CO_2 concentration limit should focus on the driver breathing zone rather than the cabin free space.

Response: EPA has clarified the regulatory text of the use condition to define the passenger free space as the space inside the passenger compartment, excluding the space enclosed by the ducting in the HVAC module. The passenger breathing zone, where the ceiling limit of 4% must be met, is defined as the area inside the passenger compartment where the driver's and passengers' heads are located during normal sitting position (i.e., space where people breathe, as defined in the NODA (71 FR 47775; September 17, 2009)). Additionally, we note that the passenger breathing zone is defined in SAE J2772 and the driver's head position in SAE J1052. Since the automotive industry often relies on standards for designs and assessments, we recommend the use of the SAE J1052 and SAE J2772 standards as references for further specifications regarding the driver's and passengers' head and seating position and to establish the passenger breathing zone consistent with our explanation provided in Section V of the preamble (i.e., the area inside the passenger compartment where the driver's and passengers' heads are located during a normal sitting position).

EPA disagrees with the comment indicating that a CO_2 concentration limit should only focus on the driver breathing zone rather than the passenger cabin free space. Based on the risk analyses and available data, we include in this final rule a 4% ceiling limit that must not be surpassed at any time in the passenger (and driver) breathing zone (EPA–HQ–OAR–2004–0488–0044–0025.2). We also include, as proposed, a 3% CO_2 STEL averaged over 15 minutes in the passenger cabin free space as an additional protective measure for passenger exposure to CO_2. As indicated by the U.S. Army risk assessment, sensitive subpopulations (e.g., elderly and children) may be affected from exposures to high concentrations of CO_2 (EPA–HQ–OAR–2004–0488–0025.2), thus we believe it is necessary to set a limit that would address risk to all people in the passenger compartment and not solely the driver. We also take into consideration that passengers may not be in a normal sitting position all the time (e.g., passenger may rest in a reclined position) and note CO_2 is heavier than air, thus higher concentrations may be found at lower points of the passenger cabin (EPA–HQ–OAR–2004–0488–0025.2, –0041, –0051). As indicated previously, the STEL is the concentration limit that people can be exposed continuously for a short period of time (i.e., 15 minutes) without suffering adverse health risks. For these reasons we include both limits (i.e., 4% CO_2 ceiling limit in the passenger breathing zone and 3% CO_2 averaged over 15 minutes in the passenger cabin free space) in this final rule.

Comment: Several commenters suggested that a CO_2 ceiling limit should rely on exposure time since potential effects of CO_2 vary with both concentration and duration of the exposure. One commenter stated that if the ceiling limit is exceeded, it is likely due to collision events.

Response: EPA agrees the health effects of CO_2 are functions of exposures over time. The commenter appears to misunderstand what a ceiling limit is. A ceiling limit is a limit that shall not be exceeded for any period of time, thus it is not consistent with the concept of a ceiling limit to also include a period of time during which it cannot be exceeded. As explained previously, we believe that both a ceiling limit and a STEL are necessary to ensure that risks posed from CO_2 MVAC systems are not greater than risks posed by other available MVAC systems.

While EPA agrees with the commenter that collision events are the most likely cause of a refrigerant leak that could cause CO_2 levels to the exceed the ceiling limit established in the use conditions, there may be other system failures that could cause the ceiling limit to be exceeded. OEMs should consider risks from all possible events in designing MVACs for use with CO_2.

Comment: Several commenters suggested considering ceiling limits of CO_2 above 4% (e.g., 6%, 9%) based on studies showing that visual disturbances occur at concentrations of 6% CO_2. They stated that the SAE CRP report's rationale suggested a 9% CO_2 concentration ceiling limit, based on studies showing central nervous system (CNS) effects at CO_2 exposure concentrations of 10% (100,000 ppm).

Response: Studies report that human exposures to 6% CO_2 for periods as short as 2 minutes can lead to hearing and visual disturbances, and that exposures to 7.5% for 5 minutes lead to significant reasoning and performance decrements (Gellhorn, 1936; Sayers, 1987 as cited in EPA–HQ–OAR–2004–0488–0041). To provide a margin of safety, EPA considers it necessary to require a ceiling limit of 4% CO_2 in the passenger breathing zone as indicated in the NODA and suggested by some commenters, to avoid driver performance decrement and other adverse health effects on passengers.

Comment: Several commenters said that the ceiling limit should rely on NIOSH's Immediately Dangerous to Life and Health (IDLH) value of 4% CO_2 based on a 30-minute exposure.

Response: EPA disagrees with the commenters to the extent they are suggesting that the 4% limit be based on a 30-minute exposure. The NIOSH IDLH value is a worker's exposure limit based on the effects that might occur as a consequence of a 30-minute exposure (NIOSH 2005; EPA–HQ–OAR–2004–0488–0041). The OSHA regulation (1910.134(b)) defines the term as ''an atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.'' We believe NIOSH's IDLH is inappropriate as a ceiling limit for the use of CO_2 as a refrigerant in MVACs because, as indicated above, a ceiling limit is a limit that shall not be exceeded for any period of time. Also, a 4% limit over 30-minutes would not protect drivers and passengers from the effects of CO_2 exposure at concentrations equal or higher than 4%. CO_2 is an asphyxiant that obstructs the oxygen flow into the body and we believe that 30-minute duration, in particular, where the person affected by such a concentration may be operating a vehicle and thus posing risk to others, creates a significant risk. *Risk Mitigation Strategies*

Comment: The U.S. Army noted a CFD parameter error in their 2005 risk analysis which used an incorrect refrigerant leak angle in their 2005 risk analysis (EPA–HQ–OAR–2004–0488–0017). The U.S. Army corrected this error for purposes of their 2006 risk analysis by using a perpendicular leak angle to the rupture cross-sectional area (EPA–HQ–OAR–2004–0488–0025.1). The 2006 analysis finds that an unmitigated discharge of CO_2, in full recirculation mode, results in CO_2 concentration above 3% for more than 60 minutes. The U.S. Army also indicated that a 3-second, rather than a 10-second squib valve, as originally determined, would be needed to ensure that CO_2 concentrations remain below

the 3% on a 15-minute average inside the passenger compartment.

Response: EPA notes that the U.S. Army is commenting on its own risk assessment performed in collaboration with EPA and several stakeholders, and referenced in the NPRM (71 FR 55140). We also note that the 2005 U.S. Army risk analysis referred in the NRPM (71 FR 55140) contained technical errors (EPA–HQ–OAR–2004–0488–0017). This final rule relies on the results of the revised (2006) U.S. Army risk analysis submitted during the public comment period.

Based on the U.S. Army revised assessment, we understand that, in order for a squib valve to be an effective mitigation device, the activation time of such device should be 3 seconds rather than the 10 seconds indicated in the original risk assessment. Since we are not specifying in this final rule what mitigation strategies must be used, we believe the 2006 revised risk analysis does not affect the use conditions addressed in this final rule, but may affect the potential risk mitigation strategies OEMs might apply for use with CO_2 refrigerant.

Comment: One commenter stated that secondary loop technology is not a viable risk mitigation strategy for CO_2 because of reduced system performance and reduced fuel efficiency.

Response: This final rule does not specify design options. EPA does not intend to limit engineering innovation by requiring any specific risk mitigation strategy; however, EPA notes that secondary loop technology could potentially reduce the risks of exceeding the ceiling limit of CO_2 in the passenger compartment because the refrigerant charge stays separate from the passenger compartment. OEMs may choose to investigate secondary loops as a risk mitigation strategy, and would have to weigh the pros and cons, including any potential effect on fuel efficiency. However, even if secondary loop technology were not an attractive option, other feasible mitigation technologies could be applied to meet the use conditions of this final rule, such as a squib valve with a 3-second response time.

Comment: One commenter indicated that squib valves with activation time of less than 10 seconds (e.g., few milliseconds) are available and such devices have been tested. Another commenter stated that a 10-second squib valve is not technically feasible given CO_2 sensor performance. Additionally, the commenter stated that during sharp increases in CO_2 concentration in the passenger compartment, a short activation time for a squib-valve would increase the possibility of purging the refrigerant from the air conditioning system to outside the vehicle when no leak in fact exists.

Response: EPA agrees with the first commenter regarding the availability of squib valves and disagrees with the second commenter's statement regarding feasibility of a squib valve. The 2006 U.S. Army risk analysis indicated that a squib valve is one effective strategy and viable engineering option to reduce the amount of charge that could potentially leak into the passenger compartment (EPA–HQ–OAR–2004–0488–0025.2). EPA notes that in the proposal, we intended for the squib valve activation time to include: 1) the time the sensor takes to detect a significant leak that would cause CO_2 refrigerant to enter into the passenger compartment, and 2) the time it takes for the squib valve to open (71 FR 55140; September 21, 2006). The 2006 U.S. Army risk assessment evaluated different activation times (i.e., 30, 10 and 3 seconds) of squib valve during modeled scenarios of CO_2 refrigerant leak. The results showed higher effectiveness of the valve preventing high refrigerant concentration reaching the passenger compartment during the shorter activation time.

EPA believes that sharp increases in CO_2 concentration in the passenger compartment will likely occur only when a significant amount of CO_2 refrigerant leaks into the passenger compartment. Risk assessments showed that CO_2 buildup due to passenger respiration occurs slowly (e.g., 60 minutes) to levels up to 2.4% in a fully-occupied 100 cubic feet sealed passenger compartment of a vehicle with no introduction of outside air (EPA–HQ–OAR–2004–0488–0025.2, –0041). EPA notes that a passenger compartment in a vehicle is not confined space and infiltration/exfiltration rates of air changes within the passenger compartment and outside air are at least 0.3 air changes per hour (NREL, 2003 as cited in EPA–HQ–OAR–2004–0488–0025.2). Therefore, we do not agree that refrigerant purging from the air conditioning system to outside the vehicle will occur when no leak in fact exists.

Comment: A commenter stated that odorants that alert drivers to a leak should be another option for compliance with the rule.

Response: EPA did not propose the use of odorants, and this final action neither requires nor prohibits the use of odorants in new CO_2 MVAC systems. Odorized CO_2 may be an effective means to alert the driver and passengers to a refrigerant leak into the passenger compartment. However, EPA does not believe odorants used alone provide sufficient risk mitigation as it may take vehicle occupants a period of time to recognize what the odor signifies. Documentation has not been provided to show how long and how much odorized CO_2 drivers must be exposed to before they recognize that the smell indicates a health and safety risk.

Comment: One commenter suggested that EPA consider use of sensors to allow continuous monitoring of refrigerant concentration inside the passenger cabin as a mitigation strategy. Another commenter mentioned that an alarm system or other technical solutions should allow for air renewal and lowering concentration levels below the limits indicated in the use conditions within a reasonable time period

Response: As noted previously, EPA is not specifying the risk mitigation strategies that must be used to ensure CO_2 levels do not exceed the levels established in the use conditions. We do not believe that a sensor alone would be sufficient to provide effective protection to the passengers and to ensure that concentrations inside the passenger compartment and passenger breathing zone do not exceed the established CO_2 concentration limits of this final rule. In response to the commenter stating that an alarm system or other technical solutions should allow for air renewal, EPA believes the use of such tool might be effective but that such strategy would need to rely on an automatic supply of air, rather than a driver's response, to ensure CO_2 concentrations do not exceed the exposure limits established in the use conditions. Thus, an additional mitigation device would need to be used in addition to any alarm system.

Comment: One commenter said that evaporator isolation valves are not realistic as mitigation devices because of cost. The commenter stated that close-coupled and hermetically sealed systems are technically feasible and noted that an automatic increase in air exchange is a possible strategy that is technically feasible. Another commenter suggested that switching the MVAC blower to operate on outside air mode on high, rapidly after CO_2 refrigerant is released, could reduce the overall refrigerant concentration in the compartment to a peak lower than 4%.

Response: EPA believes the mitigation strategies mentioned by the commenters may all be technically feasible means to meet concentration levels specified in the use conditions. We note that in the proposed rule we suggested using

evaporator isolation valves, close coupled or hermetically closed systems that would reduce refrigerant charge size, and increasing air exchange (with outside air) in the passenger compartment upon detection of leaks as some of several potential risk mitigation strategies (71 FR 55140; September 21, 2006). In this final rule we are not requiring a specific mitigation strategy or engineering device. We are allowing OEMs to choose a mitigation strategy that is consistent with the use conditions and that they will employ to protect the driver and passengers in a vehicle from CO_2 exposure above the limits specified in this rule.

Comment: One commenter stated that a vehicle crash could be so severe that the MVAC system evaporator could be damaged and possibly reduce a risk mitigation system's effectiveness. The commenter proposed the inclusion of an evaporator crush resistance standard in this action.

Response: EPA agrees that a vehicle crash could reduce the effectiveness of the risk mitigation strategy. However we believe that in such a case, the damage to the car would be so severe as to result in an inflow of ambient air that would negate the risks associated with potentially elevated CO_2 concentrations. A crush-resistant evaporator could be selected as a possible mitigation strategy but, as stated previously, in this final rule we do not specify which engineering device or strategies must be incorporated into the MVAC system and leave this choice to the OEMs.

C. Industry Standards

Comment: Several commenters indicated that SAE is developing standards for safety and servicing of CO_2 MVAC systems and that it is customary for OEMs to follow those standards. Other commenter claimed that every OEM is responsible for its own safety concept and has to show compliance with already existing and future safety standards.

Response: EPA notes and agrees with the important role industry standards play particularly for the MVAC sector. In addition, we note that the regulatory text references the relevant SAE technical standards to promote consistency with established industry practices. Specifically, use conditions in this final rule reference SAE J639 (2011 version). Other standards such as SAE J1739, which addresses design, safety, and recordkeeping requirements, are recommended to help ensure that the use conditions are met.

We disagree with the comment stating that every OEM is responsible for its own safety concept because we believe that in addition to customary business standards and industry practices outside the scope of this rule, OEMs will comply with all the use conditions specified in this rule.

Comment: Commenters noted that SAE is developing SAE J2772 standard, ''Measurement of Passenger Compartment Refrigerant Concentrations Under System Refrigerant Leakage Conditions'' (EPA–HQ–OAR–2004–0448–0054) and SAE J2773 standard, ''Standard for Safety and Risk Analysis for Use in Mobile Air Conditioning Systems'' (EPA–HQ–OAR–2004–0448–00553), formerly known as Refrigerant Guidelines for Safety and Risk Analysis for Use in Mobile Air Conditioning Systems.

Response: We note that standards J2772 and J2773 were recently published and are readily available. In the comments column of our listing decision, we recommend the use of J2772 and J2773 standards as well as other available standards such as SAE J1052, Motor Vehicle Driver and Passenger Head Position (EPA–HQ–OAR–2004–0448–0055).

D. Servicing

Comment: One commenter indicated CAA Section 609-certified, independent MVAC service technicians should be consulted before the rule is issued.

Response: EPA took comments on a range of topics during the 60-day public comment period. In addition, EPA contacted the National Institute for Automotive Service Excellence (ASE), which represents a significant number of MVAC service technicians. A summary is in the docket for this final rule. ASE stated they did not see any servicing concerns in the proposal that would impact the service technicians they represent, but would be interested in any follow-on rulemaking that will address MVAC servicing for consideration under CAA Section 609 and codified at 40 CFR part 82 subpart B (EPA–HQ–OAR–2004–0488–0031).

Comment: One commenter said risks associated with MVAC service should be considered.

Response: EPA agrees with the commenter and notes that risk associated with service were evaluated in the published risk analyses (EPA–HQ–OAR–2004–0488–0017, –0025.2, –0041, –0051) and discussed in the preamble to the proposed rulemaking (71 FR 55144 September 21, 2006). Additional details regarding our evaluation of risk associated with MVAC service can be found in Section VI of this final rule preamble (Why is EPA listing CO_2 acceptable subject to use conditions?). As explained in more detail in Section VI above, we do not believe it is necessary to establish any use conditions regarding servicing because the overall environmental and human health risks posed by the use of CO_2 in new MVAC systems, subject to the use conditions being adopted in this final rule, is lower than or comparable to the risks posed by other substitutes found acceptable subject to use conditions in the same end-use.

Comment: One commenter requested more information on why CO_2 systems are not found acceptable as a substitute in retrofitted systems.

Response: In the original SNAP rulemaking (59 FR 13854; March 18, 1994), EPA listed CO_2 as an acceptable substitute for CFC–12 only for new MVAC systems. We have never received a SNAP submission requesting consideration of CO_2 in retrofitted MVAC systems. EPA understands that the higher working pressure of CO_2 compared to CFC–12 and other SNAP-acceptable refrigerants could raise significant issues with retrofitting such systems to CO_2. Because we have not received a request to use CO_2 in retrofitted systems, which would include the technical and other analyses necessary to determine whether such use would present more risk than other available substitutes, this final rule only applies to the use of CO_2 as a refrigerant in new MVAC systems, consistent with the NPRM (71 FR 55140; September 21, 2006). When and if the Agency receives a submission for retrofitting to CO_2, we will consider CO_2 for use as a refrigerant to retrofit existing MVAC systems.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order (EO) 12866, (58 FR 51735; October 4, 1993) this action is a ''significant regulatory action.'' It raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the Paperwork Reduction Act (44 U.S.C.

3501 *et seq).* This action is an Agency determination. It contains no new requirements for reporting. The only new recordkeeping requirement involves customary business practice. This rule requires minimal recordkeeping of studies done for three years to ensure that MVAC systems using CO_2 meet the requirements set forth in this rule. Because it is customary business practice that OEMs conduct and keep on file records of the tests they perform, consistent with a widely recognized industry standard, SAE J1739 (Potential Failure Mode and Effect Analysis in Design [Design FMEA], Potential Failure Mode and Effect Analysis in Manufacturing and Assembly Processes [Process FMEA]), on any potentially hazardous part or system from the beginning of production of a vehicle model until three years or more after production of the model ends, we believe this requirement will not impose an additional paperwork burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations in subpart G of 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2060–0226. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business, as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201;'' (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule modifies the current listing of CO_2 as an acceptable alternative refrigerant subject to use conditions necessary for the safe use of CO_2 in MVAC in new motor vehicles. The use conditions will need to be met by large entities (i.e., OEMs) that manufacturer motor vehicles if these choose to use CO_2 as a refrigerant in new MVACs. This final rule does not mandate the use of CO_2 as a refrigerant in new MVAC systems, thus will not impose significant requirements on small entities such as MVAC service shops. This final rule effectively ensures consistency with current practices in MVAC service shops regarding the use of unique fittings. It is not clear that there would be any cost differential between the unique fittings required for the use of CO_2 and those used with the current automotive refrigerant, HFC-134a, or other fittings that the industry could adopt instead, for other refrigerants. It is possible that the fittings required in the revised use condition will be equally or less expensive than those required for other acceptable alternative refrigerants because they are a standard shape and size and can be easily produced in a metal-working shop. Thus, cost impacts of this final rule on small entities are expected to be small.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. EPA has worked together with SAE International and with groups representing professional service technicians such as the Mobile Air Conditioning Society Worldwide, which conducts regular outreach with technicians and owners of small businesses such as retail refrigerant suppliers and automobile repair shops.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action does not affect State, local, or tribal governments. The enforceable requirements of this action related to integrating risk mitigation devices and documenting the safety of alternative MVAC systems affect only a small number of OEMs. The impact of this action on the private sector will be less than $100 million per year. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action applies directly to facilities that use these substances and not to governmental entities.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132 (64 FR 43255, August 10, 1999). This regulation applies directly to facilities that use these substances and not to governmental entities. Thus, EO 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This final rule does not have tribal implications, as specified in EO 13175 (65 FR 67249, November 6, 2000). It does not significantly or uniquely affect the communities of Indian tribal governments, because this regulation applies directly to facilities that use these substances and not to governmental entities. Thus, EO 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This final rule is not subject to the EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are discussed in sections VI and VIII of the preamble and in documents EPA–HQ–OAR–2004–0488–0025.2, EPA–HQ–OAR–2004–0488–0041 and EPA–HQ–OAR–2004–0488–0051 in the docket for this rulemaking.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355; May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action would impact manufacturers of CO_2 MVAC systems for new vehicles.

Preliminary information indicates that these new systems are equally or more energy efficient than currently available systems in some climates. Therefore, we conclude that this rule is not likely to have any adverse effects on energy supply, distribution or use.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995, Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. EPA has incorporate by reference, the 2011 version of SAE standard J639 which is a voluntary consensus standard. This standard can be obtained from *http://www.sae.org/technical/standards/.* This standard addresses safety and reliability issues of CO_2 MVAC systems.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629; February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The refrigerant CO_2 is a non ozone-depleting substance with a GWP of 1.0. Based on the toxicological and atmospheric data described earlier, the use of CO_2 subject to the use conditions specified in this final rule will not have any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This final rule requires specific use conditions for MVAC systems, if motor vehicle manufacturers choose to market MVAC systems using this refrigerant alternative.

K. Congressional Review Act

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 Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of 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). This rule will be effective August 6, 2012.

X. References

The documents below are referenced in the preamble. All documents are located in the Air Docket at the address listed in section titled **ADDRESSES** at the beginning of this document. Unless specified otherwise, all documents are available in Docket ID No. EPA–HQ–OAR–2004–0488 at *http://www.regulations.gov.*

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List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practicable and procedure, Air pollution control, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: May 23, 2012.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart G—Significant New Alternatives Policy Program

■ 2. In Appendix B to Subpart G of Part 82, add an entry to the end of the table for ''Refrigerants-Acceptable Subject to Use Conditions,'' and revise footnotes 1, 2, and 3 to read as follows:

Appendix B to Subpart G of Part 82—Substitutes Subject To Use Restrictions and Unacceptable Substitutes

REFRIGERANTS-ACCEPTABLE SUBJECT TO USE CONDITIONS

Application	Substitute	Decision	Conditions	Comments
*	*	*	* *	* *
CFC–12 Motor Vehicle Air Conditioning (New equipment only).	Carbon dioxide (CO_2) as a substitute for CFC–12.	Acceptable subject to use conditions.	Engineering strategies and/or mitigation devices shall be incorporated such that in the event of refrigerant leaks, the resulting CO_2 concentrations do not exceed:	Additional training for service technicians is recommended.
			The short term exposure level (STEL) of 3% or 30,000 ppm averaged over 15 minutes in the passenger free space [1]; and; The ceiling limit of 4% or 40,000 ppm in the passenger breathing zone.[2]	In designing risk mitigation strategies and/or devices, manufacturers should factor in background CO_2 concentrations in the passenger cabin potentially contributed from normal respiration by the maximum number of vehicle occupants.
			Vehicle manufacturers must keep records of the tests performed for a minimum period of three years demonstrating that CO_2 refrigerant levels do not exceed the STEL of 3% averaged over 15 minutes in the passenger free space, and the ceiling limit of 4% in the breathing zone.	Use of the standards SAE J1052, SAE J2772, and SAE J2773 is recommended as additional reference.
			The use of CO_2 in MVAC systems must adhere to the standard conditions identified in SAE Standard J639 (2011 version) including: Installation of a high pressure system warning label; Installation of a compressor cut-off switch; and Use of unique fittings with: Outside diameter of 16.6 +0/−0.2 mm (0.6535 +0/−0.0078 inches) for the MVAC low-side; Outside diameter of 18.1 +0/−0.2 mm (0.7126 +0/−0.0078 inches) for the MVAC high-side; and Outside diameter of 20.955 +0/−0.127 mm (0.825 +0/−0.005 inches) and right-hand thread direction for CO_2 refrigerant service containers.[3]	Manufacturers should conduct and keep on file Potential Failure Mode and Effects Analysis in Design [Design FMEA], Potential Failure Mode and Effect Analysis in Manufacturing and Assembly Process [Process FMEA] on the MVAC as stated in SAE J1739.

[1] Free space is defined as the space inside the passenger compartment excluding the space enclosed by the ducting in the HVAC module.

[2] Area inside the passenger compartment where the driver's and passengers' heads are located during a normal sitting position. Refer to SAE J1052 for information on determining passenger head position.

[3] The refrigerant service containers fitting requirement applies only to refrigerant service containers used during servicing of the MVAC, in accordance with the provisions established for MVAC servicing under 40 CFR part 82, subpart B.

* * * * *

[FR Doc. 2012–13189 Filed 6–5–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

Regulatory Guidance on the Applicability of Property-Carrier Hours-of-Service Rules to the Driveaway Operation of Vehicles Designed to Transport Passengers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of regulatory guidance.

SUMMARY: The property-carrier hours-of-service (HOS) rules in 49 CFR 395.3 are applicable to drivers operating commercial motor vehicles designed or used to transport passengers on ''driveaway-towaway'' trips, as defined in 49 CFR 390.5. This notice provides Federal and State enforcement personnel, and the motor carrier industry, with uniform guidance concerning these rules.

DATES: *Effective Date:* This regulatory guidance is effective June 6, 2012.

FOR FURTHER INFORMATION CONTACT: Thomas L. Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. Email: *MCPSD@dot.gov.* Phone (202) 366–4325.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Act of 1935 provides that ''The Secretary of Transportation may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards for equipment of, a motor private carrier, when needed to promote safety of operation'' [49 U.S.C. 31502(b)].

The Motor Carrier Safety Act of 1984 (MCSA) confers on the Secretary the authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to prescribe safety standards for commercial motor vehicles (CMVs). At a minimum, the regulations must ensure that (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operator [49 U.S.C. 31136(a)]. The Act also grants the Secretary broad power to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate'' [49 U.S.C. 31133(a)(8) and (10)].

The Administrator of FMCSA has been delegated authority to carry out the functions vested in the Secretary by the Motor Carrier Act of 1935 [49 CFR 1.73(l)], and the MCSA [§ 1.73(g)]. The provisions affected by this Notice of Regulatory Guidance are based on these statutes.

Background

This document adds regulatory guidance on the applicability of the hours-of-service (HOS) regulations for property-carrying drivers in 49 CFR 395.3 to drivers of vehicles designed or used to transport passengers, while operating the vehicle on a ''driveaway-towaway'' trip as defined 49 CFR 390.5. These drivers often work for motor carriers that specialize in delivery of commercial motor vehicles (CMVs), and they do not operate CMVs to transport passengers on a regular basis.

The § 390.5 definition of ''driveaway-towaway'' is ''* * * an operation in which an empty or unladen motor vehicle with one or more sets of wheels on the surface of the roadway is being transported: (1) Between vehicle manufacturer's facilities; (2) between a vehicle manufacturer and a dealership or purchaser; (3) between a dealership, or other entity selling or leasing the vehicle, and a purchaser or lessee; (4) to a motor carrier's terminal or repair facility for the repair of disabling damage (as defined in § 390.5) following a crash; (5) to a motor carrier's terminal or repair facility for repairs associated with the failure of a vehicle component or system; or (6) by means of a saddle-mount or tow-bar.''

Reason for This Notice

Section 395.3 prescribes the primary HOS regulations applicable to property-carrying drivers, and § 395.5 prescribes the comparable regulations for passenger-carrying drivers. Neither the term ''property-carrying'' nor ''passenger-carrying'' is defined in these regulations. The FMCSA has received inquiries from motor carriers as to whether the property-carrying or passenger-carrying HOS rules would apply in driveaway situations usually involving the delivery of a bus, motorcoach, or similar CMV from the manufacturer or distributor to the dealer, or similar scenario. The Agency agrees that regulatory guidance is needed to clarify applicability of the HOS regulations. For the reasons explained above, FMCSA issues Regulatory Guidance Question 1 to § 395.5 of the FMCSRs.

PART 395—HOURS OF SERVICE OF DRIVERS

§ 395.5 ''Maximum driving time for passenger-carrying vehicles.''

''*Question 1:* Would a driver delivering an empty commercial motor vehicle designed or used to carry passengers, from the manufacturer or distributor to a dealer, or otherwise engaged in a ''driveaway-towaway'' trip as defined in § 390.5, be required to comply with the hours-of-service regulations for passenger-carrying drivers?

Guidance:

No. The *property-carrier* hours-of-service rules in § 395.3 are applicable to drivers operating commercial motor vehicles designed or used to transport passengers in a ''driveaway-towaway'' operation, as defined in § 390.5.''

Issued on: May 29, 2012.

Anne S. Ferro,

Administrator.

[FR Doc. 2012–13657 Filed 6–5–12; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register

Vol. 77, No. 109

Wednesday, June 6, 2012

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0589; Directorate Identifier 2011–NM–189–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede two existing airworthiness directives (AD) that apply to certain Fokker Services B.V. Model F.28 Mark 0100 airplanes. The first existing AD currently requires removing the actuator from the fuel-balance transfer-valve (FBTV) and installing a locking device on the FBTV. The second existing AD currently requires inspecting to verify that the position indicator of the FBTV is in the closed position and deactivating the fuel-balance transfer-system. Since we issued those ADs, we have received reports that the FBTV was inadvertently reactivated after required de-activation measures were undone. This proposed AD would require installing an FBTV locking device. We are proposing this AD to prevent fuel starvation and consequently a double-engine flameout, possibly resulting in a forced landing, damage to the airplane, and injury to occupants.

DATES: We must receive comments on this proposed AD by July 23, 2012.

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

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

For service information identified in this proposed AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; email *technicalservices.fokkerservices@stork.com*; Internet *http://www.myfokkerfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 227–1137; fax: (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0589; Directorate Identifier 2011–NM–189–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

On June 23, 1994, we issued AD 94–14–05, Amendment 39–8957 (59 FR 35237, July 11, 1994), and on March 21, 1996, we issued AD 96–07–06, Amendment 39–9555 (61 FR 14014, March 29, 1996). Those ADs required actions intended to address an unsafe condition on Model F.28 Mark 0100 airplanes.

Since we issued AD 94–14–05, Amendment 39–8957 (59 FR 35237, July 11, 1994), and AD 96–07–06, Amendment 39–9555 (61 FR 14014, March 29, 1996): The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0158, dated August 26, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Some Fokker F28 Mark 0100 (Fokker 100) aeroplanes were delivered from the production line with a Fuel-Balance Transfer-System (FBTS) installed. Other Fokker 100 aeroplanes were delivered with only FBTS provisions and for some of those, an option existed for in-service activation of the FBTS, through Fokker Service Bulletin (SB) SBF100–28–021.
>
> The FBTS was designed to be used during maintenance activities to move the Centre of Gravity (CG) forward by transferring fuel from the main tanks to the centre tank through the crossfeed system and a Fuel-Balance Transfer-Valve (FBTV).
>
> In 1993, a dormant failure mode was discovered, which could lead to fuel starvation and consequently to a double engine flame-out, possibly resulting in a forced landing, damage to the aeroplane and injury to occupants. To address and correct this unsafe condition, CAA–NL [Civil Aviation Authority—Netherlands] issued AD BLA 93–160, which required modification of the FBTV (Fokker SBF100–28–029) [which corresponds to FAA AD 94–14–05, Amendment 39–8957 (59 FR 35237, July 11, 1994)], and later BLA 94–146, which required deactivation of the FBTS (Fokker SBF100–28–030) [which corresponds to FAA AD 96–07–06, Amendment 39–9555 (61 FR 14014, March 29, 1996)].
>
> Recently, one operator reported that on two aeroplanes, the FBTS had inadvertently been reactivated. SBF100–28–030 had been

accomplished on both aeroplanes but apparently, (some of) the de-activation measures introduced with that SB were later made undone. Subsequent investigation also showed that Fokker SBF100–28–021, containing instructions for activating the FBTS, had inadvertently been left active when SBF100–28–029 and SBF100–28–030 were published. To address this safety concern, Fokker Services have issued SBF100–28–066, which introduces a task to deactivate the FBTS to a greater extent than previously required. At the same time, SBF100–28–021 has been cancelled by its Revision 1.

For the reasons described above, this [EASA] AD retains the requirements of CAA–NL [airworthiness directives] BLA 93–160 and BLA 94–146, which are superseded, and requires the accomplishment of additional measures to deactivate the FBTS [modify the airplane by installing an FBTV locking device], in accordance with the instructions of Fokker Services SBF100–28–066.

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

Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin SBF100–28–066, dated June 30, 2011, which includes the following attachments (* the issue date is not specified on the drawing):

- Fokker Manual Change Notification—Maintenance Documentation MCNM–F100–145, dated June 30, 2011.
- Fokker Manual Change Notification—Operational Documentation MCNO–F100–059, dated June 30, 2011.
- Fokker Drawing W41190, Sheet 013, Issue P.*
- Fokker Drawing W41190, Sheet 014, Issue P.*
- Fokker Drawing W41190, Sheet 016, Issue P.*

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 2 products of U.S. registry.

The actions that are required by AD 94–14–05, Amendment 39–8957 (59 FR 35237, July 11, 1994), and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Required parts cost about $250 per product. Based on these figures, the estimated cost of the currently required actions is $335 per product.

The actions required by AD 96–07–06, Amendment 39–9555 (61 FR 14014, March 29, 1996), and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it would take about 5 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $650 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,150, or $1,075 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 94–14–05, Amendment 39–8957 (59 FR 35237, July 11, 1994); and AD 96–07–06, Amendment 39–9555 (61 FR 14014, March 29, 1996); and adding the following new AD:

Fokker Services B.V.: Docket No. FAA–2012–0589; Directorate Identifier 2011–NM–189–AD.

(a) Comments Due Date

We must receive comments by July 23, 2012.

(b) Affected ADs

This AD supersedes AD 94–14–05, Amendment 39–8957 (59 FR 35237, July 11, 1994); and AD 96–07–06, Amendment 39–9555 (61 FR 14014, March 29, 1996).

(c) Applicability

This AD applies to Fokker Services B.V. Model F.28 Mark 0100 airplanes; certificated in any category; serial numbers 11257, 11258, 11261, 11262, 11264, 11265, 11266, 11284, 11285, 11287, 11288, 11290, 11292, 11294, 11296, 11298, 11299, 11301, 11302, 11304, 11305, 11307, 11309, 11311, 11315, 11317, 11319, 11320, 11322, 11336, 11339, 11341 through 11344 inclusive, 11347, 11348, 11350, 11351, 11362, 11363, 11364, 11371, 11374, 11375, 11382, 11383, 11384, 11389, 11390, 11394, 11400, 11401, 11409, 11410, 11420 through 11424 inclusive, 11429, 11430, 11431, 11433, 11441 through 11456 inclusive, 11461, 11462, 11463, 11470 through 11475 inclusive, 11477, 11484, 11485, 11486, 11488, 11489, 11496, 11497, 11500, 11503, 11505, 11511, 11512, 11516, 11517, 11518, and 11527.

(d) Subject

Air Transport Association (ATA) of America Code 28: Fuel.

(e) Reason

This AD was prompted by reports that the fuel-balance transfer-valve (FBTV) was inadvertently reactivated after required de-activation measures were undone. We are issuing this AD to prevent fuel starvation and consequently a double-engine flameout, possibly resulting in a forced landing, damage to the airplane, and injury to occupants.

(f) Compliance

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

(g) Retained Installation of a Locking Device for the FBTV

This paragraph restates the requirements of paragraph (a) of AD 94–14–05, Amendment 39–8957 (59 FR 35237, July 11, 1994). For airplanes having serial numbers 11443, 11446 through 11449 inclusive, and 11456: Within 30 days after August 10, 1994 (the effective date of AD 94–14–05), remove the actuator from the fuel-balance transfer-valve, part number (P/N) 7933141J and install a locking device on the fuel-balance transfer-valve, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–28–029, Revision 1, dated November 30, 1993.

(h) Retained Inspection and Deactivation

(1) This paragraph restates the requirements of paragraphs (a) and (b) of AD 96–07–06, Amendment 39–9555 (61 FR 14014, March 29, 1996). For airplanes identified in Fokker Service Bulletin SBF100–28–030, Revision 1, dated December 5, 1994: After April 29, 1996 (the effective date of AD 96–07–06), whenever the fuel balance transfer system (FBTS) is used during maintenance, prior to further flight, perform an inspection to verify that the position indicator of the FBTV is in the closed position, in accordance with Fokker Service Bulletin SBF100–28–030, Revision 1, dated December 5, 1994. The inspection requirements of this paragraph must be accomplished until the deactivation required by paragraph (h)(2) of this AD is accomplished.

(i) If the position indicator is in the closed position, no further action is required by this paragraph.

(ii) If the position indicator is in the open position, close the FBTV, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–28–030, Revision 1, dated December 5, 1994.

(2) Within 90 days after April 29, 1996 (the effective date of AD 96–07–06, Amendment 39–9555 (61 FR 14014, March 29, 1996)), deactivate the FBTS in accordance with either Part 2 or Part 3, as applicable, of the Accomplishment Instructions of Fokker Service Bulletin SBF100–28–030, Revision 1, dated December 5, 1994. Accomplishment of the deactivation constitutes terminating action for the repetitive inspection requirements of paragraph (h)(1) of this AD.

(i) New Requirements of This AD

Within 12 months after the effective date of this AD, modify the airplane by installing an FBTV locking device, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–28–066, dated June 30, 2011, which includes the attachments identified in paragraphs (i)(1) through (i)(5) of this AD (* the issue date is not specified on the drawing.)

(1) Fokker Manual Change Notification—Maintenance Documentation MCNM–F100–145, dated June 30, 2011.

(2) Fokker Manual Change Notification—Operational Documentation MCNO–F100–059, dated June 30, 2011.

(3) Fokker Drawing W41190, Sheet 013, Issue P.*

(4) Fokker Drawing W41190, Sheet 014, Issue P.*

(5) Fokker Drawing W41190, Sheet 016, Issue P.*

(j) Prohibited Modification

As of the effective date of this AD, no person may modify any airplane using the Accomplishment Instructions of Fokker Services Bulletin SBF100–28–021, dated September 6, 1991. That service bulletin was cancelled by Fokker Service Bulletin SBF100–28–021, Revision 1, dated June 30, 2011.

(k) 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(l) Related Information

Refer to MCAI EASA Airworthiness Directive 2011–0158, dated August 26, 2011, and the service information specified in paragraphs (l)(1), (l)(2), and (l)(3) for related information.

(1) Fokker Service Bulletin SBF100–28–029, Revision 1, dated November 30, 1993.

(2) Fokker Service Bulletin SBF100–28–030, Revision 1, dated December 5, 1994.

(3) Fokker Service Bulletin SBF100–28–066, dated June 30, 2011, which includes the attachments identified in paragraphs (l)(3)(i) through (l)(3)(v) of this AD (* the issue date is not specified on the drawing.)

(i) Fokker Manual Change Notification—Maintenance Documentation MCNM–F100–145, dated June 30, 2011.

(ii) Fokker Manual Change Notification—Operational Documentation MCNO–F100–059, dated June 30, 2011.

(iii) Fokker Drawing W41190, Sheet 013, Issue P.*

(iv) Fokker Drawing W41190, Sheet 014, Issue P.*

(v) Fokker Drawing W41190, Sheet 016, Issue P.*

Issued in Renton, Washington, on May 24, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–13671 Filed 6–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0590; Directorate Identifier 2011–NM–112–AD]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to all Model ERJ 190–100

STD, –100 LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes. The existing AD currently requires revising the maintenance program to incorporate modifications in the Airworthiness Limitation Section (ALS) of the Embraer S.A. ERJ 190 Maintenance Review Board Report (MRBR). Since we issued that AD, new inspection tasks and their respective thresholds and intervals have been issued. This proposed AD would require revising the maintenance program to incorporate modifications in the Airworthiness Limitation Section (ALS) of the Embraer S.A. ERJ 190 Maintenance Review Board Report (MRBR) to include new inspection tasks and their respective thresholds and intervals. We are proposing this AD since failure to inspect these structural components according to the new ALS tasks, thresholds, and intervals could prevent a timely detection of fatigue cracking, which if not properly addressed, could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by July 23, 2012.

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

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

For service information identified in this proposed AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–227–2768; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0590; Directorate Identifier 2011–NM–112–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

On May 13, 2010, we issued AD 2010–11–14, Amendment 39–16319 (75 FR 30277, June 1, 2010). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2010–11–14, Amendment 39–16319 (75 FR 30277, June 1, 2010), the Agência Nacional de Aviação Civil (ANAC), which is the airworthiness authority for Brazil, has issued Brazilian Airworthiness Directives 2010–08–03, dated September 20, 2010, and 2011–05–04, dated June 16, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During the airplane full scale fatigue test, cracks were found in some structural components of the airplane. Analysis of these cracks resulted in modifications on the Airworthiness Limitation Section (ALS) of Embraer ERJ 190 Maintenance Review Board Report (MRBR), to include new inspections tasks and its respective thresholds and intervals.
>
> Failure to inspect these structural components, according to the new tasks, thresholds and intervals, could prevent a timely detection of fatigue cracking. These cracks, if not properly addressed, could adversely affect the structural integrity of the airplane.
>
> Since this condition may occur in other airplanes of the same type and affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this [ANAC] AD in the indicated time limit.

The required action is revising the maintenance program to incorporate new structural inspection requirements. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Embraer S.A. has issued Part 2—Airworthiness Limitation Inspections (ALI)—Structures, of Appendix A, Airworthiness Limitations (AL), of the EMBRAER 190 Maintenance Review Board Report, MRB–1928, Revision 5, dated November 11, 2010; and Temporary Revision (TR) 5–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspections (ALI)—Structures, of Appendix A, Airworthiness Limitations (AL), of the EMBRAER 190 Maintenance Review Board Report, MRB–1928, Revision 5, dated November 11, 2010. 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.

Correction To Restate Table 1 of AD 2010–11–14, Amendment 39–16319 (75 FR 30277, June 1, 2010)

Table 1 of AD 2010–11–14, Amendment 39–16319 (75 FR 30277, June 1, 2010), contains a reference to EMBRAER Temporary Revision (TR) 2–6, dated December 12, 2008, to Part 2—Airworthiness Limitation Inspections (ALI)—Structures, of Appendix A, Airworthiness Limitations (AL), of the EMBRAER 190 Maintenance Review

Board Report, MRB–1928. We have determined that the correct date for that TR should be February 12, 2008. That information is reflected in table 1 of this proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 88 products of U.S. registry.

The actions that are required by AD 2010–11–14, Amendment 39–16319 (75 FR 30277, June 1, 2010), and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $7,480, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–11–14, Amendment 39–16319 (75 FR 30277, June 1, 2010), and adding the following new AD:

Embraer S.A.: Docket No. FAA–2012–0590; Directorate Identifier 2011–NM–112–AD.

(a) Comments Due Date

We must receive comments by July 23, 2012.

(b) Affected ADs

This AD supersedes AD 2010–11–14, Amendment 39–16319 (75 FR 30277, June 1, 2010).

(c) Applicability

(1) This AD applies to Embraer S.A. Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes; certificated in any category; all serial numbers.

(2) This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval of an alternative method of compliance (AMOC) according to paragraph (j)(1) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors; 53, Fuselage; 54, Nacelles/Pylons; 55, Stabilizers; 57, Wings; 71, Powerplant; and 78, Engine Exhaust.

(e) Reason

This AD was prompted by reports of cracks in some of the structural components of the airplane. We are issuing this AD since failure to inspect these structural components according to the new ALS tasks, thresholds, and intervals could prevent a timely detection of fatigue cracking, which if not properly addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Restated Actions and Compliance

This paragraph restates the actions required by paragraph (f) of AD 2010–11–14, Amendment 39 16319 (75 FR 30277, June 1, 2010).

(1) Within 90 days after July 6, 2010 (the effective date of AD 2010–11–14, Amendment 39–16319 (75 FR 30277, June 1, 2010)), revise the Airworthiness Limitation Section (ALS) of the Instructions for Continued Airworthiness (ICA) to include the tasks specified in table 1 of this AD. These tasks are identified in EMBRAER Temporary Revision (TR) 2–5, dated December 6, 2007; and EMBRAER TR 2–6, dated February 12, 2008; to Appendix A, Part 2, Airworthiness Limitation Inspections (ALI)—Structures, of the EMBRAER 190 Maintenance Review Board Report (MRBR), MRB–1928.

Note 1 to paragraph (g)(1) of this AD: The actions required by paragraph (g)(1) of this AD may be done by inserting a copy of EMBRAER TR 2–5 and TR 2–6 into the ALS of the EMBRAER 190 MRBR, MRB–1928. When these TRs have been included in general revisions of the EMBRAER 190 MRBR, MRB–1928, the general revisions may be inserted, provided the relevant information in the general revision is identical to that in EMBRAER TR 2–5 and TR 2–6, and these TRs may be removed.

(2) The initial compliance times for the tasks specified in EMBRAER TR 2–5, dated December 6, 2007; and EMBRAER TR 2–6, dated February 12, 2008; to Appendix A, Part 2, Airworthiness Limitation Inspections (ALI)—Structures, of the EMBRAER 190 MRBR, MRB–1928; start at the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD. For certain tasks, the compliance times depend on the pre-modification and post-modification condition of the associated service bulletin, as specified in the ''Applicability'' column of these TRs.

(i) Within the applicable threshold times specified in the TRs specified in table 1 of this AD.

(ii) At the applicable compliance time specified in table 1 of this AD.

TABLE 1—MRBR TRs AND TASKS, WITH COMPLIANCE TIMES

EMBRAER MRBR TR	Subject	MRBR task No.	Compliance time
TR 2–5, dated December 6, 2007.	Wing stub main box lower skin and splices—internal.	57–01–002–0002	250 flight cycles after July 6, 2011 (the effective date of AD 2010–11–14, Amendment 39-16319 (75 FR 30277, June 1, 2010)).
TR 2–5, dated December 6, 2007.	Wing stub spar 3—internal/external.	57–01–008–0003	500 flight cycles after July 6, 2011.
TR 2–5, dated December 6, 2007.	Wing stub spar 3—external ...	57–01–008–0004	500 flight cycles after July 6, 2011.
TR 2–5, dated December 6, 2007.	Wing lower skin panel stringers—internal.	57–10–007–0004	500 flight cycles after July 6, 2011.
TR 2–5, dated December 6, 2007.	Wing main box rib 11—internal.	57–10–012–0003	500 flight cycles after July 6, 2011.
TR 2–6, dated February 12, 2008.	Nose landing gear wheel well metallic structure.	53–10–021–0004	500 flight cycles after July 6, 2011.

(iii) Thereafter, except as provided in paragraphs (h) and (j) of this AD, no alternative replacement times or structural inspection intervals may be approved for the tasks specified in the TRs specified in table 1 of this AD.

(h) New Requirements of This AD: Revision of the Maintenance Program

Within 90 days after the effective date of this AD, revise the maintenance program to incorporate the tasks specified in Part 2—Airworthiness Limitation Inspections (ALI)—Structures, of Appendix A, Airworthiness Limitations (AL), of the EMBRAER 190 Maintenance Review Board Report, MRB–1928, Revision 5, dated November 11, 2010; and EMBRAER TR 5–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspections (ALI)—Structures, of Appendix A, Airworthiness Limitations (AL), of the EMBRAER 190 Maintenance Review Board Report, MRB–1928, Revision 5, dated November 11, 2010; with the thresholds and intervals stated in these documents. The initial compliance times for the tasks are stated in the ''Implementation Plan'' section of Appendix A, Airworthiness Limitations (AL), of the EMBRAER 190 Maintenance Review Board Report, MRB–1928, Revision 5, dated November 11, 2010. Doing the revision required by this paragraph terminates the revision required by paragraph (g) of this AD.

(i) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (h) of this AD, no alternative actions (e.g., inspections) or intervals, may be used, unless the actions or intervals are approved as an AMOC in accordance with the procedures specified in paragraph (j)(1) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–227–2768; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

Refer to MCAI Brazilian Airworthiness Directive 2011–05–04, dated June 16, 2011, and the service information specified in paragraphs (k)(1) through (k)(4) of this AD.

(1) EMBRAER TR 2–5, dated December 6, 2007, to Part 2—Airworthiness Limitation Inspections (ALI)—Structures, of Appendix A, Airworthiness Limitations (AL), of the EMBRAER 190 Maintenance Review Board Report, MRB–1928.

(2) EMBRAER TR 2–6, dated February 12, 2008, to Part 2—Airworthiness Limitation Inspections (ALI)—Structures, of Appendix A, Airworthiness Limitations (AL), of the EMBRAER 190 Maintenance Review Board Report, MRB–1928.

(3) EMBRAER TR 5–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspections (ALI)—Structures, of Appendix A, Airworthiness Limitations (AL), of the EMBRAER 190 Maintenance Review Board Report, MRB–1928, Revision 5, dated November 11, 2010.

(4) Part 2—Airworthiness Limitation Inspections (ALI)—Structures, of Appendix A, Airworthiness Limitations (AL), of the EMBRAER 190 Maintenance Review Board Report, MRB–1928, Revision 5, dated November 11, 2010.

(5) For service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos-SP—Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 24, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–13672 Filed 6–5–12; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 305

[RIN 3084–AB03]

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Proposed rule; request for comments.

SUMMARY: The Commission seeks comment on proposed disclosures to help consumers, distributors, contractors, and installers easily determine whether a specific furnace or central air conditioner meets applicable Department of Energy regional efficiency standards.

DATES: Comments must be received by August 6, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the

SUPPLEMENTARY INFORMATION section below. Write ''Regional Labeling for Heating and Cooling Equipment—Proposed Rule (16 CFR Part 305) (Project No. P114202)'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/proposedregionaldisclosuresnprm,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex C), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, (202) 326–2889, Division of Enforcement, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission seeks comment on proposed labeling requirements for residential furnaces, central air conditioners, and heat pumps to help consumers and industry members install products that comply with Department of Energy (DOE) efficiency standards.

II. Background

The Commission's Appliance Labeling Rule (''Rule''), issued pursuant to the Energy Policy and Conservation Act (EPCA),[1] requires energy labeling for major household appliances and other consumer products to help consumers compare competing models.[2] When first published in 1979,[3] the Rule applied to eight appliance categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. The Commission has since expanded the Rule's coverage to include central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, certain types of water heaters, and televisions.[4]

The Rule requires manufacturers to attach yellow EnergyGuide labels to all covered furnaces, central air conditioners, and heat pumps.[5] It also prohibits retailers from removing these labels or rendering them illegible.[6] In addition, retailers must post label information on Web sites and in paper catalogs from which consumers can order these products.[7] Manufacturers must provide distributors and installers with energy information about their furnaces, central air conditioners, and heat pumps in paper or electronic form (including internet-based access). In turn, retailers, including installers, must show this information to their customers and let them read the information before purchase.[8]

The EnergyGuide labels for heating and cooling equipment contain two key disclosures: (1) The product's efficiency rating, and (2) a comparability range showing the highest and lowest ratings for all similar models.[9] The Rule also specifies the label's format. For example, the label must be yellow and feature the EnergyGuide headline in a specific format and type. Additionally, manufacturers cannot place any information on the label other than that specifically allowed by the Rule.

III. DOE Regional Standards for Heating and Cooling Equipment

On October 25, 2011,[10] DOE announced new efficiency standards for residential furnaces, central air conditioners, and heat pumps as directed by the Energy Independence and Security Act of 2007 (EISA).[11] Unlike existing DOE standards, which impose uniform, national efficiency levels, the new standards vary by region for certain products.[12] As detailed in Tables 1 and 2, the DOE rules impose regional efficiency standards for four product categories: split-system air conditioners, single-package air conditioners, non-weatherized gas furnaces, and mobile home gas furnaces. For all other covered heating and cooling equipment, the new standards are nationally uniform. The new DOE requirements will become effective on two dates: May 1, 2013, for non-weatherized gas furnaces, mobile home gas furnaces, and non-weatherized oil furnaces; and January 1, 2015, for weatherized gas furnaces and all central air conditioners and heat pumps.

To promote compliance with these new standards, EISA also directs DOE to develop an enforcement plan to specify the responsibilities of installers, distributors, and manufacturers in meeting the new standards and making required disclosures.[13] DOE must complete this plan within 15 months after issuance of the final efficiency standards. To augment DOE's enforcement efforts, EISA gives states authority to enforce the regional standards in Federal court.[14]

IV. EISA's Mandate for New FTC Disclosures Related to Regional Standards

EISA directs the FTC to develop new disclosures for heating and cooling equipment. Specifically, the law requires the Commission to ''determine the appropriate 1 or more methods for disclosing information so that consumers, distributors, contractors, and installers can easily determine whether a specific piece of equipment that is installed in a specific building is in conformance with the regional standard that applies to the building.'' [15] The statute also authorizes the Commission to modify the EnergyGuide label or develop other disclosure ''methods that make it easy for consumers and installers to use and understand at the point of installation.'' [16] Consistent with the timing for DOE's enforcement plan, EISA directs the Commission to complete this effort 15 months after DOE issues the regional standards.

V. FTC Advance Notice of Proposed Rulemaking

In response to EISA's mandate, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) on November 28, 2011, seeking comments on the development of new disclosures related to the regional standards.[17] The ANPR invited comment to help consumers,

[1] 42 U.S.C. 6291 *et seq.*

[2] More information about the Rule can be found at: *http://www.ftc.gov/appliances.*

[3] 44 FR 66466 (Nov. 19, 1979).

[4] *See* 52 FR 46888 (Dec. 10, 1987) (central air conditioners and heat pumps); 54 FR 28031 (Jul. 5, 1989) (fluorescent lamp ballasts); 58 FR 54955 (Oct. 25, 1993) (certain plumbing products); 59 FR 25176 (May 13, 1994) (lighting products); 59 FR 49556 (Sep. 28, 1994) (pool heaters); 71 FR 78057 (Dec. 26, 2006) (ceiling fans); and 76 FR 1038 (Jan. 6, 2011) (televisions).

[5] *See* 42 U.S.C. 6302(a)(1) and 16 CFR 305.4(a)(1).

[6] *See* 42 U.S.C. 6302(a)(2) and 16 CFR 305.4(a)(2).

[7] *See* 42 U.S.C. 6296(a) and 16 CFR 305.20.

[8] 16 CFR 305.14.

[9] 16 CFR 305.13.

[10] 76 FR 67037 (Oct. 31, 2011). *See also,* 76 FR 37408 (June 27, 2011).

[11] Pub. L. 110–140; 42 U.S.C. 6295(o)(6). EISA amended EPCA to authorize separate regional standards for these products.

[12] 42 U.S.C. 6295(o)(6)(B). The DOE standards apply to three regions: the North, Southeast, and Southwest. For furnaces, the standards are the same for the Southeastern and Southwestern regions. The Northern region encompasses Alaska, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. The Southeastern region encompasses Alabama, Arkansas, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, the District of Columbia, and U.S. territories. The Southwest includes Arizona, California, New Mexico, and Nevada. 76 FR 37422.

[13] 42 U.S.C. 6295(o)(6)(G).

[14] *Id.*

[15] 42 U.S.C. 6295(o)(6)(H).

[16] *Id.*

[17] 76 FR 72872 (Nov. 28, 2011).

distributors, contractors, and installers easily determine whether a specific furnace, central air conditioner, or heat pump meets the applicable standard for their region. It also sought input on the content, location, and format of such disclosures. To facilitate this process, FTC and DOE staff held a joint public meeting on December 16, 2011.

VI. Public Comments

The Commission received four written comments in response to its ANPR.[18] In general, the comments recommended EnergyGuide label changes to inform industry members and consumers about regional standards for heating and cooling equipment. In addition, one commenter provided suggestions for the label's location on products, packaging, and Web sites. That commenter also addressed the time needed to comply with the new requirements. Finally, the comments suggested specific changes for oil furnace labels related to input rates set by installers.

A. Recommended Label Content

The comments recommended several label changes to help industry members and consumers understand applicable regional efficiency standards. These suggestions included a U.S. map and a list of states to identify applicable regions, specific disclosures for central air conditioners and furnaces, links to product databases, and efficiency range updates.

U.S. Map on Label: Manufacturers, installers, and energy efficiency groups urged the Commission to include a U.S. map on the label depicting the applicable regional efficiency standards for specific product types. According to Air-Conditioning, Heating, and Refrigeration Institute (AHRI), such a map will allow manufacturers to inform distributors, installers, and consumers about the regional requirements. To augment the map, Natural Resources Defense Council (NRDC) recommended a list of states where the product can be legally installed and a warning that federal law prohibits installation in any other state. NRDC also recommended maps for all models subject to regional standards (*e.g.,* all non-weatherized gas furnaces regardless of efficiency). In its view, such an approach would avoid consumer confusion in comparing labels for different models. For models that comply with all applicable standards (*e.g.,* a 90 AFUE furnace), NRDC also recommended that the label state: ''Federal Law allows installation of this unit in any U.S. state.'' Finally, the Air Conditioning Contractors of America (ACCA) urged the Commission to spell state names on the label and not use state abbreviations.

Split-System Central Air Conditioners: The comments also provided specific recommendations for split-system central air conditioners. These systems consist of two separate pieces of equipment: an outdoor condenser and an indoor coil. During the installation process, installers match a condenser with a coil to form the entire air conditioning system. The final efficiency rating for these systems varies depending on the installed condenser-coil combination. Under the current Rule, EnergyGuide labels appear on the condenser unit and disclose the efficiency rating of that unit when matched with the typical coil (i.e., the condenser-coil combination with the highest sales volume). The applicable regional standards for these products involve three different geographic regions and two different efficiency ratings (Seasonal Energy Efficiency Ratio (''SEER'') and Energy Efficiency Ratio (''EER'')).[19]

For these systems, AHRI recommended using a general U.S. map identifying the three regions covered by the standards and a table listing the applicable standards by region.[20] NRDC advocated a product-specific map depicting the states in which the model may be legally installed. AHRI also suggested a disclosure to help installers and consumers understand that a system's efficiency depends on the installed condenser-coil combination. Specifically, AHRI recommended that the label disclose the high and low efficiency values associated with the different coils certified to match the labeled condenser (e.g., 13.5–14.4 SEER). In addition, AHRI suggested a statement explaining that the system's overall efficiency rating will depend on the condenser-coil combination.

The comments also recommended that the air conditioner label include information to help consumers and installers understand the product's Energy Efficiency Ratio (EER), an efficiency rating different from SEER. Unlike SEER, which reflects the model's efficiency over a typical cooling season, EER measures efficiency under specific operating conditions. Although SEER is the primary efficiency rating for these products, EER is necessary for determining an air conditioner's compliance with the new DOE standards in the southwest region. NRDC argued that the label should include definitions of both EER and SEER. In addition, AHRI advocated a separate comparability range for EER on the label. NRDC did not believe that this was necessary.

Furnaces: The comments made specific recommendations for non-weatherized and mobile gas furnaces, which are both subject to the regional standards. These standards prohibit the installation of furnaces rated lower than 90 AFUE in northern states.[21] In AHRI's view, labels for these lower-efficiency furnaces should include a map identifying the states where those models can be legally installed. AHRI also suggested that the Commission consult the furnace map used on the Energy Star logo, which appears on the label for qualified products. This logo includes a U.S. map displaying the states in which certain furnaces qualify for the Energy Star program.[22] NRDC agreed but urged the Commission to avoid confusion that might arise with the appearance of two maps on the label.

Product Databases: AHRI recommended that all labels contain a reference to the AHRI directory (*www.ahridirectory.org*), which lists models certified by that organization. In its view, the directory will help ensure contractors select appropriate products for their location and consumers receive products that comply with the regional standards. AHRI also urged the Commission to allow installers to use the directory in complying with their point of sale disclosure requirements.

[18] Air Conditioning Contractors of America (ACCA) (# 00005); Air-Conditioning, Heating, and Refrigeration Institute (AHRI) (# 00003); Natural Resources Defense Council (NRDC) and other Organizations (# 00004) (the other organizations include Alliance to Save Energy, American Council for an Energy-Efficient Economy, Appliance Standards Awareness Project, Consumer Federation of America, Earthjustice, National Consumer Law Center, Natural Resources Defense Council, Northeast Energy Efficiency Partnerships, Northwest Energy Efficiency Alliance, Northwest Power and Conservation Council); and Torres, Michelle (# 00002). The comments are available at: *http://www.ftc.gov/os/comments/regionaldisclosuresanpr/index.shtm.*

[19] As explained in NRDC's comments, EER is ''a measure of energy efficiency for central air conditioners at specific operating conditions''; and SEER is a ''a measure of energy efficiency for central air conditioners that estimates energy performance over a typical cooling season.''

[20] For single-package air conditioners, which do not have separate condenser-coil combinations, the new standards set a minimum EER rating in the Southwest region. To help installers comply with these standards, AHRI recommended a map on labels for single-package air conditioner labels to communicate the minimum EER standard for those products in the Southwest region.

[21] ''Annual Fuel Utilization Efficiency'' (AFUE) is the efficiency rating for these products.

[22] Energy Star is a program administered by the Environmental Protection Agency (EPA) which identifies high efficiency products for consumers. See *www.energystar.gov.*

Efficiency Ranges: Both AHRI and NRDC recommended amendments to the comparability ranges displayed on the EnergyGuide labels for heating and cooling equipment. These ranges disclose the most and least efficient product ratings on the market. Specifically, AHRI urged the Commission to update these efficiency ranges to reflect the new energy conservation standards. NRDC also suggested that the thresholds for the regional standards should appear on the label's range. For furnace labels, it recommended a vertical arrow on the range accompanied by the statement ''Federal law requires furnaces installed in northern states to meet a minimum AFUE of 90,'' or, alternatively, the phrase ''Installation legal in Southern states only'' placed on the range between 80 and 90 AFUE. For central air conditioners, NRDC recommended a hash mark or shaded region on the SEER range to communicate the regional standard for those products.

B. Location and Format for Disclosures

The comments also offered some suggestions for the label's location and format. NRDC provided three specific suggestions for the label's placement and format. First, it recommended a permanent version of the EnergyGuide label on products to aid enforcement and voluntary compliance by consumers and other market participants. In its view, a permanent label would reveal non-compliance for real estate transactions and energy ratings. Second, NRDC argued that the product package should display the label to aid official enforcement efforts and help distributors, installers, and consumers avoid costly shipping and installation mistakes. According to NRDC, the package label could also display a Quick Response (QR) scan code so that consumers can access additional product information online.[23] Finally, NRDC argued that the required disclosures should appear online in official product descriptions and advertisements because online dealers currently offer heating and cooling equipment directly to consumers. In its view, such disclosures should include an EnergyGuide icon and a link to the EnergyGuide label and any other relevant product information to help consumers who research equipment online. Additionally, NRDC proposed that Web sites selling such equipment should provide regional standards information on the product information page, without requiring consumers to open a link to the EnergyGuide label. It recommended that the FTC look to the recent television labeling requirements as guidance for the EnergyGuide label's placement. Among other things, these new rules require online sellers to use an FTC-provided EnergyGuide icon so that consumers can view the required labels.[24]

Finally, AHRI explained that focus on EnergyGuide label revisions alone should be sufficient to meet FTC and DOE objectives and cautioned that additional requirements would increase regulatory burden without consumer benefit. Similarly, ACCA stated that labeling changes, along with the current contractor disclosures, should meet the Commission's objectives.[25]

C. Timing of New Labels

NRDC encouraged the FTC to establish compliance deadlines of May 1, 2013 for non-weatherized gas, oil-fired, and mobile home gas furnaces, and January 1, 2015 for weatherized furnaces and central air conditioners and heat pumps. These dates coincide with the implementation of the relevant regional efficiency standards, and, in NRDC's view, will ensure that products manufactured on these dates and thereafter comply with the disclosure requirements.

D. Oil Furnace Labels

On an issue unrelated to the regional standards, AHRI urged the FTC to modify the EnergyGuide label for oil furnaces.[26] The installed efficiency rating of these products depends on input rates set by installers in the consumer's home. Thus, the efficiency rating on the label may not match the rating of the installed unit. To address this issue, AHRI recommended the Commission require a label listing the efficiency ratings associated with four different input rates set in the field. Under AHRI's proposal, installers would mark the label to indicate the product's efficiency rating as installed.

VII. Proposed Disclosures for Heating and Cooling

After reviewing the comments, the Commission proposes amending the EnergyGuide label content for heating and cooling equipment. The Commission also proposes to expand the label's availability by requiring it on manufacturer Web sites, on product packaging, and at the point of sale. These changes should help industry members comply with the regional standards and aid consumers in their purchasing decisions for these products. The labels' proposed new content discloses efficiency ratings in a simple format and provides regional information to help installers comply with the law. Tables 1 and 2 summarize the content of the proposed labels by product category. In addition, the proposal directs contractors to make the labels available to consumers prior to purchase. These changes should help industry members and consumers easily use and understand the labels. The proposed amendments also change the oil furnace labels in response to AHRI's suggestion. Finally, the proposed effective dates for the new labels coincide with the DOE compliance dates for the various product categories.

A. Label Revisions

Consistent with commenter suggestions, the Commission proposes changing the EnergyGuide label content to inform industry members and consumers about regional standards and otherwise improve the label. The proposed label contains two parts: a revised upper portion designed primarily for consumers and a lower portion to help installers comply with the regional standards. The upper portion, which resembles the current EnergyGuide, will appear on labels for all heating and cooling products, whether or not they are subject to different regional standards.[27] The lower portion contains maps, tables, and other information designed to help installers comply with the regional standards and will appear only on products subject to regional standards (i.e., split-system air conditioners, single-package air conditioners, and non-weatherized and mobile home gas furnaces).

Upper Portion: The upper portion, which closely resembles the current label, discloses the product's efficiency rating, a range of efficiency ratings for similar products, and a link to an online energy cost calculator. It bears the simple title ''Efficiency Rating'' followed by a technical acronym for the rating applicable to that product (e.g., SEER or AFUE). The Commission

[23] Currently, the Environmental Protection Agency requires QR codes on fuel economy labels for vehicles. These codes link consumer to detailed information for individual models at *www.fueleconomy.gov. See* 40 CFR 600.302–12(b)(6).

[24] *See* 76 FR 1038 (Jan. 11, 2011).

[25] ACCA also urged FTC, in coordination with DOE, to create print and broadcast public service announcements, promotional materials with the DOE or FTC logo, and other information to inform consumers and contractors of the pending standard changes.

[26] The efficiency standards for oil furnaces are the same across the country.

[27] These products include boilers, which fall under the definition of ''furnace'' in the Rule. 16 CFR 305.3(g).

proposes to use ''efficiency rating'' because the technical terms alone (e.g., SEER) are likely to be unfamiliar to most consumers. Nevertheless, the acronyms for those technical terms appear in smaller type elsewhere on the label to identify the type of rating disclosed (e.g., SEER, AFUE, or EER).

In addition to the product's efficiency rating, the upper portion displays a range of ratings for similar models to help consumers compare competing products.[28] Consistent with the comments and the current Rule's requirements, the Commission proposes to update existing comparability ranges for all heating and cooling equipment.[29] Following NRDC's comment, the Commission proposes requiring new ranges beginning May 1, 2013, to coincide with the new efficiency standards applicable to most products.[30] However, for products subject to standards effective on January 1, 2015 (*i.e.,* central air conditioners, heat pumps, and weatherized furnaces), the new ranges will not apply until that date.[31] The Commission also proposes specifying separate ranges for each system type addressed by the efficiency standards. Thus, for example, the Rule will have separate ranges for weatherized and non-weatherized furnaces, split-system air conditioner systems, small duct, high-velocity systems, and space-constrained air conditioners. Commenters should address whether such separate categories are necessary to help consumers compare products.[32]

Yearly energy cost disclosure gives consumers a clear, understandable tool to compare energy performance. Therefore, the proposed label also contains a prominent link to an online energy cost calculator based on a government Web site. Energy cost information appears on EnergyGuide labels for other covered products such as dishwashers and televisions. Unlike those products, however, heating and cooling costs can vary significantly depending on the consumer's location. For example, the annual operating cost of a furnace installed in Minnesota is likely to be much higher than one in Florida. As a result, national average cost information on the label may not provide a good estimate for a substantial number of consumers. Accordingly, the Commission proposes to provide consumers with a link to an online cost calculator, which will give consumers estimates based on their location.[33]

Lower Portion: The proposed label's lower portion contains information to help installers comply with regional standards. The proposed rule only requires this information for product categories subject to different regional standards (i.e., split-system air conditioners, single-package air conditioners, and non-weatherized and mobile home gas furnaces).[34] The lower portion communicates standards information through text, a map, and a link. The text provides general information to installers about regional efficiency standards, including a list of applicable states.[35] Second, a color U.S. map illustrating regional standards information appears on the label for products that do not meet standards in at least one region (i.e., certain split air conditioner systems, single-package air conditioners lower than 11.0 EER, and non-weatherized and mobile gas furnaces lower than 90 AFUE). The color map provides a simple, graphical means to inform distributors, contractors, and consumers about the regional requirements. However, contrary to commenter suggestions, the proposed label for units that are legal to install in any state would not have a map but rather would state, ''Federal law allows this unit to be installed in all U.S. states and territories.'' Because these higher-efficiency models can be installed anywhere, a map would add unnecessary detail to the label. Additionally, under this approach, the FTC map would not appear on any labels displaying the Energy Star map and thus eliminate any confusion from the appearance of two different maps on the same label. Finally, the proposed label contains a link to DOE's database of certified equipment (*http://www.regulations.doe.gov/certification-data/Category.html*).[36] This information will help contractors and consumers ensure that installed equipment complies with the regional standards. The Commission seeks comment on whether it should require a QR code on all labels to link consumers and installers directly to detailed information about the product at the DOE Web site.

Central Air Conditioners and Heat Pumps: The proposed label contains specific requirements for split-system air conditioners and heat pumps. First, consistent with AHRI's suggestion, the upper portion of the label discloses the lowest and highest SEER (and HSPF) ratings for all the condenser's certified coil combinations. This disclosure provides the minimum and maximum efficiency yielded by a particular split-system. Second, the proposed label states that an installed system's efficiency varies depending on which coil is matched with the condenser. Third, consistent with AHRI's suggestion, the lower portion of the proposed air conditioner label displays a map and a table illustrating the three regions covered by the new DOE standards.[37] This map will provide installers with a clear illustration of the standards applicable to the product. The Commission is not proposing a product-specific map because split-system air conditioner efficiency ratings vary depending on the installed condenser-coil combination. Thus, a condenser may meet the standard in the southern region when paired with one coil but not when paired with another.

The proposed labels for split-system air conditioners and single-package air conditioners also contain EER ratings because such information is necessary to determine regional standards compliance. EER information would appear in the proposed label's lower portion and, for split systems, would include the high and low certified ratings. The Commission does not

[28] The label's range does not include thresholds for regional standards as suggested by NRDC because the addition of such information may create confusion and detract from the label's basic message. In addition, the proposed label addresses applicable regional standards elsewhere.

[29] In the final rule notice, the Commission will adjust the range tables in the Appendices if necessary to reflect new industry data available at that time. 16 CFR 305.10(b).

[30] The new ranges effective May 1, 2013 will also apply to equipment not subject to any change in the standards (e.g., electric furnaces and boilers).

[31] The Commission will publish new ranges for central air conditioners, heat pumps, and weatherized furnaces before the January 1, 2015 date. Under the current Rule, the Commission amends range information for labels on a five-year schedule. However, the Commission has indicated it may update ranges more frequently. 72 FR 49948, 49959 (Aug. 29, 2007). The ranges on the new sample heat pump and air conditioner labels in this Notice stem from current industry data and have been included only for illustrative purposes.

[32] To reduce label clutter, the proposal also eliminates text stating that the efficiency range is based on a particular model type (*e.g.,* ''Efficiency range based only on split system units''). The Commission seeks comment on whether this statement should remain on the label.

[33] To allow consumers to use the calculator, the proposed rule requires the labels to display the model's capacity in addition to its efficiency rating.

[34] The regional disclosures do not apply to products subject to uniform national standards (e.g., heat pumps).

[35] Given space limitations, the labels do not spell out state names as suggested by ACCA. State postal abbreviations should not lead to significant confusion, particularly for installers who are likely to be familiar with the abbreviations of states in which they work.

[36] The Commission proposes to link consumers to the DOE Web site, rather than AHRI's directory, because DOE's site provides a government source for information from both AHRI and non-AHRI members.

[37] The proposed rule contains no regional standards information for heat pump labels because those products are subject to uniform national standards.

propose to include a separate EER range bar. Because most consumers are not likely to be familiar with EER ratings, the inclusion of a separate EER range is likely to lead to confusion without providing significant benefit. Finally, the proposed label for single-package air conditioners rated below 11.0 EER displays a product specific map to illustrate that such models can only be installed in the northern and southeastern regions.

Furnaces: The Commission also proposes specific regional information for furnace labels. For non-weatherized and mobile gas furnaces rated below 90 AFUE, the proposed label contains a map and a list identifying those states where the product may be installed. For non-weatherized and mobile home furnaces that meet standards in all regions, the proposed label contains the statement: ''Federal law allows this unit to be installed in all U.S. states and territories.''

B. Label Location

To improve access to the EnergyGuide label for heating and cooling products, the proposed amendments continue to require the label on the product itself and retailer Web sites, and propose requiring it on packaging (for product categories subject to regional standards) and manufacturer Web sites. The proposal also directs contractors to give consumers the opportunity to review the EnergyGuide label prior to purchase. These requirements provide a single, familiar tool for communicating efficiency and standards information. They also avoid multiple formats that could cause confusion and increase compliance burdens. For distributors and installers, the comprehensive label eliminates the need to create their own disclosures.

In addition, by requiring the label in several different locations, the proposed approach should help consumers and installers with their purchasing and installation decisions—regardless of where those decisions occur. The label's continued presence on products provides consumers with efficiency information for their purchases. It will also help installers with regional standards information to ensure they install the correct equipment under the law.[38] Labels on packages will help distributors and installers determine whether a model meets applicable standards before they ship or open boxes, avoiding costly shipping or installation mistakes.

Consistent with the Commission's recent television labeling requirements as well as its proposed requirements for all covered products, the proposed rule requires manufacturer Web sites to provide consumers, distributors, and installers access to their product labels online.[39] The proposed amendments continue to require retail Web sites to post a copy of the EnergyGuide label. In addition, the proposal requires retail Web sites selling any product subject to regional standards to display the statement ''Federal law prohibits the installation of some [central air conditioners or furnaces] in certain states. Look to the EnergyGuide label to determine whether this product can be legally installed in your location.'' This should ensure that the Web site alerts purchasers to regional restrictions even if purchasers do not open the label itself. Though some commenters suggested a lengthier disclosure, such information would unnecessarily duplicate the label's content. In addition to requirements for Web sites, the proposal also contains disclosures for paper catalogs requirements related to regional standards.

Finally, the Commission proposes requiring retail sellers (e.g., contractors, installers, and assemblers) to make the EnergyGuide label available to consumers before purchase. Contractors can comply with this requirement by, for example, showing the labels to consumers or providing them instructions to view the labels online. Though AHRI urged the Commission to refer to AHRI's directory for these required disclosures, the label itself is preferable because it provides detailed information in a larger format specifically designed for consumers. This requirement should not increase existing disclosure burdens for installers because the Rule already requires them to make energy disclosures to consumers.[40] Nothing prevents installers from also directing consumers to the AHRI site.

C. Oil Furnace Labels

In response to AHRI's suggestion, the Commission proposes to amend the oil furnace label to include the efficiency ratings associated with different input rates. The proposed label provides consumers with the furnace's efficiency rating as configured and installed in their home, as well as the efficiency rating associated with the product's input rate as shipped by the manufacturer. In addition, the proposed label contains a chart displaying four efficiency ratings associated with the four input rates recommended by AHRI. It also contains a single scale displaying the furnace's efficiency rating at the manufacturer's rated input to avoid label clutter that could potentially confuse consumers. If the installer uses a different input rate, they must mark the chart on the EnergyGuide label to indicate so.[41] The Commission seeks comment on whether this is necessary and, if so, whether the proposed label will provide clear information to consumers. In addition, commenters should address whether this same design should appear on boilers, which also vary in efficiency by input rate settings.

D. Effective Dates for Label Changes

The Commission proposes to require the proposed label changes in two phases. Under the first phase, manufacturers must begin using the new label no later than May 1, 2013 for equipment subject to new standards effective on that date (*i.e.,* weatherized gas and mobile home gas furnaces) or not subject to any change in the standards (*e.g.,* boilers, oil-fired, and electric furnaces). Under the second phase, manufacturers must begin placing the new labels no later than January 1, 2015 for any heating and cooling equipment subject to new standards effective on that date (*i.e.,* weatherized furnaces and central air conditioners and heat pumps).[42] Until January 1, 2015, manufacturers must continue to use the current label, including the current ranges, for those products. These proposed dates coincide with the effective dates of regional standards for those products and thus should provide a reasonable transition date for the new labels. However, DOE has clarified that the effective date for the regional standards applies to the installation of products on or after that date.[43] Accordingly, the Commission seeks comment on whether to require manufacturers to begin using

[38] The proposed rule does not require a permanent EnergyGuide label on these products as suggested by comments because the unit's model number provides the information necessary to determine compliance, particularly given the availability of online databases from DOE and AHRI.

[39] *See* 76 FR 1038 (Jan. 11, 2011) (television requirements) and 77 FR 15298 (Mar. 15, 2012) (proposed requirements for all covered products). The present notice includes the proposed rule language for catalog disclosure from the March 15, 2012 notice and corrects minor errors in that language.

[40] 16 CFR 305.14.

[41] *See* 42 U.S.C. 6294(c)(4).

[42] The Commission will update ranges for weatherized furnaces and central air conditioners and heat pumps before the January 1, 2015 transition to the new labels.

[43] See Department of Energy, ''Regional Standards Enforcement Framework Document,'' *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/furncac_regstnd_enforceframework.pdf.*

the new labels earlier to provide a lead-time for newly labeled units to enter retailer inventories before the regional standards take effect.

TABLE 1—FURNACES

System type	Regional standards information on proposed label	Date for label change	Efficiency standard—north %	Efficiency standard—southeast %	Efficiency standard—southwest %
Non-weatherized gas	Models below 90 AFUE: U.S. map and explanatory text indicating product can only be installed in south/southwest (see Sample Label 9). All other models: a statement that unit can be installed in any state (see Sample Label 9A).	May 1, 2013	90 AFUE	80 AFUE	80 AFUE.
Mobile home gas	Models below 90 AFUE: U.S. map and explanatory text indicating product can only be installed in south/southwest. All other models: a statement that unit can be installed in any state.	May 1, 2013	90 AFUE	80 AFUE	80 AFUE.
Non-weatherized oil-fired	No regional standards information (see Sample Label 9B).	May 1, 2013	83 AFUE	83 AFUE	83 AFUE.
Weatherized gas	No regional standards information	Jan. 1, 2015	81 AFUE	81 AFUE	81 AFUE.
Mobile home oil-fired	No regional standards information	May 1, 2013	75 AFUE	75 AFUE	75 AFUE.
Weatherized oil-fired	No regional standards information	Jan. 1, 2015	78 AFUE	78 AFUE	78 AFUE.
Electric	No regional standards information	May 1, 2013	78 AFUE	78 AFUE	78 AFUE.

TABLE 2—CENTRAL AIR CONDITIONERS AND HEAT PUMPS

System type	Regional standards information on proposed label	Date for label change	Efficiency standard-north	Efficiency standard-southeast	Efficiency standard-southwest
Split-system air conditioners	All models regardless of efficiency rating: low and high SEER and EER for certified compressor-coil combinations. Models below 14 SEER (any size model), below 12.2 EER (for models smaller than 45,000 Btu/h), or below 11.7 EER (for models larger than 45,000 Btu/h): General U.S. map & standards chart (see Sample Label 7A). All other models: A statement that unit can be installed in any state.	Jan. 1, 2015	13 SEER [44]	14 SEER	14 SEER/12.2 EER [45] <45,000 Btu/h 14 SEER/11.7 EER >45,000 Btu/h.
Split-system heat pumps	No regional standards information (see Sample Label 8A). All Models: Low and high SEER and HSPF for certified compressor-coil combinations.	Jan. 1, 2015	14 SEER/8.2 HSPF [46].	14 SEER/8.2 HSPF.	14 SEER/8.2 HSPF.
Single-package air conditioners.	Models below 11 EER: U.S. Map and explanatory text indicating product can only be installed in northern and southeastern states (not southwestern) (see Sample Label 7B). All other models: A statement that unit can be installed in any state.	Jan. 1, 2015	14 SEER	14 SEER	14 SEER/11.0 EER.
Single-Package Heat Pumps	No regional standards information	Jan. 1, 2015	14 SEER/8.0 HSPF.	14 SEER/8.0 HSPF.	14 SEER/8.0 HSPF.
Small-duct, high-velocity systems.	No regional standards information. All Models: Low and high SEER and HSPF for certified compressor-coil combinations.	Jan. 1, 2015	13 SEER/7.7 HSPF.	13 SEER/7.7 HSPF.	13 SEER/7.7 HSPF.
Space-constrained products -air conditioners.	No Regional Standards information. All split-systems models: Low and high SEER and HSPF for certified compressor-coil combinations.	Jan. 1, 2015	12 SEER	12 SEER	12 SEER.

[44] Seasonal Energy Efficiency Rating.

[45] Energy Efficiency Rating.

[46] Heating Seasonal Performance Factor.

TABLE 2—CENTRAL AIR CONDITIONERS AND HEAT PUMPS—Continued

System type	Regional standards information on proposed label	Date for label change	Efficiency standard-north	Efficiency standard-southeast	Efficiency standard-southwest
Space-constrained products—heat pumps.	No Regional Standards information. All split-system models: All Models: Low and high SEER and HSPF for certified compressor-coil combinations.	Jan. 1, 2015	12 SEER/7.4 HSPF.	12 SEER/7.4 HSPF.	12 SEER/7.4 HSPF.

VIII. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute ''collection[s] of information'' under the Paperwork Reduction Act (PRA).[47] OMB has approved the Rule's existing information collection requirements through Jan. 31, 2014 (OMB Control No. 3084–0069). As described below, the proposed amendments modify existing EnergyGuide label design and require its presence on packaging for some products. Accordingly, the Commission is submitting this proposed rule and an associated PRA Supporting Statement to OMB for review.

Manufacturer EnergyGuide Images Online: The proposed Rule requires manufacturers to post images of their EnergyGuide labels on their Web sites. Given approximately 6,000 total models[48] at an estimated five minutes per model, this requirement will entail a burden of 500 hours.[49] Assuming that the additional disclosure requirement will be implemented by graphic designers at a mean hourly wage of $23.42 per hour,[50] the associated labor cost would approximate $11,710 per year (500 hours × $23.42).

Updating EnergyGuide Labels: The proposed rule requires heating and cooling equipment manufacturers to change the EnergyGuide labels to the new design. The new label design will require a one-time drafting change for the manufacturers. Consistent with similar label changes in the past, the Commission estimates that this one-time change will take 40 hours per manufacturer.[51] As with other recent labeling changes, the FTC staff plans to provide template labels to manufacturers to minimize the burden associated with such labels changes. The Commission estimates that there are approximately 100 manufacturers of affected covered products. Therefore, the label design change will result in a one-time burden of 4,000 hours (100 manufacturers × 40 hours). In calculating the associated labor cost estimate, the Commission assumes that the label design change will be implemented by graphic designers at an hourly wage rate of $23.42 per hour based on Bureau of Labor Statistics information. Thus, the Commission estimates that the new label design change will result in a one-time labor cost of approximately $93,680 (4,000 hours × $23.42 per hour).

EnergyGuide Labels on Packaging: The proposed amendments would require manufacturers to affix a copy of the EnergyGuide on packaging for split-system and single-package air conditioners, and non-weatherized and mobile home gas furnaces. DOE has estimated past annual shipments of these units at about 5,500,000.[52] The Commission estimates the burden for package labeling at 9,167 hours [6 seconds × 5,500,000 units]. In calculating the associated labor cost estimate, the Commission assumes that the label design change will be implemented by packaging and filling machine operators at an hourly wage rate of $14.67 per hour based on Bureau of Labor Statistics information. Thus, the Commission estimates that label placement on packaging will result in an annual labor cost of approximately $134,480 (9,167 hours × $14.67 per hour).

Catalog and Installer Disclosures: The Rule already requires retailers to post energy information in catalogs (including Web sites) and installers to make information available to consumers at the point of sale. Therefore, the proposed requirements would not alter this burden.

Estimated Annual Non-labor Cost Burden: Any capital costs associated with the amendments are likely to be minimal.

The Commission invites comments that will enable it to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collections of information on those who must comply, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Comments on any proposed disclosure requirements that are subject to OMB review under the PRA should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–5167 because U.S. postal mail at the OMB is subject to lengthy delays due to heightened security precautions.

IX. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed Rule and a Final Regulatory Flexibility Analysis (''FRFA''), with the final Rule, if any, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605.

The Commission does not anticipate that the proposed Rule will have a significant economic impact on a

[47] 44 U.S.C. 3501–3521.

[48] This estimate is based on information from industry sources.

[49] Unlike retail Web sites that already have established Web pages for the products they offer, some manufacturers may have to create new Web pages for posting these requirements. Accordingly, the burden estimate for manufacturers is higher (five minutes per model) than that for catalog sellers (one minute per model).

[50] *See* U.S. Department of Labor, National Compensation Survey: Occupational Earnings in the United States 2010 (May 2011), Bulletin 2753, Table 3 at 3–13 (''Full-time civilian workers,'' mean and median hourly wages), available at *http://www.bls.gov/ncs/ncswage2010.htm.*

[51] 72 FR 49948, 49964 (Aug. 27, 2007).

[52] *See http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/hvac_ch_09_shipments_2011-04-25.pdf.*

substantial number of small entities. The Commission recognizes that some of the affected manufacturers may qualify as small businesses under the relevant thresholds. However, the Commission does not expect that the requirements specified in the proposed Rule will have a significant impact on these entities because, as discussed in the previous section, the proposed amendments involve formatting changes to labels, additional labels on some packaging, and Web site changes that should not have a significant impact on affected entities, including small businesses.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed Rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed Rule, the number of these companies that are ''small entities,'' and the average annual burden for each entity. Although the Commission certifies under the RFA that the Rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed Rule on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

As directed by Congress, the Commission proposes new disclosures to help consumers and industry members understand new DOE regional efficiency standards for heating and cooling equipment.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed Rule is to develop new labels to help communicate regional standards requirements for heating and cooling equipment. The legal basis for this Rule is the EPCA (42 U.S.C. 6291 *et seq.*).

C. Small Entities to Which the Proposed Rule Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, the standards for equipment manufacturers is 750 employees.[53] The Commission estimates that fewer than 50 entities subject to the proposed Rule's requirements qualify as small businesses. The Commission seeks comment and information with regard to the estimated number or nature of small business entities for which the proposed Rule would have a significant economic impact.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The Commission recognizes that the proposed labeling changes will involve some burdens on affected entities. However, the amendments should not have a significant impact on small entities. The proposed amendments would increase existing burdens by requiring manufacturers to change their EnergyGuide labels for products and place labels on packages for certain furnaces and central air conditioners. Graphic designers and packaging operators will implement the new requirements. There should be no capital costs associated with the amendments. The Commission invites comment and information on these issues.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed Rule. While the proposed labels are related to DOE efficiency standards, the proposed requirements do not overlap with DOE rules.

F. Significant Alternatives to the Proposed Rule

The Commission seeks comment and information on the need, if any, for alternative compliance methods that, consistent with the statutory requirements, would reduce the economic impact of the rule on such small entities. As one alternative to reduce burden, the Commission could delay the effective date of the amendments to provide additional time for small business compliance. Comments filed in response to this notice should identify small entities that are affected by the Rule, as well as alternative methods of compliance that would reduce the economic impact of the Rule on small entities. The Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

[53] *See http://www.sba.gov/content/table-small-business-size-standards.*

X. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. See 16 CFR 1.26(b)(5).

XI. Request for Comment

The Commission invites interested persons to submit written comments on any issue of fact, law, or policy that may bear upon the FTC's proposed requirements. Please provide explanations for your answers and supporting evidence where appropriate. After examining the comments, the Commission will determine whether to issue final amendments.

All comments should be filed as prescribed below, and must be received by August 6, 2012. Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Regional Labeling for Heating and Cooling Equipment—Proposed Rule (16 CFR Part 305) (Project No. P114202)'' to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at *http://www.ftc.gov/os/publiccomments.shtm.*

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential'' as provided in Section 6(f) of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[54]

[54] The comment must be accompanied by an explicit request for confidential treatment,

Continued

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following weblink: *https://ftcpublic.commentworks.com/ftc/proposedregionaldisclosuresnprm* (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink *https://ftcpublic.commentworks.com/ftcproposedregionaldisclosuresnprm*. If this Notice appears at *http://www.regulations.gov/#!home,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Web site at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Regional Labeling for Heating and Cooling Equipment—Proposed Rule (16 CFR Part 305) (Project No. P114202)'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex C), 600 Pennsylvania Avenue NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.shtm*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

Because written comments appear adequate to present the views of all interested parties, the Commission has not scheduled an oral hearing regarding these proposed amendments. Interested parties may request an opportunity to present views orally. If such a request is made, the Commission will publish a document in the **Federal Register** stating the time and place for such oral presentation(s) and describing the procedures that will be followed. Interested parties who wish to present oral views must submit a hearing request, on or before June 26, 2012, in the form of a written comment that describes the issues on which the party wishes to speak. If there is no oral hearing, the Commission will base its decision on the written rulemaking record.

XII. Proposed Rule Language

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons set out above, the Commission proposes the following amendments to 16 CFR Part 305:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT (''APPLIANCE LABELING RULE'')

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. In § 305.12, revise paragraphs (c), (d), and (e), redesignate paragraphs (f) and (g) as paragraphs (h) and (i) respectively, add new paragraphs (f) and (g), and revise redesignated paragraphs (h)(8)(iii) and (i)(9)(iii) to read as follows:

§ 305.12 Labeling for central air conditioners, heat pumps, and furnaces.

* * * * *

(c) Colors. The basic colors of all labels covered by this section shall be process yellow or equivalent and process black unless otherwise indicated in this part. The label shall be printed full bleed process yellow. All type and graphics shall be print process black unless otherwise stated.

(d) Label Type. The labels must be affixed in the form of an adhesive label. All adhesive labels should be applied so they can be easily removed without the use of tools or liquids, other than water, but should be applied with an adhesive with an adhesion capacity sufficient to prevent their dislodgment during normal handling throughout the chain of distribution to the retailer or consumer. The paper stock for pressure-sensitive or other adhesive labels shall have a basic weight of not less than 58 pounds per 500 sheets (25″ x 38″) or equivalent, exclusive of the release liner and adhesive. A minimum peel adhesion capacity for the adhesive of 12 ounces per square inch is suggested, but not required if the adhesive can otherwise meet the above standard.

(e) Placement.

(1) Manufacturers shall affix adhesive labels to the covered products in such a position that it is easily read by a person examining the product. The label should be generally located on the upper-right-front corner of the product's front exterior. However, some other prominent location may be used as long as the label will not become dislodged during normal handling throughout the chain of distribution to the retailer or consumer. The top of the label should not exceed 74 inches from the base of taller products. The label can be displayed in the form of a flap tag adhered to the top of the appliance and bent (folded at 90°) to hang over the front, as long as this can be done with assurance that it will be readily visible. Labels for split system central air conditioners shall be affixed to the condensing unit.

(2) In addition to the requirements of paragraph (1), for split-system and single-package central air conditioners manufactured on or after January 1, 2015, and all non-weatherized and mobile home furnaces, manufacturers shall affix adhesive labels to covered product packages in such a position easily read by a person examining the product. Labels for split-system central air conditioners shall be affixed to the condensing unit's package.

(f) Content of labels for non-weatherized, mobile home, and electric furnaces and boilers manufactured after May 1, 2013, and all furnaces and boilers manufactured after January 1, 2015.

(1) Headlines and texts, as illustrated in the prototype and sample labels in appendix L to this part.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an

including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9.(c).

individual, partnership, or association, the name under which the business is conducted shall be used.

(3) The model's basic model number.

(4) The model's capacity as illustrated in the prototype and sample labels in appendix L to this part.

(5) The annual fuel utilization efficiency (AFUE) for furnace models as determined in accordance with § 305.5.

(6) Ranges of comparability consisting of the lowest and highest annual fuel utilization efficiencies (AFUE) ratings for all furnaces of the model's type consistent with sample label 9A in appendix L.

(7) Placement of the labeled product on the scale shall be proportionate to the lowest and highest annual fuel utilization efficiency ratings forming the scale.

(8) The following statement shall appear in bold print on furnace labels beneath the range(s) as illustrated in the sample labels in appendix L:

For energy cost info, visit ftc.gov/energy.

(9) For non-weatherized gas furnaces and mobile home gas furnaces with an AFUE of 90 or greater, the label must contain the following regional standards information consistent with sample label 9A in appendix L to this part:

Notice Federal law allows this unit to be installed in all U.S. states and territories.

(10) For non-weatherized and mobile home gas furnaces with an AFUE lower than 90, the label shall contain the following regional standards information consistent with sample label 9A in appendix L to this part:

(i) A statement that reads:

Notice Federal law allows this unit to be installed only in: AL, AZ, AR, CA, DC, DE, FL, GA, HI, KY, LA, MD, MS, NC, NM, NV, OK, SC, TN, TX, VA, and U.S. territories.

Federal law prohibits installation of this unit in other states.

(ii) A color map and accompanying text as illustrated in sample label 9A in appendix L. The map contains the following colors: Green, CMKY value 34, 0, 55, 0; and Gray, CMKY value 0, 0, 0, 9.

(11) The following statement shall appear at the top of the label as illustrated in the sample labels in appendix L:

Federal law prohibits removal of this label before consumer purchase.

(12) No marks or information other than that specified in this part shall appear on or directly adjoining this label except that:

(i) A part or publication number identification may be included on this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand corner of the label and be set in 6-point type or smaller.

(ii) The energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer.

(iii) The manufacturer may include the ENERGY STAR logo on the label for qualified products in a location consistent with the sample labels in appendix L. The logo must be no larger than 1 inch by 3 inches in size. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

(13) Manufacturers of boilers shipped with more than one input nozzle to be installed in the field must label such boilers with the AFUE of the system when it is set up with the nozzle that results in the lowest AFUE rating.

(14) Manufacturers that ship out boilers that may be set up as either steam or hot water units must label the boilers with the AFUE rating derived by conducting the required test on the boiler as a hot water unit.

(15) Manufacturers of oil furnaces must label their products with the AFUE rating associated with the furnace's input rate set by the manufacturer at shipment. The oil furnace label must contain a chart, as illustrated in sample label 9B in appendix L, indicating the efficiency rating at additional input rates of 84,000, 105,000, 119,000, and 140,000 Btu/hr.

(g) Content of labels for central air conditioners and heat pumps manufactured on or after January 1, 2015.

(1) Headlines and texts, as illustrated in the prototype and sample labels in appendix L to this part.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used.

(3) The model's basic model number.

(4) The model's capacity as illustrated in the prototype and sample labels in appendix L to this part.

(5) The seasonal energy efficiency ratio (SEER) for the cooling function of central air conditioners as determined in accordance with § 305.5. For the heating function, the heating seasonal performance factor (HSPF) shall be calculated for heating Region IV for the standardized design heating requirement nearest the capacity measured in the High Temperature Test in accordance with § 305.5. In addition, as illustrated in the sample labels 7A and 8A in appendix L, the energy efficiency ratings for any split-system condenser-evaporator coil combinations shall include the low and high ratings of all condenser-evaporator coil combinations certified to the Department of Energy pursuant to 10 CFR Part 430.

(6)(i) Each cooling-only central air conditioner label shall contain a range of comparability consisting of the lowest and highest SEER for all cooling only central air conditioners consistent with sample label 7A in appendix L to this part.

(ii) Each heat pump label, except as noted in paragraph (g)(6)(iii) of this section, shall contain two ranges of comparability. The first range shall consist of the lowest and highest seasonal energy efficiency ratios for the cooling side of all heat pumps consistent with sample label 7A in appendix L to this part. The second range shall consist of the lowest and highest heating seasonal performance factors for the heating side of all heat pumps consistent with sample label 7A in appendix L to this part.

(iii) Each heating-only heat pump label shall contain a range of comparability consisting of the lowest and highest heating seasonal performance factors for all heating-only heat pumps following the format of sample label 7A in appendix L to this part.

(7) Placement of the labeled product on the scale shall be proportionate to the lowest and highest efficiency ratings forming the scale.

(8) The following statement shall appear on the label in bold print as indicated in the sample labels in appendix L.

For energy cost info, visit ftc.gov/energy.

(9) All labels on split-system condenser units must contain one of the following three statements:

(i) For labels disclosing only the seasonal energy efficiency ratio for cooling, the statement should read:

This system's efficiency rating depends on the coil your contractor installs with this unit. Ask for details.

(ii) For labels disclosing both the seasonal energy efficiency ratio for cooling and the heating seasonal performance factor for heating, the statement should read:

This system's efficiency ratings depend on the coil your contractor installs with this unit. The heating efficiency rating will vary slightly in different geographic regions. Ask for details.

(iii) For labels disclosing only the heating seasonal performance factor for heating, the statement should read:

This system's efficiency rating depends on the coil your contractor installs with this unit. The efficiency rating will vary slightly in different geographic regions. Ask for details.

(10) The following statement shall appear at the top of the label as illustrated in the sample labels in appendix L:

Federal law prohibits removal of this label before consumer purchase.

(11) For any single-package air conditioner with a minimum Energy Efficiency Ratio (EER) of 11.0, any split-system central air conditioner with a rated minimum cooling capacity of 45,000 Btu/h and minimum efficiency ratings of 14 SEER and 11.7 EER, and any split-system central air conditioners with a rated cooling capacity less than 45,000 Btu/h and minimum efficiency ratings of 14 SEER and 12.2 EER, the label must contain the following regional standards information consistent with sample label 7A in appendix L to this part:

Notice Federal law allows this unit to be installed in all U.S. states and territories.

(12) For any split-system central air conditioners with a rated minimum cooling capacity of 45,000 Btu/h and minimum efficiency ratings below 14 SEER or 11.7 EER, and any split-system central air conditioner with a rated cooling capacity less than 45,000 Btu/h and a minimum efficiency rating below 14 SEER or 12.2 EER, the label must contain the following regional standards information consistent with sample label 7A in appendix L to this part:

(i) A statement that reads:

The system you install must meet the minimum Federal regional efficiency standards.

See regulations.doe.gov/certification for certified combinations.

(ii) A map and accompanying text as illustrated in the sample label 9A in appendix L. The map contains the following colors: Blue, CMYK value 33, 7, 1, 0; Peach, CMKY value 11, 26, 51, 0; and Yellow, CMKY value 3, 0, 55, 0.

(iii) A statement that reads:

Energy Efficiency Ratio (EER): The installed system's EER could range from [____] to [____]., depending on the coil installed with this unit.

(13) For any single-package air conditioner with an EER below 11.0, the label must contain the following regional standards information consistent with sample labels in appendix L to this part:

(i) A statement that reads:

Notice Federal law allows this unit to be installed only in: AK, AL, AR, CO, CT, DC, DE, FL, GA, HI, ID, IL, IA, IN, KS, KY, LA, ME, MD, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NY, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VT, WA, WV, WI, WY and U.S. territories.

Federal law prohibits installation of this unit in other states.

(ii) A color map and accompanying text as illustrated in the sample label in appendix L. The map contains the following colors: Green, CMKY value 34, 0, 55, 0; and Gray, CMKY value 0, 0, 0, 9.

(i) A statement that reads:

Energy Efficiency Ratio (EER): This model's EER is [____].

(14) No marks or information other than that specified in this part shall appear on or directly adjoining this label except that:

(i) A part or publication number identification may be included on this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand corner of the label and be set in 6-point type or smaller.

(ii) The energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer.

(iii) The manufacturer may include the ENERGY STAR logo on the label for qualified products in a location consistent with the sample labels in appendix L. The logo must be no larger than 1 inch by 3 inches in size. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

(h) Content of label for weatherized gas furnaces manufactured before January 1, 2015.

* * * * *

(8) * * *

(iii) The manufacturer may include the ENERGY STAR logo on the label for qualified products in a location consistent with the sample labels in appendix L. The logo must be 1 inch by 3 inches in size. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

(i) Content of label for central air conditioners and heat pumps manufactured before January 1, 2015.

* * * * *

(9) * * *

(iii) The manufacturer may include the ENERGY STAR logo on the label for qualified products in a location consistent with the sample labels in appendix L. The logo must be no larger than 1 inch by 3 inches in size. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

3. Revise section 305.14 to read as follows:

§ 305.14 Energy information disclosures for heating and cooling equipment.

(a) Manufacturer Duty to Provide Labels. For any covered central air conditioner, heat pump, or furnace model that a manufacturer distributes in commerce, the manufacturer must make a copy of the EnergyGuide label available on a publicly accessible Web site in a manner that allows catalog sellers to hyperlink to the label or download it for use in catalogs that advertise such products. The labels must remain on the Web site for two years after the manufacturer ceases the model's production.

(b) Distribution. (1) Manufacturers and private labelers must provide to distributors and retailers, including assemblers, EnergyGuide labels for the central air conditioners, heat pumps, and furnaces (including boilers) they sell to them. The label may be provided in paper or electronic form (including Internet-based access). Distributors must give this information to retailers, including assemblers, they supply.

(2) Retailers, including assemblers, who sell central air conditioners, heat pumps, and furnaces (including boilers) to consumers must make the

EnergyGuide labels for the models they sell available to customers prior to purchase, in any manner, as long as customers are likely to notice them. For example, they may be available in a display, where customers can take copies of them. They may be kept in a binder or made available electronically at a counter or service desk, with a sign telling customers where the required information is.

(3) Retailers, including installers, who negotiate or make sales at a place other than their regular places of business must show the labels to their customers and let them read the labels before the customers agree to purchase the product. If the labels are on a Web site, retailers, including assemblers, who negotiate or make sales at a place other than their regular places of business, may choose to provide customers with instructions to access such labels in lieu of showing them a paper version of the information. Retailers who choose to use the Internet for the required label disclosures must provide customers the opportunity to read such information prior to sale of the product.

(c) Oil Furnace Labels. If an installer installs an oil furnace with an input rate different from that set by the manufacturer and identified on the label, the installer must permanently mark the appropriate box on the EnergyGuide label displaying the installed input rate and the associated AFUE.

4. In section 305.20, revise paragraphs (a) and (b), and add paragraph (c) to read as follows:

§ 305.20 Paper catalogs and Web sites.

(a) Covered products offered for sale on the Internet. Any manufacturer, distributor, retailer, or private labeler who advertises a covered product on an Internet Web site in a manner that qualifies as a catalog under this Part shall disclose energy information as follows:

(1) Content.

(i) Products required to bear EnergyGuide or Lighting Facts labels. All Web sites advertising covered refrigerators, refrigerator-freezers, freezers, room air conditioners, clothes washers, dishwashers, ceiling fans, pool heaters, central air conditioners, heat pumps, furnaces, general service lamps, and televisions must display, for each model, an image of the label required for that product by this Part. The Web site may hyperlink to the image of the label using the icon depicted in appendix L.

(ii) Products not required to bear EnergyGuide or Lighting Facts labels.

All Web sites advertising covered showerheads, faucets, water closets, urinals, general service fluorescent lamps, fluorescent lamp ballasts, and metal halide lamp fixtures must include the following disclosures for each covered product:

(A) Showerheads, faucets, water closets, and urinals. The product's water use, expressed in gallons and liters per minute (gpm and L/min) or per cycle (gpc and L/cycle) or gallons and liters per flush (gpf and Lpf) as specified in § 305.16.

(B) General service fluorescent lamps, fluorescent lamp ballasts and luminaires and metal halide lamp fixtures. A capital letter ''E'' printed within a circle.

(2) Format. The required Web site disclosures, whether label image, icon, or text, must appear clearly and conspicuously and in close proximity to the covered product's price on each Web page that contains a detailed description of the covered product and its price. The label and hyperlink icon must conform to the prototypes in appendix L, but may be altered in size to accommodate the Web page's design, as long as they remain clear and conspicuous to consumers viewing the page.

(b) Covered products offered for sale in paper catalogs. Any manufacturer, distributor, retailer, or private labeler that advertises a covered product in a paper publication that qualifies as a catalog under this part shall disclose energy information as follows:

(1) Content.

(i) Products required to bear EnergyGuide or Lighting Facts labels. All paper catalogs advertising covered products required by this Part to bear EnergyGuide or Lighting Facts labels illustrated in appendix L (refrigerators, refrigerator-freezers, freezers, room air conditioners, clothes washers, dishwashers, ceiling fans, pool heaters, central air conditioners, heat pumps, furnaces, general service lamps, and televisions) must either display an image of the full label prepared in accordance with this Part, or make a text disclosure as follows:

(A) Refrigerator, refrigerator-freezer, and freezer. The capacity of the model determined in accordance with § 305.7, the estimated annual operating cost determined in accordance with § 305.5 and appendix K of this Part, and a disclosure stating ''Your energy cost depends on your utility rates and use. The estimated cost is based on [$__] per kWh. For more information, visit *www.ftc.gov/energy.*''

(B) Room air conditioners and water heaters. The capacity of the model determined in accordance with § 305.7, the estimated annual operating cost determined in accordance with § 305.5 and appendix K of this Part, and a disclosure stating ''Your operating costs will depend on your utility rates and use. The estimated operating cost is based on a national average [electricity, natural gas, propane, or oil] cost of [$__ per kWh, therm, or gallon]. For more information, visit *www.ftc.gov/energy.*''

(C) Clothes washers and dishwashers. The capacity of the model determined in accordance with § 305.7 and the estimated annual operating cost determined in accordance with § 305.5 and appendix K, and a disclosure stating ''Your energy cost depends on your utility rates and use. The estimated cost is based on [4 washloads a week for dishwashers, or 8 washloads a week for clothes washers] and [__] cents per kWh for electricity and $__ per therm for natural gas. For more information, visit *www.ftc.gov/energy.*''

(D) General service fluorescent lamps or general service lamps. All the information concerning that lamp required by § 305.15 of this part to be disclosed on the lamp's package, and a disclosure stating ''Your energy cost depends on your utility rates and use. The estimated cost and life is based on 11 cents per kWh and 3 hours of use per day. For more information, visit *www.ftc.gov/energy.*'' For the ''Light Appearance'' disclosure required by § 305.15(b)(3)(iv), the catalog need only disclose the lamp's correlated color temperature in Kelvin (e.g., 2700 K). General service fluorescent lamps or incandescent reflector lamps must also include a capital letter ''E'' printed within a circle and the statement described in § 305.15(d)(1).

(E) Ceiling fans. All the information required by § 305.13.

(F) Televisions. The estimated annual operating cost determined in accordance with § 305.5 and a disclosure stating ''Your energy cost depends on your utility rates and use. The estimated cost is based on [__] cents per kWh and 5 hours of use per day. For more information, visit *www.ftc.gov/energy.*''

(G) Furnaces, Central Air Conditioners, and Heat Pumps: The model's efficiency rating or ratings as disclosed on the label and a disclosure stating ''For more information, visit *www.ftc.gov/energy.*'' For split-system units, a disclosure stating ''This system's efficiency rating depends on the coil installed with this unit.'' For central air conditioners manufactured on or after January 1, 2015, the catalog must provide, in at least one location, the disclosures and graphics required by section 305.12(g)(11)&(12). For non-weatherized, mobile home, and electric furnaces and boilers manufactured after May 1, 2013, and all furnaces and

boilers manufactured after January 1, 2015, the catalog must disclose, in a clear and conspicuous fashion, the states in which specific models may be installed as indicated on the product's label prepared by the manufacturer pursuant to § 305.12.

(ii) Products not required to bear EnergyGuide or Lighting Facts labels. All paper catalogs advertising covered products not required by this Part to bear labels with specific design characteristics illustrated in appendix L (showerheads, faucets, water closets, urinals, fluorescent lamp ballasts, and metal halide lamp fixtures) must make a text disclosure for each covered product identical to those required for Internet disclosures under § 305.20(a)(1)(iii).

(2) Format. Unless otherwise indicated in this section, the required disclosures, whether text, label image, or icon, must appear clearly and conspicuously on each page that contains a detailed description of the covered product and its price. If a catalog displays an image of the full label, the size of the label may be altered to accommodate the catalog's design, as long as the label remains clear and conspicuous to consumers. For text disclosures made pursuant to § 305.20(b)(1)(i) and (ii), the required disclosure may be displayed once per page per type of product if the catalog offers multiple covered products of the same type on a page, as long as the disclosure remains clear and conspicuous.

(c) For split-system and single-package central air conditioners offered for sale after January 1, 2015, and any non-weatherized or mobile home furnace, the catalog (Web site or paper catalog) must contain the following statement conspicuously placed on the product page in close proximity to the link to the product's EnergyGuide label:

Federal law prohibits the installation of some [central air conditioners or furnaces] in certain states. Look to the EnergyGuide label to determine whether this product can be installed in your location.

* * * * *

5. Revise Appendices G1, G2, G3, G4, G5, G6, G7, and G8 and add Appendices G9 and G10 to read as follows:

APPENDIX G1 TO PART 305—FURNACES—NON-WEATHERIZED GAS

Manufacturer's rated heating capacities (Btu/h)	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
All Capacities	80.0	98.5

APPENDIX G2 TO PART 305—FURNACES—WEATHERIZED GAS

Manufacturer's rated heating capacities (Btu/h)	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
All Capacities	78.0	96.6

APPENDIX G3 TO PART 305—FURNACES—ELECTRIC

Manufacturer's rated heating capacities (Btu/h)	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
All Capacities	100	100

APPENDIX G4 TO PART 305—FURNACES—NON-WEATHERIZED OIL

Manufacturer's rated heating capacities (Btu/h)	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
All Capacities	83.0	95.4

APPENDIX G5 TO PART 305—FURNACES—WEATHERIZED OIL

Manufacturer's rated heating capacities (Btu/h)	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
All Capacities	78.0	86.1

APPENDIX G6 TO PART 305—MOBILE HOME FURNACES—GAS

Manufacturer's rated heating capacities (Btu/h)	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
All Capacities	80.0	96.5

APPENDIX G7 TO PART 305—MOBILE HOME FURNACES—OIL

Manufacturer's rated heating capacities (Btu/h)	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
All Capacities	75.0	86.6

APPENDIX G8 TO PART 305—BOILERS (GAS)

Manufacturer's rated heating capacities (Btu/h)	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
All Capacities	78.0	98.0

APPENDIX G9 TO PART 305—BOILERS (OIL)

Manufacturer's rated heating capacities (Btu/h)	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
All Capacities	80.0	96.0

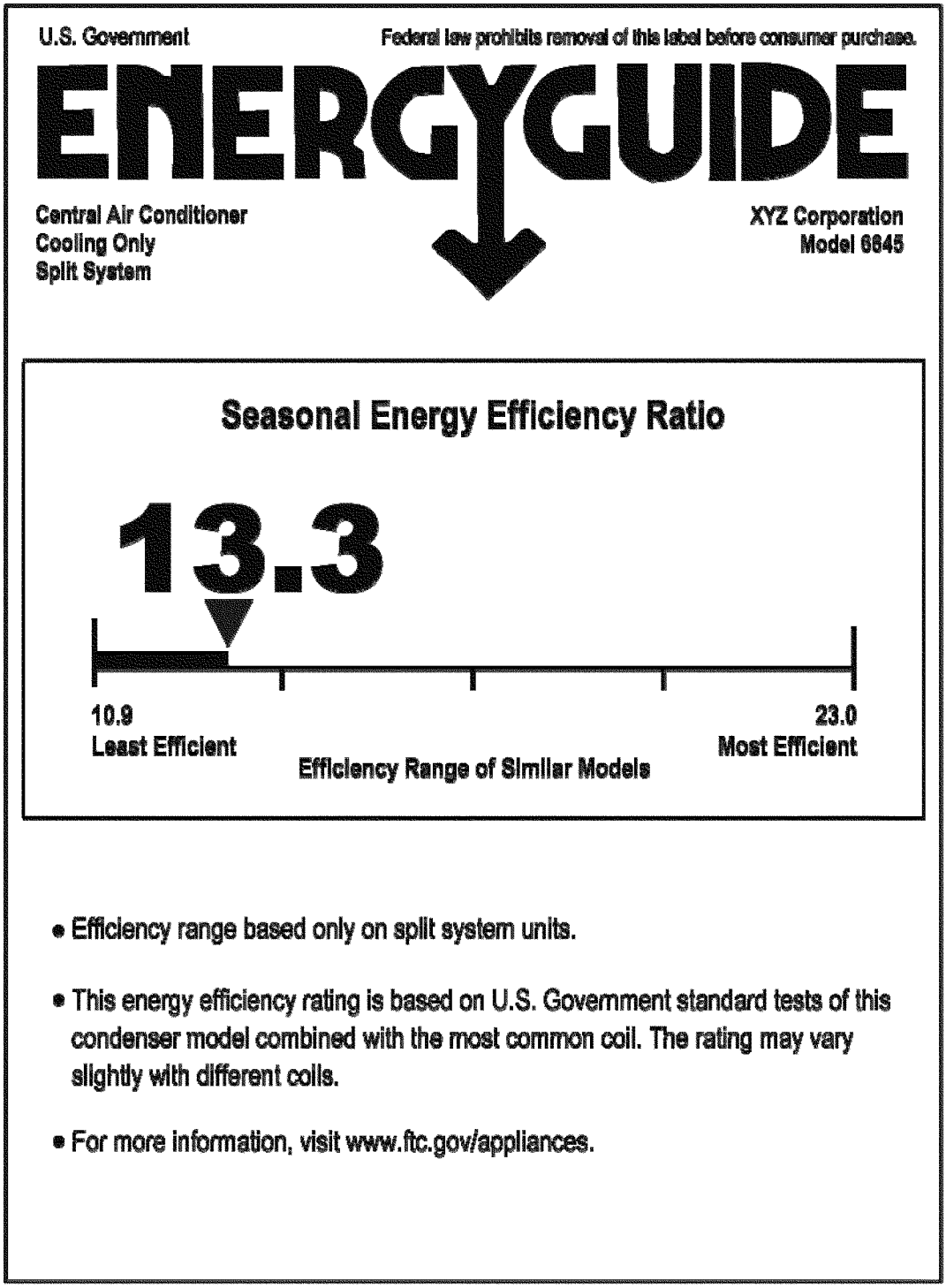
APPENDIX G10 TO PART 305—BOILERS (ELECTRIC)

Manufacturer's rated heating capacities (Btu/h)	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
All Capacities	100	100

6. In Appendix L, Sample Label 7 is revised, Sample Label 7A is added, Sample Label 8 is revised, Sample Label 8A is added, Sample Label 9 is revised, and Sample Labels 9A and 9B are added to read as follows:

* * * * *

BILLING CODE 6750–01–P



Sample Label 7 - Split-System Central Air Conditioner (models manufactured before January 1, 2015)

U.S. Government

Federal law prohibits removal of this label before consumer purchase.

ENERGYGUIDE

Central Air Conditioner
Cooling Only
Split System

XYZ Corporation
Model HC47
Capacity 57,000 Btu/h

Efficiency Rating *

13.0-14.2

13.0 | | 24.5

Least Efficient — Most Efficient

Range of Similar Models

* Seasonal Energy Efficiency Ratio (SEER)

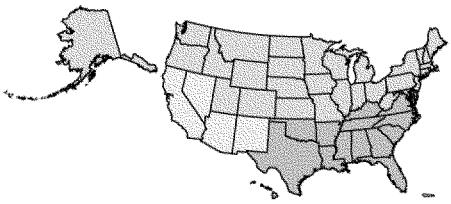
This system's efficiency rating depends on the coil your contractor installs with this unit. Ask for details.

For energy cost info, visit

ftc.gov/energy

Notice

The installed system must meet minimum federal regional efficiency standards.
See **regulations.doe.gov/certification** for certified coil combinations.



Minimum Standards

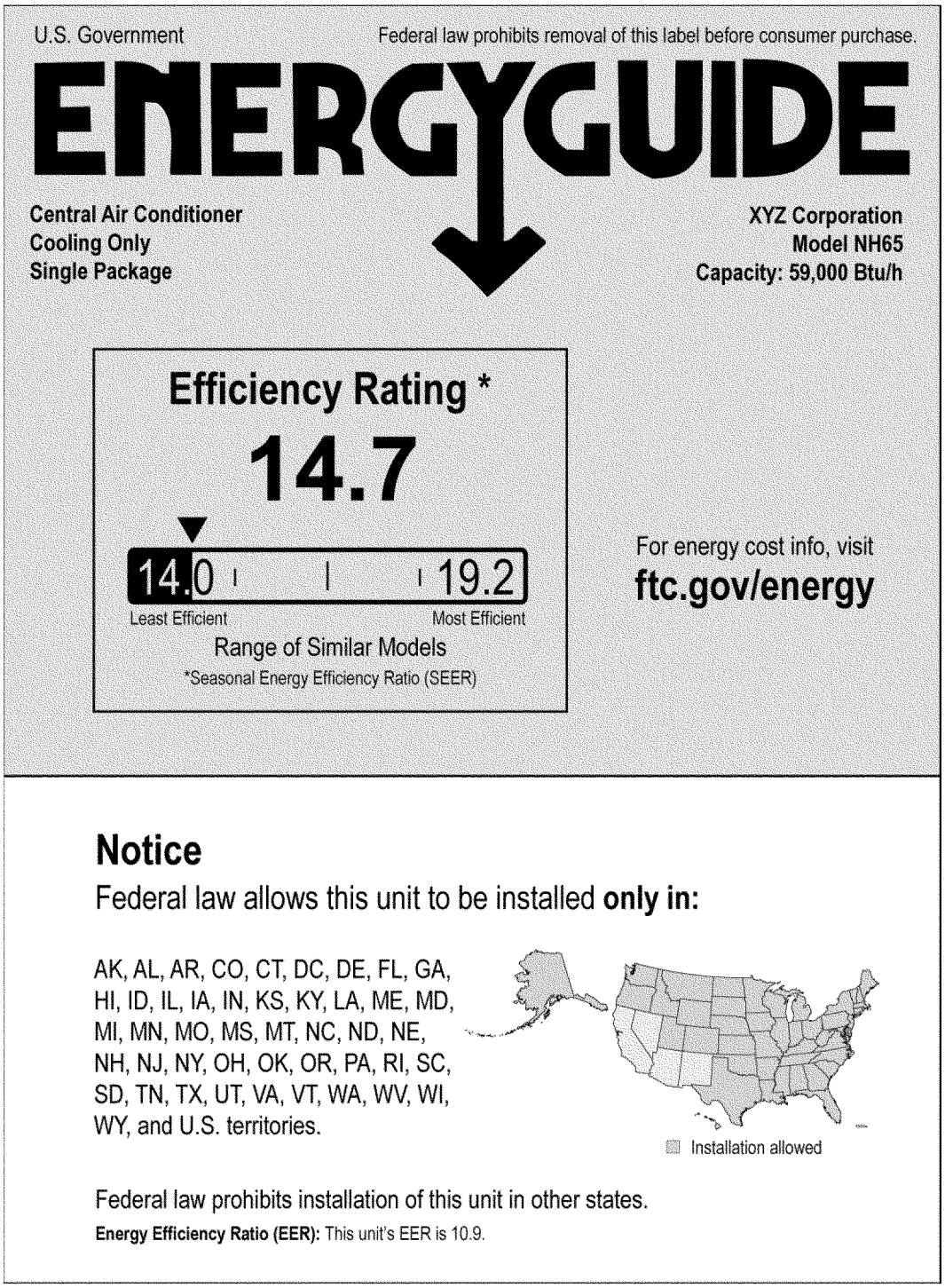
	North	Southeast	Southwest
SEER	13	14	14
EER †			12.2
EER ††			11.7

† Units with rated capacity of less than 45,000 btu/h
†† Units with rated capacity equal to or greater than 45,000 btu/h

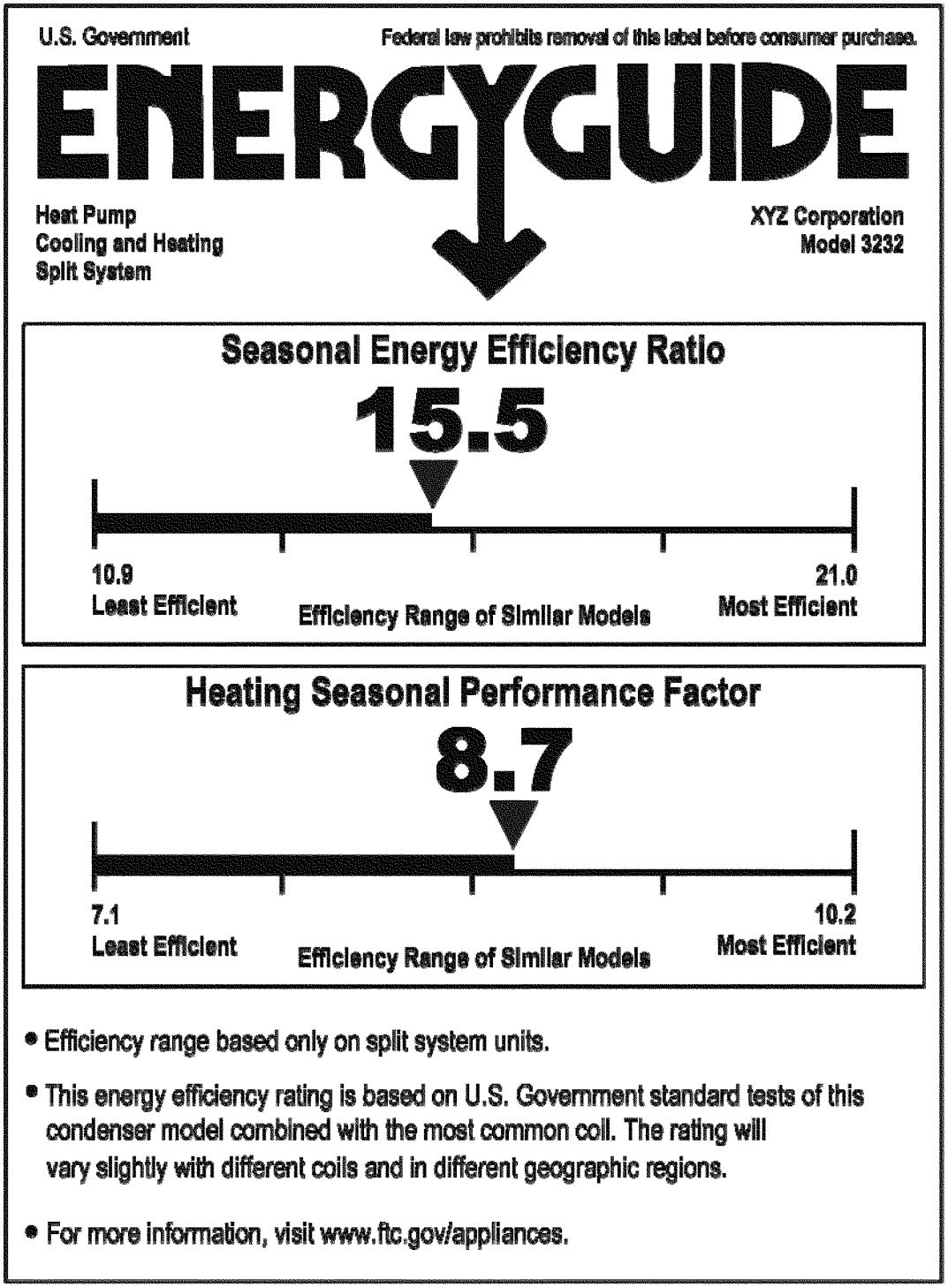
Southeast: AL, AR, DC, DE, FL, GA, HI, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA, U.S. Territories
Southwest: AZ, CA, NM, NV
North: AK, CO, CT, ID, IL, IA, IN, KS, ME, MI, MN, MO, MT, ND, NE, NH, NJ, NY, OH, OR, PA, RI, SD, UT, VT, WA, WV, WI, WY

Energy Efficiency Ratio (EER): The installed system's EER could range from 11.4 to 12.5., depending on the coil installed with this unit.

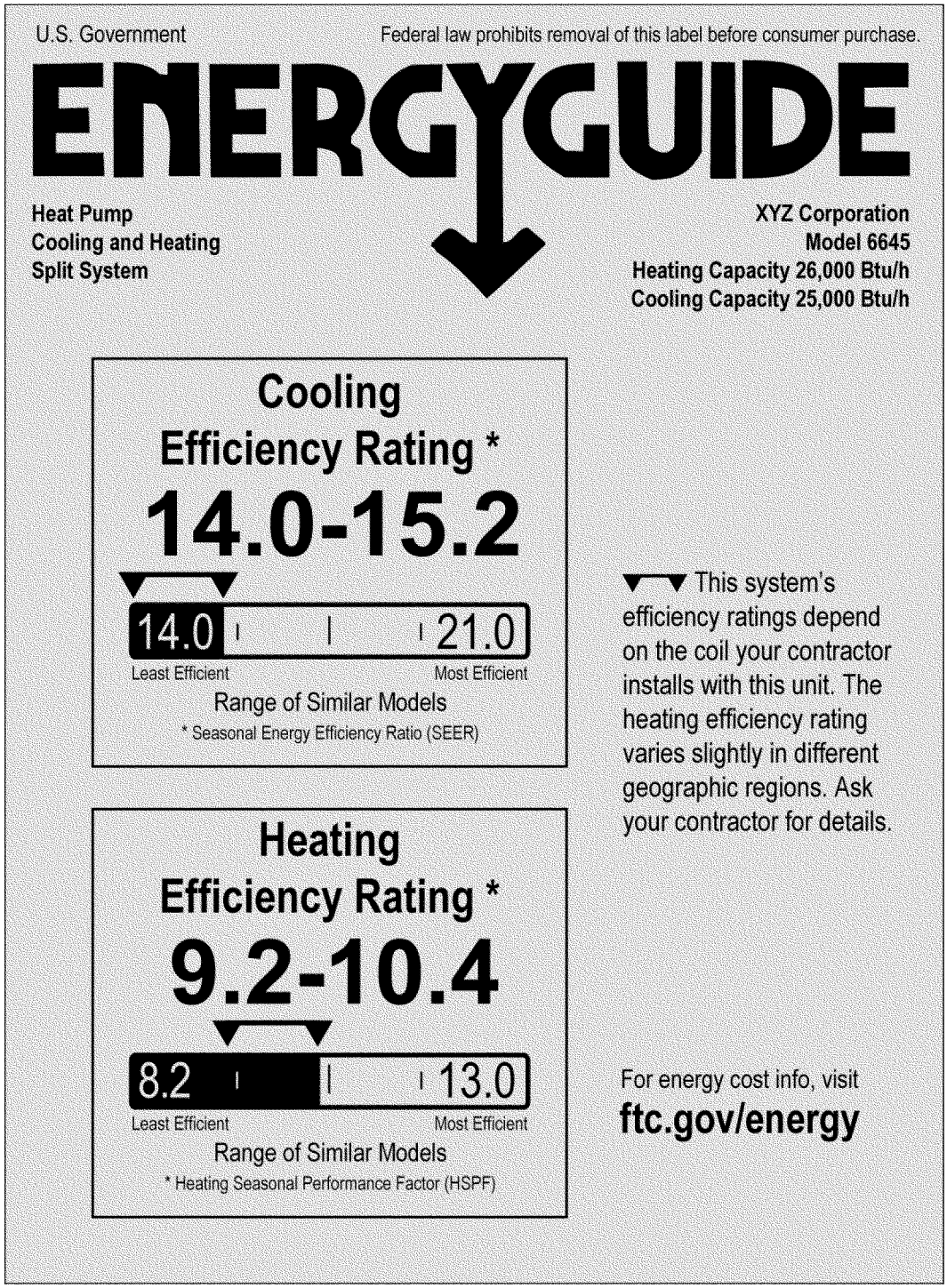
Sample Label 7A Split-System Central Air Conditioner (models manufactured after January 1, 2015)



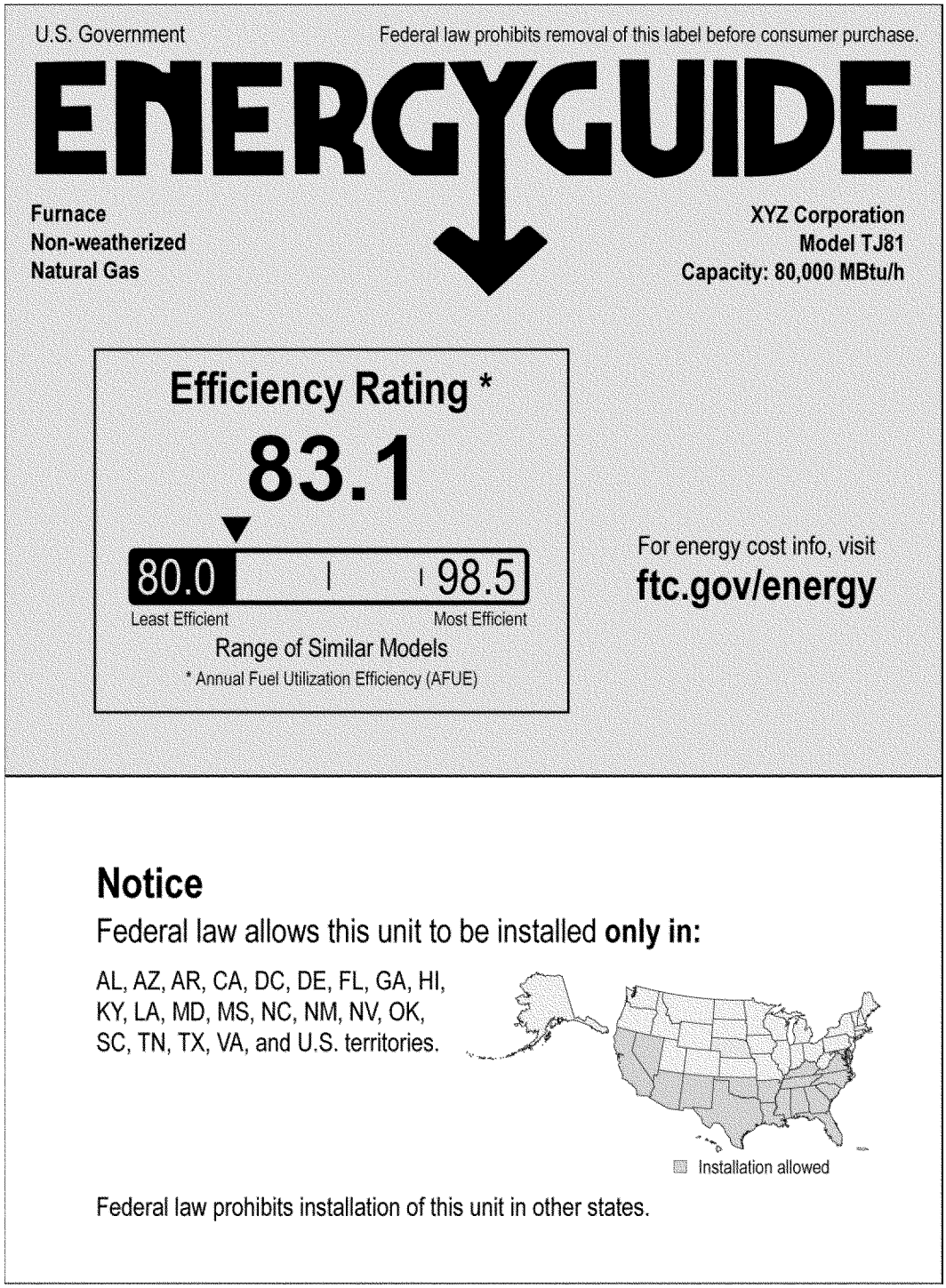
Sample Label 7B Single-Package Central Air Conditioner (models manufactured after January 1, 2015)



Sample Label 8 – Split-system Heat Pump (only for units manufactured before January 1, 2015)



Sample Label 8A – Split-system Heat Pump (only for units manufactured on or after January 1, 2015)



Sample Label 9 – Non-weatherized Gas Furnace (below 90 AFUE)

U.S. Government

Federal law prohibits removal of this label before consumer purchase.

ENERGYGUIDE

Furnace
Non-weatherized
Natural Gas

XYZ Corporation
Model 5XC4
Capacity: 62,000 MBtu/h

Efficiency Rating *

93.0

80.0 | | 98.5

Least Efficient — Most Efficient

Range of Similar Models

* Annual Fuel Utilization Efficiency (AFUE)

For energy cost info, visit

ftc.gov/energy

Notice

Federal law allows this unit to be installed in all U.S. states and territories.

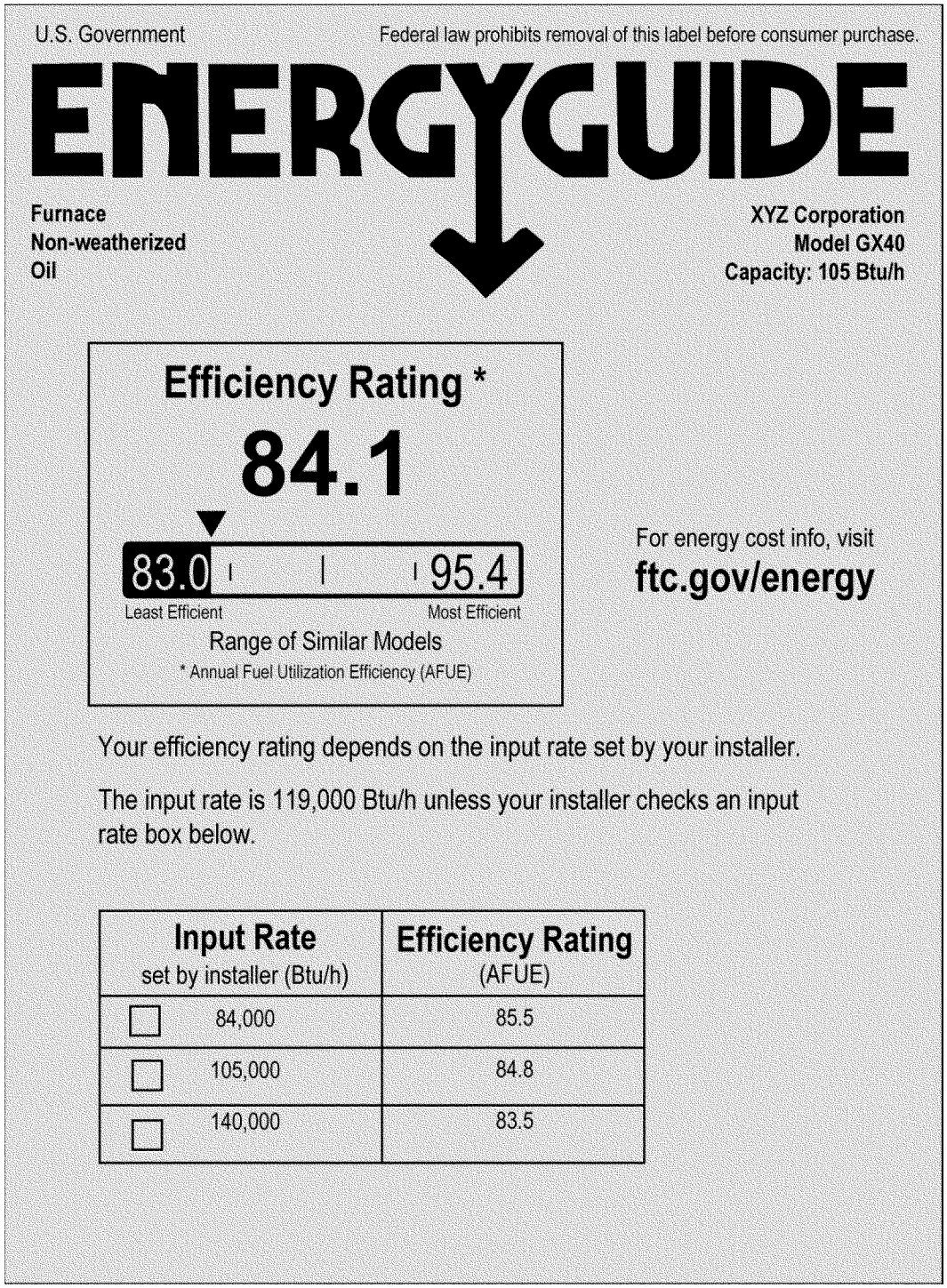
ENERGY STAR

QUALIFIED ONLY IN

U.S. SOUTH: AL, AZ, AR, CA, DC, DE, FL, GA, HI, KY, LA, MD, MS, NV, NM, NC, OK, SC, TN, TX, VA

QUALIFIED

Sample Label 9A – Non-weatherized Gas Furnace (AFUE of 90 or greater)



Sample Label 9B – Non-weatherized Oil Furnaces

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–13626 Filed 6–5–12; 8:45 am]

BILLING CODE 6750–01–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0153; FRL–9682–3]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Tennessee: Knoxville; Determination of Attaining Data for the 1997 Annual Fine Particulate Matter Standards and 2006 24-Hour Fine Particulate Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make two determinations, one regarding the Knoxville, Tennessee, 1997 annual fine particulate ($PM_{2.5}$) nonattainment area and one regarding the Knoxville-Sevierville-La Follette, Tennessee, 2006 24-hour $PM_{2.5}$ nonattainment area (both areas have the same geographic boundary and will hereafter be collectively referred to as the ''Knoxville Area'' or ''Area''). First, EPA is proposing to determine that the Area has attained the 1997 annual average $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS or ''standard''). Second, EPA is proposing to determine that the area has attained the 2006 24-hour $PM_{2.5}$ NAAQS. These proposed determinations of attaining data are based upon complete, quality-assured and certified ambient air monitoring data for the 2009–2011 period, showing that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS and 2006 24-hour $PM_{2.5}$ NAAQS. If EPA finalizes these proposed determinations of attaining data, the requirements for the Area to submit attainment demonstrations and associated reasonably available control measures (RACM), reasonable further progress (RFP) plans, contingency measures, and other planning state implementation plan (SIP) revisions related to attainment of the standards shall be suspended so long as the Area continues to attain the respective $PM_{2.5}$ NAAQS.

DATES: Comments must be received on or before July 6, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0153, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9040.
4. *Mail:* EPA–R04–OAR–2010–0153, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2010–0153. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sara Waterson or Joel Huey, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Waterson may be reached by phone at (404) 562–9061 or via electronic mail at *waterson.sara@epa.gov.* Mr. Huey may be reached by phone at (404) 562–9104. Mr. Huey can also be reached via electronic mail at *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What actions is EPA taking?

EPA is proposing to determine that the Knoxville Area (comprised of Anderson, Blount, Knox, and Loudon Counties in their entireties and a portion of Roane County) have monitored attaining data for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. The proposal is based upon complete, quality-assured and certified ambient air monitoring data for the 2009–2011 monitoring period.

II. What is the background for these actions?

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m³) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA also established a 24-hour NAAQS of 65 μg/m³. See 40 CFR 50.7. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Knoxville Area was designated nonattainment for the 1997 annual $PM_{2.5}$ NAAQS. See 40 CFR 81.343.

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a 24-hour NAAQS of 35 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the Clean Air Act (CAA). EPA and state air quality agencies initiated the monitoring process for the $PM_{2.5}$ NAAQS in 1999 and began operating all air quality monitors by January 2001. On November 13, 2009, EPA published its air quality designations and classifications for the 2006 24-hour $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2006–2008 (74 FR 58688). Those designations became effective on December 14, 2009. The Knoxville Area was designated nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS (see 40 CFR part 81).[1]

In response to legal challenges of the annual NAAQS promulgated in 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded this NAAQS to EPA for further consideration. *See American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 annual NAAQS are essentially identical, attainment of the 1997 annual NAAQS would also indicate attainment of the remanded 2006 annual NAAQS.

On April 25, 2007 (72 FR 20664), EPA promulgated its $PM_{2.5}$ implementation rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and tribal plans to implement the 1997 $PM_{2.5}$ NAAQS. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of attaining the NAAQS, as discussed below. While 40 CFR 51.1004(c) was promulgated as part of a set of regulations addressing the $PM_{2.5}$ NAAQS promulgated in 1997, EPA believes that the same approach is warranted with respect to the $PM_{2.5}$ NAAQS promulgated in 2006. See ''Implementation Guidance for the 2006 24–Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' March 2, 2012, available online at *http://www.epa.gov/ttn/naaqs/pm/pm25_guide.html.*

III. Does the Knoxville Area meet the 1997 annual $PM_{2.5}$ NAAQS?

A. Criteria

Today's proposed rulemaking assesses whether the Knoxville Area has attained the 1997 annual $PM_{2.5}$ NAAQS, based on the most recent three years of quality-assured data. Under EPA regulations at 40 CFR 50.7, the 1997 annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 μg/m³ at all relevant monitoring sites in the subject area.

B. Knoxville Area Air Quality

EPA has reviewed the ambient air monitoring data for the Knoxville Area in accordance with the provisions of 40 CFR part 50, Appendix N. All data considered have been quality-assured, certified, and recorded in EPA's Air Quality System (AQS) database. The 2009–2011 data are used for the determination of attaining data because that is the most recent period of certified data available to EPA.

Table 1 and the related discussion below show that the Area is attaining the standard based on available data for 2009–2011. Less than 75 percent of the data were collected at the Bearden Middle School site for the second quarter of 2009 and the fourth quarter for 2010. EPA performed a quarterly maximum data substitution test using 40 CFR part 50 Appendix N and the April 1999 *Guideline on Data Handling Conventions for the PM NAAQS* (*www.epa.gov/ttncaaa1/t1/memoranda/pmfinal.pdf*) for the Bearden Middle School monitor for the quarters with less than 75 percent complete data. Less than 75 percent of the data were collected at the Air Lab site for the first quarter of 2010. Coarse particular matter (PM_{10}) data substitution, using the April 1999 *Guideline on Data Handling Conventions for the PM NAAQS* (*www.epa.gov/ttncaaa1/t1/memoranda/pmfinal.pdf*), was applied at the Air Lab site because a PM_{10} sampler is co-located at the site. PM_{10} data substitution was used instead of max value substitution because the substituted values were higher. The three-year annual design values both with and without data substitution are provided in Table 1 below. EPA's review of these data indicates that the Knoxville Area has met the 1997 annual $PM_{2.5}$ NAAQS.

TABLE 1—2009–2011 ANNUAL AVERAGE $PM_{2.5}$ CONCENTRATIONS FOR MONITORS IN THE KNOXVILLE, TENNESSEE NONATTAINMENT AREA

Location	Site No.	Annual average concentration (μg/m³) without data substitution	Annual average concentration (μg/m³) with data substitution
Sevier Elementary School	47–009–0011	11.0	N/A
Bearden Middle School	47–093–0028	11.6	12.4
Air Lab	47–093–1013	12.3	12.9
Rule High School	47–093–1017	12.1	N/A

[1] On February 3, 2011, EPA made a technical correction to the name of the Knoxville, Tennessee, nonattainment area included in the November 13, 2009 (74 FR 58688), **Federal Register** action designating nonattainment areas for the 2006 24-hour $PM_{2.5}$ NAAQS. The name of the Knoxville, Tennessee, nonattainment area for this NAAQS was changed at 40 CFR 81.343 to be the Knoxville-Sevierville-La Follette, Tennessee, nonattainment area to correspond with the name of the Core Based Statistical Area and to provide an accurate area name in the CFR. *See* 76 FR 6056, February 3, 2011. The geographic boundaries of the Knoxville-Sevierville-La Follette nonattainment area for the 24-hour $PM_{2.5}$ NAAQS are the same as for the Knoxville nonattainment area for the annual $PM_{2.5}$ NAAQS.

TABLE 1—2009–2011 ANNUAL AVERAGE $PM_{2.5}$ CONCENTRATIONS FOR MONITORS IN THE KNOXVILLE, TENNESSEE NONATTAINMENT AREA—Continued

Location	Site No.	Annual average concentration (μg/m³) without data substitution	Annual average concentration (μg/m³) with data substitution
Spring Hill Elementary School	47–093–1020	11.3	N/A
Webb Drive	47–105–0108	11.7	N/A

N/A—Not Applicable.

The Bearden Middle School monitor has a preliminary 2009–2011 $PM_{2.5}$ annual design value of 11.6 μg/m³. Since the monitor had incomplete quarters during the second quarter of 2009 and fourth quarter of 2010, quarterly maximum data substitution was conducted. The annual mean was recalculated, and the resulting 2009–2011 $PM_{2.5}$ annual design value with data substitution is 12.4 μg/m³. The Air Lab monitor has a preliminary 2009–2011 $PM_{2.5}$ annual design value of 12.3 μg/m³. The monitor had one incomplete quarter during the first quarter of 2010, and PM_{10} data substitution was conducted. The annual mean was recalculated, and the resulting 2009–2011 $PM_{2.5}$ annual design value with data substitution is 12.9 μg/m³. Because the design values with data substitution are below the 15.0 μg/m³ standard, both monitors are considered to be attaining the 1997 annual NAAQS. The official design values of the monitors are 11.6 μg/m³ and 12.3 μg/m³, respectively. On the basis of this review, EPA is proposing to determine that the Knoxville Area has attained the 1997 annual $PM_{2.5}$ NAAQS.

C. Has the Knoxville Area met the 1997 annual $PM_{2.5}$ air quality standard?

EPA has reviewed the ambient air monitoring data for $PM_{2.5}$, consistent with the requirements contained in 40 CFR part 50 and recorded the data in the EPA AQS database, for the Knoxville Area. Based on EPA's review of the data for 2009–2011, EPA proposes to determine that the Area attained the 1997 annual $PM_{2.5}$ NAAQS.

IV. Does the Knoxville Area meet the 2006 24-hour $PM_{2.5}$ NAAQS?

A. Criteria

Today's proposed rulemaking assesses whether the Knoxville Area has attained the 2006 24-hour $PM_{2.5}$ NAAQS, based on the most recent three years of quality-assured data. Under EPA regulations at 40 CFR 50.13, the 2006 24-hour primary and secondary $PM_{2.5}$ standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 35 μg/m³ at all relevant monitoring sites in the subject area.

B. Knoxville Area Air Quality

EPA has reviewed the ambient air monitoring data for the Knoxville Area in accordance with the provisions of 40 CFR part 50, Appendix N. All data considered have been quality-assured, certified, and recorded in EPA's AQS database. The 2009–2011 data are used for the determination of attaining data because that is the most recent period of certified data available to EPA.

Table 2 and the related discussion below show that the Area is attaining the standard based on available data for 2009–2011. Less than 75 percent of the data were collected at the Bearden Middle School site for the second quarter of 2009 and the fourth quarter for 2010. EPA performed a quarterly maximum data substitution test using 40 CFR part 50 Appendix N and the April 1999 *Guideline on Data Handling Conventions for the PM NAAQS* (*www.epa.gov/ttncaaa1/t1/memoranda/pmfinal.pdf*) for the Bearden Middle School monitor for the quarters with less than 75 percent complete data. Less than 75 percent of the data were collected at the Air Lab site for the first quarter of 2010. Coarse particulate matter (PM_{10}) data substitution, using the April 1999 *Guideline on Data Handling Conventions for the PM NAAQS* (*www.epa.gov/ttncaaa1/t1/memoranda/pmfinal.pdf*), was applied at the Air Lab site because a PM_{10} sampler is co-located at the site. PM_{10} data substitution was used instead of max value substitution because the substituted values were higher. The three-year annual design values both with and without data substitution are provided in Table 2 below. EPA's review of these data indicates that the Knoxville Area has met the 2006 24-hour $PM_{2.5}$ NAAQS.

TABLE 2—2009–2011 24-HOUR AVERAGE $PM_{2.5}$ CONCENTRATIONS FOR MONITORS IN THE KNOXVILLE, TENNESSEE NONATTAINMENT AREA

Location	Site No.	Annual average concentration (μg/m³) without data substitution	Annual average concentration (μg/m³) with data substitution
Sevier Elementary School	47–009–0011	21	N/A
Bearden Middle School	47–093–0028	24	27
Air Lab	47–093–1013	24	29
Rule High School	47–093–1017	24	N/A
Spring Hill Elementary School	47–093–1020	23	N/A
Webb Drive	47–105–0108	24	N/A

N/A—Not Applicable.

The Bearden Middle School monitor has a preliminary 2009–2011 $PM_{2.5}$ 24-hour design value of 24 μg/m³. Since the monitor had incomplete quarters during the second quarter of 2009 and fourth quarter of 2010, quarterly maximum

data substitution was conducted. The 24-hour mean was recalculated, and the resulting 2009–2011 $PM_{2.5}$ 24-hour design value with data substitution is 27 μg/m³. The Air Lab monitor has a preliminary 2009–2011 $PM_{2.5}$ 24-hour design value of 24 μg/m³. The monitor had one incomplete quarter during the first quarter of 2010, and PM_{10} data substitution was conducted. The 24-hour mean was recalculated, and the resulting 2009–2011 $PM_{2.5}$ 24-hour design value with data substitution is 29 μg/m³. Because the design values with data substitution are below the 35 μg/m³ standard, both monitors are considered to be attaining the 2006 24-hour NAAQS. The official design values of the monitors are 24 μg/m³ and 24 μg/m³, respectively. On the basis of this review, EPA is proposing to determine that the Knoxville Area has attained the 2006 24-hour $PM_{2.5}$ NAAQS.

C. Has the Knoxville Area met the 2006 24-hour $PM_{2.5}$ air quality standard?

EPA has reviewed the ambient air monitoring data for $PM_{2.5}$, consistent with the requirements contained in 40 CFR part 50 and recorded the data in the EPA AQS database, for the Knoxville Area. Based on EPA's review of the data for 2009–2011, EPA proposes to determine that the Area attained the 2006 24-hour $PM_{2.5}$ NAAQS.

V. What is the effect of these actions?

If these proposed determinations of attaining data are made final, the requirements for the Knoxville Area to submit attainment demonstrations and associated RACM, RFP plans, contingency measures, and any other planning SIPs related to attainment of either the 1997 annual or the 2006 24-hour $PM_{2.5}$ NAAQS would be suspended for so long as the Area continues to attain the applicable $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1004(c). Notably, as described below, any such determination would not be equivalent to the redesignation of the Area to attainment for the 1997 annual or 2006 24-hour $PM_{2.5}$ NAAQS.

If these proposed rulemakings are finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the Area has violated either the 1997 annual or 2006 24-hour $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements would no longer exist for the Knoxville Area for the NAAQS (i.e, the 1997 annual or the 2006 24-hour NAAQS) which was violated, and the Area would thereafter have to address the applicable requirements for that particular NAAQS. *See* 40 CFR 51.1004(c).

Finalizing these proposed actions would not constitute a redesignation of the Area to attainment of the 1997 annual or 2006 24-hour $PM_{2.5}$ NAAQS under section 107(d)(3) of the CAA. Further, finalizing these proposed actions does not involve approving a maintenance plan for the Area as required under section 175A of the CAA, nor would it find that the Area has met all other requirements for redesignation. Even if EPA finalizes the proposed actions, the designation status of the Knoxville Area would remain nonattainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Area.

If the Knoxville Area continues to monitor attainment of the 1997 annual $PM_{2.5}$ NAAQS, the requirements for the Knoxville Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS will remain suspended. Further, if the Knoxville Area continues to monitor attainment of the 2006 24-hour $PM_{2.5}$ NAAQS, the requirements for the Knoxville Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS will remain suspended.

VI. Statutory and Executive Order Reviews

These actions propose to make determinations of attaining data based on air quality, and would, if finalized, result in the suspension of certain federal requirements, and it would not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not ''significant regulatory actions'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, these proposed 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS determinations for the Knoxville Area do 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.

For purposes of judicial review, the two determinations proposed by today's action are severable from one another.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 17, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–13715 Filed 6–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0227; FRL–9681–7]

Approval and Promulgation of Implementation Plans; Kentucky; Approval of Revisions to the Jefferson County Portion of the Kentucky SIP; New Source Review; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve multiple revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), to EPA in two submittals dated June 1, 2009, and February 8, 2011. These proposed revisions were submitted by KDAQ on behalf of the Louisville Metro Air Pollution Control District (LMAPCD), (also referred to as Jefferson County) and modifies the LMAPCD New Source Review (NSR) Prevention of Significant Deterioration (PSD) permitting regulations. The proposed revisions incorporate by reference (IBR) federal NSR PSD requirements promulgated in the Greenhouse Gas (GHG) Tailoring Rule (hereafter referred to as the ''GHG Tailoring Rule''), requirements for the fine particulate matter (also known as $PM_{2.5}$) national ambient air quality standards (NAAQS) as amended in EPA's 2008 NSR $PM_{2.5}$ Implementation Rule (hereafter referred to as the ''NSR $PM_{2.5}$ Rule''), the 1997 8-Hour Ozone NAAQS Implementation Rule NSR Update Phase II (hereafter referred to as the ''Phase II Rule''), and the 2002 NSR Reform Rule, into the Jefferson County portion of the Kentucky SIP. EPA is proposing approval of Jefferson County's June 1, 2009, and February 8, 2011, SIP revisions because the Agency has determined that these SIP revisions are in accordance with the Clean Air Act (CAA or Act) and EPA regulations regarding the PSD permitting program.

DATES: Comments must be received on or before July 6, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2011–0227 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2011–0227, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2011–0227.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Jefferson County portion of the Kentucky SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Bradley's telephone number is (404) 562–9352; email address: *bradley.twunjala@epa.gov.* For information regarding the GHG Tailoring Rule, 2002 NSR Reform and NSR $PM_{2.5}$ Rule, contact Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams' telephone number is (404) 562–9214; email address: *adams.yolanda@epa.gov.* For information regarding the Phase II Rule and ozone NAAQS, contact Jane Spann, Regulatory Development Section, at the same address above. Ms. Spann's telephone number is (404) 562–9029; email address: *spann.jane@epa.gov.* For information regarding the $PM_{2.5}$ NAAQS, contact Mr. Joel Huey, Regulatory Development Section, at the same address above. Mr. Huey's telephone number is (404) 562–9104; email address: *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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VI. What is EPA's proposed action for the automatic rescission clause?
VII. Proposed Actions
VIII. Statutory and Executive Order Reviews

I. What actions are proposed in this notice?

On June 1, 2009, and February 8, 2011, the Commonwealth of Kentucky through the KDAQ (and on behalf of LMAPCD) submitted two SIP revisions to EPA for approval into the Jefferson County portion of the Kentucky SIP to adopt federal NSR PSD permitting requirements. The SIP revisions consist of changes to the LMAPCD Air Quality Regulations, Regulation 2 Permit Requirements: Regulation 2.05—Prevention of Significant Deterioration

of Air Quality and address several NSR PSD permitting requirements promulgated at 40 CFR 52.21. Specifically, the June 1, 2009, SIP revision: (1) Incorporates provisions for implementing the PSD program for the $PM_{2.5}$ NAAQS as promulgated in the NSR $PM_{2.5}$ Rule,[1] 73 FR 28321 (May 16, 2008); (2) adopts PSD provisions related to the implementation of the 1997 8-hour ozone Phase II Rule including nitrogen oxides (NO_X) as a precursor to ozone, 70 FR 71612 (November 29, 2005); and (3) adopts federal PSD regulations established in the 2002 NSR Reform Rules, 67 FR 80186 (December 31, 2002) and the NSR Reasonable Possibility Rule, 72 FR 72607 (December 21, 2007). These PSD permitting provisions became effective in Jefferson County on May 20, 2009. The February 8, 2011, SIP revision provides Jefferson County with the authority to regulate GHG under its PSD program and establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to LMAPCD's PSD permitting requirements for their GHG emissions as promulgated in the GHG Tailoring Rule, 75 FR 31514 (June 3, 2010). These GHG PSD applicability provisions became effective in Jefferson County on November 17, 2010. In addition, the February 8, 2011, submittal adopts a provision that would automatically render Jefferson County's Regulation 2.05 or a portion thereof invalid in the wake of certain court decisions or other events (the ''automatic rescission clause''). Approval of Jefferson County's GHG permitting regulations also includes a proposal to simultaneously rescind the federal implementation plan (FIP) that EPA promulgated on January 14, 2011. *See* 76 FR 2581. For more information on the Jefferson County FIP see Section II of this rulemaking. Pursuant to section 110 of the CAA, EPA is proposing to approve these changes into the Jefferson County portion of the Kentucky SIP.

In addition to incorporating the changes discussed above, Jefferson County's SIP revisions also include PSD permitting provisions that: (1) Exclude facilities that produce ethanol through a natural fermentation process from the definition of ''chemical process plants'' in the major NSR source permitting program as amended in the Ethanol Rule, 72 FR 24060 (May 1, 2007); and (2) IBR changes pursuant to EPA's Fugitive Emissions Rule, 73 FR 77882 (December 19, 2008).[2] In today's proposed rulemaking, EPA is not proposing to take action on LMAPCD's changes to its PSD regulations to adopt provisions promulgated in the Ethanol Rule nor is EPA proposing to take action on LMAPCD's changes to incorporate the provisions of the Fugitive Emission Rule.

LMAPCD IBR the federal PSD permitting requirements found at 40 CFR 52.21 to update its permitting program at Regulation 2.05. Jefferson County's practice for revising its PSD regulations is to IBR into its SIP the version of the Code of Federal Regulations (at 40 CFR 52.21) that is in effect as of a specified date. LMAPCD's Regulation 2.05 contains the preconstruction review program that provides for the prevention of significant deterioration of ambient air quality as required under part C of title I of the CAA (the PSD program). Jefferson County's June 1, 2009, SIP revision, which provided version 9 of LMAPCD's Regulation 2.05, IBR the federal PSD regulations as set forth at 40 CFR 52.21, and as amended as of July 1, 2008. Subsequently, the February 8, 2011, SIP revision, which provided version 10 of LMAPCD's Regulation 2.05, IBR federal PSD regulations as set forth at 40 CFR 52.21, and as amended as of July 1, 2010, thereby superseding version 9 of Regulation 2.05. Throughout this rulemaking, EPA will refer to the June 1, 2009, and February 8, 2011, SIP revisions as the ''Jefferson County's SIP revisions.''

II. What is EPA's proposed action for GHG-emitting sources?

On February 8, 2011, KDAQ submitted a request to EPA to approve changes to the Jefferson County portion of the Kentucky SIP to incorporate federal requirements for NSR PSD permitting. These adopted rules became effective in Jefferson County on November 17, 2010. These amendments provide Jefferson County with the authority to regulate GHG under its PSD program and establish PSD applicability thresholds for GHG emissions in LMAPCD's PSD regulations at the same emissions thresholds and in the same timeframes as those specified by EPA in the GHG Tailoring Rule. By incorporating the GHG Tailoring Rule thresholds into the Jefferson County portion of the Kentucky SIP, KDAQ is ensuring that smaller GHG sources emitting less than these thresholds will not be subject to PSD permitting requirements for their GHG emissions. In today's action, pursuant to section 110 of the CAA, EPA is proposing to approve these changes into the Jefferson County portion of the Kentucky SIP.[3] Approval of Jefferson County's GHG permitting regulations also includes a proposal to simultaneously rescind the FIP that EPA promulgated on January 14, 2011. *See* 76 FR 2581. More information regarding Jefferson County's FIP is summarized below. This section briefly summarizes EPA's GHG-related actions that provide the background for today's proposed action. More detailed discussion of the background is found in the preambles for those actions cited herein.

A. Background

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part are distinct from one another, establish the overall framework for today's final action on the Jefferson County portion of the Kentucky SIP. Four of these actions include, as they are commonly called, the ''Endangerment Finding'' and ''Cause or Contribute Finding,''[4] which EPA issued in a single final action; the ''Johnson Memo Reconsideration;''[5] the ''Light-Duty Vehicle Rule;''[6] and the ''Tailoring Rule.'' Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines;

[1] With respect to the NSR $PM_{2.5}$ Rule, Phase II Rule and NSR Reform, Jefferson County's SIP revisions only address PSD requirements at Regulation 2.05. The nonattainment NSR (NNSR) provisions for Jefferson County (Regulation 2.04) for these provisions are still under development by LMAPCD.

[2] On March 31, 2010, EPA stayed the Fugitive Emissions Rule (73 FR 77882) for 18 months to October 3, 2011, to allow the Agency time to propose, take comment and issue a final action regarding the inclusion of fugitive emissions in NSR applicability determinations. This stay was established as a result of EPA granting the Natural Resource Defense Council's petition for reconsideration on the original Fugitive Emissions Rule. *See* 73 FR 77882 (December 19, 2008). On March 30, 2011 (76 FR 17548), EPA proposed an interim rule which superseded the March 31, 2010, stay and clarified and extended the stay of the Fugitive Emission Rule until EPA completes its reconsideration. The interim rule simply reverts the CFR text back to the language that existed prior to the Fugitive Emissions Rule changes in the December 19, 2008, rulemaking. EPA plans to issue a final rule affirming the interim rule as final. The final rule will remain in effect until EPA completes its reconsideration.

[3] The GHG Tailoring Rule also applies to the title V program, which requires operating permits for existing sources. However, today's action does not affect LMAPCD's title V program.

[4] ''Endangerment and Cause or Contribute Finding for Greenhouse Gases Under Section 202(a) of the Clean Air Act.'' 74 FR 66496 (December 15, 2009).

[5] ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.'' 75 FR 17004 (April 2, 2010).

[6] ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.'' 75 FR 25324 (May 7, 2010).

determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the GHG Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. In the GHG Tailoring Rule, EPA tailored the applicability criteria that determine which GHG emission sources become subject to the PSD program of the CAA to relieve overwhelming permitting burdens that would, in the absence of the rule, fall on permitting authorities and sources. *See* 75 FR 31514, (June 3, 2010). As EPA explained in the GHG Tailoring Rule, the threshold limitations are necessary because without them PSD would apply to all stationary sources that emit or have the potential to emit more than 100 or 250 tons of GHG per year as of January 2, 2011. January 2, 2011, was the date when EPA's Light-Duty Vehicle Rule took effect, imposing control requirements for the first time on carbon dioxide and other GHGs. EPA asked permitting authorities to confirm that they would follow this implementation approach for their programs, and if they could not, to notify EPA so that the Agency could take appropriate follow-up action to narrow [7] federal approval of their programs before GHGs became subject to PSD permitting on January 2, 2011. *See* 75 FR at 31518.

Recognizing that some states had SIP-approved PSD programs that did not apply PSD to GHGs, EPA issued a SIP call and, for some of these states, a FIP. On December 13, 2010, EPA finalized the rulemaking entitled ''Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call,'' Final Rule (hereafter referred to as the ''SIP call''). *See* 75 FR 77698. The rule finalized findings of substantial inadequacy and SIP call for 15 state and local permitting authorities (including Jefferson County) where the existing SIP-approved PSD program did not provide authority to regulate GHGs. EPA explained that if a state identified in the SIP call failed to submit the required corrective SIP revision by the applicable deadline, EPA would promulgate a FIP under CAA section 110(c)(1)(A) for that state to govern PSD permitting for GHGs. LMAPCD requested a SIP call deadline of January 1, 2011, to provide its corrective SIP with the understanding that EPA would put a FIP in place for Jefferson County soon after that date if a SIP revision was not provided. On January 14, 2011, EPA finalized a FIP for Jefferson County in the rulemaking ''Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan for Jefferson County, KY,'' Final Rule (hereafter referred to as ''Jefferson County GHG FIP''). *See* 76 FR 2581. This rulemaking established a FIP for Jefferson County because LMAPCD, through KDAQ, was unable to submit, by its January 1, 2011, deadline, the corrective SIP revision to apply its PSD program to sources of GHG.[8] The FIP was put in place to ensure that a permitting authority (i.e., EPA) would be available to issue preconstruction PSD permits to GHG-emitting sources in Jefferson County, if necessary.

B. Jefferson County's Actions

In response to EPA's request in the GHG Tailoring Rule that permitting authorities confirm whether their SIPs provide authority to implement the GHG Tailoring Rule thresholds, LMAPCD provided a letter (commonly referred to as the 60-day letter) to EPA on August 2, 2010, explaining that LMAPCD * * * ''[i]s authorized in its existing SIP to apply the meaning of the term ''subject to regulation'' established by EPA in the GHG Tailoring Rule in both the PSD and title V permitting programs.'' LMAPCD further explained that it would need to amend its SIP for Jefferson County to enable it to implement the GHG Tailoring Rule thresholds. See the docket for this proposed rulemaking for a copy of LMAPCD's 60-day letter.

However, on October 4, 2010, in response to EPA's request in the September 2, 2010, proposed SIP call Rule, LMAPCD submitted a letter to EPA changing its view of whether Jefferson County's SIP-approved PSD regulations provided authority to regulate GHGs (referred to as the 30-day letter). Jefferson County's 30-day letter acknowledged that while its existing SIP could be interpreted as providing the Agency authority to issue PSD permits to GHG-emitting sources, this interpretation would be a departure from its past practice of utilizing rulemaking procedures to update the SIP to incorporate revised EPA regulations.'' See Docket ID: EPA–R04–OAR–2011–0227 for LMAPCD's October 4, 2010, 30-day letter. In a follow-up letter dated October 19, 2010, LMAPCD reiterated its position that it did not have the authority, under its existing SIP, to issue PSD permits to regulate GHG-emitting sources without going through rulemaking. *See* DOCKET ID: EPA–R04–OAR–2011–0227 for LMAPCD's October 19, 2010, follow-up letter.

With the final GHG SIP call (75 FR 77698) and the Jefferson County GHG FIP rulemaking (76 FR 2581), EPA took steps to ensure that LMAPCD, which did not interpret its exiting SIP-approved PSD program to provide authority to issue PSD permits to GHG-emitting sources, would not be at risk for permitting interruptions related to GHG by either having EPA issue permits for GHG through a FIP or be in a position for EPA to use delegation to allow LMAPCD to issue permits related to GHGs. More detail regarding EPA's analysis of the proposed changes to the Jefferson County portion of the Kentucky SIP (as provided in the February 8, 2011, revision) is provided below.

C. EPA's Analysis of Jefferson County's SIP Revision To Adopt the GHG Tailoring Rule

On February 8, 2011, KDAQ, on behalf of LMAPCD, submitted to EPA a revision to the Jefferson County portion of Kentucky's SIP to IBR NSR PSD requirements for GHG. Specifically, the February 8, 2011, SIP revision includes changes to LMAPCD's Regulation 2.05—Prevention of Significant Deterioration of Air Quality (version 10) to provide authority to LMAPCD to regulate GHG under the PSD program; and establish appropriate PSD applicability

[7] On December 30, 2010, (75 FR 82536) EPA promulgated the rule entitled ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule; (the ''Narrowing Rule''). In the Narrowing Rule, EPA explained that by ''narrowing'' its prior approval of a SIP-approved PSD program, EPA could ensure that for federal purposes, GHG sources below the Tailoring Rule's thresholds would not be obligated to hold PSD permits until the state develops and submits a revised PSD program that EPA approves, either because the state adopts the Tailoring Rule thresholds or because the state demonstrates that it has adequate resources to administer a program covering GHGs at lower applicability thresholds. *See* 75 FR at 31518. However, as discussed later in this section, EPA issued a SIP call and FIP for the Jefferson County jurisdiction, and therefore did not narrow federal approval of LMAPCD's PSD program.

[8] EPA's action on January 14, 2011, to put a FIP in place for Jefferson County, Kentucky does not relate to the rest of Kentucky, as the Commonwealth, through KDAQ submitted a corrective SIP revision to address the remainder of Kentucky on December 13, 2010. KDAQ's SIP revision to adopt the GHG Tailoring Rule thresholds for all portions of Kentucky, except Jefferson County, was approved by EPA on December 29, 2010 (75 FR 81868).

thresholds for GHGs, consistent with EPA's Tailoring Rule.

LMAPCD is currently the SIP-approved permitting authority for the PSD program in Jefferson County, Kentucky. As mentioned above, LMAPCD does not interpret the current SIP-approved version of its PSD regulations at Regulation 2.05 (i.e., version 9), which IBR the federal PSD regulations, to be applicable to GHG. In correspondences dated October 4, 2010, and October 19, 2010, LMAPCD notified EPA that it did not have the authority to regulate GHG under the PSD program, and thus was in the process of revising its regulations (the subject of this proposed action) to provide LMAPCD with this authority. The February 8, 2011 SIP revision IBR the federal PSD regulations at 40 CFR 52.21 as of July 2010 into Jefferson County Regulation 2.05 to include the relevant federal GHG Tailoring Rule revisions that provide LMAPCD with the authority to regulate GHG under the PSD program and establish the thresholds for GHG permitting applicability. The GHG Tailoring Rule changes that this proposed action would incorporate into the Jefferson County portion of Kentucky's SIP define the term ''subject to regulation'' for the PSD program and define ''greenhouse gases'' and ''tons per year (tpy) carbon dioxide equivalent emissions'' (CO_2e). Additionally, the changes specify the methodology for calculating an emissions increase for GHG, the applicable thresholds for GHG emissions subject to PSD, and the schedule for when the applicability thresholds take effect. *See* 75 FR at 31606–31607. EPA has preliminarily determined that these provisions, which provide LMAPCD with the authority to regulate GHG under the PSD program and establish the thresholds for GHG permitting applicability, are consistent with EPA's PSD regulations for GHG emitting sources as promulgated in the GHG Tailoring Rule and section 110 of the CAA. Therefore, EPA is proposing to approve the GHG PSD permitting revision into the Jefferson County portion of Kentucky's SIP. *See* GHG Tailoring Rule, 75 FR at 31561. In addition, EPA is proposing to rescind the FIP promulgated January 14, 2011, codified in 40 CFR 52.37(b)(7), that ensures the availability of a PSD-permitting authority for GHG-emitting sources in Jefferson County, Kentucky. This FIP will no longer be required once the proposed GHG PSD permitting revision has been approved into the Jefferson County portion of Kentucky's SIP.

III. What is EPA's proposed action for the NSR $PM_{2.5}$ Rule?

A. Background on Fine Particulate Matter

Today's proposed action to revise the Jefferson County portion of the Kentucky SIP also regards EPA's ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$),'' Final Rule (NSR $PM_{2.5}$ Rule), 73 FR 28321 (May 16, 2008). In the NSR $PM_{2.5}$ Rule, EPA finalized regulations to implement the NSR program for the $PM_{2.5}$ NAAQS. As a result of EPA's final NSR $PM_{2.5}$ Rule, states were required to provide SIP revisions no later than May 16, 2011, to address these requirements for both the PSD and NNSR programs. Jefferson County's June 1, 2009, and February 8, 2011, SIP revisions both address the PSD requirements for the $PM_{2.5}$ NAAQS. More detail on the NSR $PM_{2.5}$ Rule can be found in EPA's May 16, 2008, final rule and is summarized below.

Fine particles in the atmosphere are made up of a complex mixture of components. Common constituents include sulfate (SO_4); nitrate (NO_3); ammonium; elemental carbon; a great variety of organic compounds; and inorganic material (including metals, dust, sea salt, and other trace elements) generally referred to as ''crustal'' material, although it may contain material from other sources. Airborne particulate matter (PM) with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is one-millionth of a meter, and 2.5 micrometers is less than one-seventh the average width of a human hair) are considered to be ''fine particles'' and are also known as $PM_{2.5}$. ''Primary'' particles are emitted directly into the air as a solid or liquid particle (e.g., elemental carbon from diesel engines or fire activities, or condensable organic particles from gasoline engines). ''Secondary'' particles (e.g., SO_4 and NO_3) form in the atmosphere as a result of various chemical reactions.

The health effects associated with exposure to $PM_{2.5}$ include potential aggravation of respiratory and cardiovascular disease (i.e., lung disease, decreased lung function, asthma attacks and certain cardiovascular issues). Epidemiological studies have indicated a correlation between elevated $PM_{2.5}$ levels and premature mortality. Groups considered especially sensitive to $PM_{2.5}$ exposure include older adults, children, and individuals with heart and lung diseases. For more details regarding health effects and $PM_{2.5}$ see EPA's Web site at *http://www.epa.gov/air/urbanair/pm/index.html* (See heading ''Health'').

On July 18, 1997, EPA revised the NAAQS for PM to add new standards for fine particles, using $PM_{2.5}$ as the indicator. Previously, EPA used PM_{10} (inhalable particles smaller than or equal to 10 micrometers in diameter) as the indicator for the PM NAAQS. EPA established health-based (primary) annual and 24-hour standards for $PM_{2.5}$, setting an annual standard at a level of 15.0 micrograms per cubic meter ($\mu g/m^3$) and a 24-hour standard at a level of 65 $\mu g/m^3$. *See* 62 FR 38652. At the time the 1997 primary standards were established, EPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of $PM_{2.5}$, such as visibility impairment, soiling, and materials damage. On October 17, 2006, EPA revised the primary and secondary 24-hour NAAQS for $PM_{2.5}$ to 35 $\mu g/m^3$ and retained the existing annual $PM_{2.5}$ NAAQS of 15.0 $\mu g/m^3$. *See* 71 FR 61236.

B. Implementation of NSR for the $PM_{2.5}$ NAAQS

After EPA promulgated the NAAQS for $PM_{2.5}$ in 1997, the Agency issued a guidance document entitled ''Interim Implementation of New Source Review Requirements for $PM_{2.5}$.'' John S. Seitz, EPA, October 23, 1997 (the ''Seitz memo''). The Seitz memo was designed to help states implement NSR requirements pertaining to the new $PM_{2.5}$ NAAQS in light of technical difficulties posed by $PM_{2.5}$ at that time. Specifically, the Seitz memo stated: ''PM–10 may properly be used as a surrogate for PM–2.5 in meeting NSR requirements until these difficulties are resolved'' (the PM_{10} Surrogate Policy).

EPA also issued a guidance document entitled ''Implementation of New Source Review Requirements in $PM_{2.5}$ Nonattainment Areas'' (the ''2005 $PM_{2.5}$ Nonattainment NSR Guidance''), on April 5, 2005, the date that EPA's $PM_{2.5}$ nonattainment area designations became effective for the 1997 NAAQS. This memorandum provided guidance on the implementation of the nonattainment major NSR provisions in $PM_{2.5}$ nonattainment areas in the interim period between the effective date of the $PM_{2.5}$ nonattainment area designations (April 5, 2005) and EPA's promulgation of final $PM_{2.5}$ NNSR regulations. Besides re-affirming the continuation of the PM_{10} Surrogate Policy for $PM_{2.5}$ attainment areas set forth in the Seitz memo, the 2005 $PM_{2.5}$ Nonattainment NSR Guidance recommended that until EPA promulgated the $PM_{2.5}$ major NSR

regulations, ''[s]tates should use a PM_{10} nonattainment major NSR program as a surrogate to address the requirements of nonattainment major NSR for the $PM_{2.5}$ NAAQS.''

On May 16, 2008, EPA finalized a rule to implement the 1997 $PM_{2.5}$ NAAQS, including changes to the NSR program. *See* 73 FR 28321. The 2008 NSR $PM_{2.5}$ Rule revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. The 2008 NSR $PM_{2.5}$ Rule requires that major stationary sources seeking permits must begin directly satisfying the $PM_{2.5}$ requirements, as of the effective date of the rule, rather than relying on PM_{10} as a surrogate, with two exceptions. The first exception is a ''grandfathering'' provision in the federal PSD program at 40 CFR 52.21(i)(1)(xi). This grandfathering provision applied to sources that had applied for, but had not yet received, a final and effective PSD permit before the July 15, 2008, effective date of the May 2008 final rule. The second exception was that states with SIP-approved PSD programs could continue to implement the Seitz Memo's PM_{10} Surrogate Policy for up to three years (until May 2011) or until the individual revised state PSD programs for $PM_{2.5}$ are approved by EPA, whichever comes first. For additional information on the NSR $PM_{2.5}$ Rule, see 73 FR 28321.[9]

On February 11, 2010, EPA proposed to repeal the grandfathering provision for $PM_{2.5}$ contained in the federal PSD program at 40 CFR 52.21(i)(1)(xi) and to end early the PM_{10} Surrogate Policy applicable in states that have a SIP-approved PSD program. *See* 75 FR 6827. In support of this proposal, EPA explained that the $PM_{2.5}$ implementation issues that led to the adoption of the PM_{10} Surrogate Policy in 1997 had been largely resolved to a degree sufficient for sources and permitting authorities to conduct meaningful permit-related $PM_{2.5}$ analyses. On May 18, 2011, EPA took final action to repeal the $PM_{2.5}$ grandfathering provision at 40 CFR 52.21(i)(1)(xi). *See* 76 FR 28646. This final action ended the use of the 1997 PM_{10} Surrogate Policy for PSD permits under the federal PSD program at 40 CFR 52.21. In effect, any PSD permit applicant previously covered by the grandfathering provision (for sources that completed and submitted a permit application before July 15, 2008)[10] that did not have a final and effective PSD permit before the effective date of the repeal will not be able to rely on the 1997 PM_{10} Surrogate Policy to satisfy the PSD requirements for $PM_{2.5}$ unless the application includes a valid surrogacy demonstration. *See* 76 FR 28646. In the February 8, 2011, SIP revision, LMAPCD elected to IBR the grandfathering provision at 40 CFR 52.21(i)(1)(xi) in its PSD regulations at Regulation 2.05. However, since the rule is repealed, EPA is not taking action to approve this provision into the Jefferson County portion of the Kentucky SIP.

The NSR $PM_{2.5}$ Rule also established the following NSR requirements to implement the $PM_{2.5}$ NAAQS: (1) Require NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) establish significant emission rates for direct $PM_{2.5}$ and precursor pollutants (including sulfur dioxide (SO_2) and NO_X); (3) establish $PM_{2.5}$ emission offsets; and (4) require states to account for gases that condense to form particles (''condensables'') in $PM_{2.5}$ and PM_{10} emission limits in PSD or nonattainment NSR permits. In addition, the NNSR $PM_{2.5}$ Rule gives states the option of allowing interpollutant trading for the purpose of precursor offsets under the $PM_{2.5}$ NNSR program.[11] Jefferson County's June 1, 2009, and February 8, 2011, SIP revisions address only the PSD requirements related to EPA's May 16, 2008, NSR $PM_{2.5}$ Rule.

In the NSR $PM_{2.5}$ Rule, EPA also revised the definition of ''regulated NSR pollutant'' for PSD and NNSR to add a paragraph providing that ''particulate matter (PM) emissions, $PM_{2.5}$ emissions and PM_{10} emissions'' shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures and that on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, $PM_{2.5}$ and PM_{10} in permits issued. *See* 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(vi) and ''Emissions Offset Interpretative Ruling'' (40 CFR Part 51, Appendix S). A similar paragraph added to the NNSR rule does not include ''particulate matter (PM) emissions.'' *See* 40 CFR 51.165(a)(1)(xxxvii)(D).

On March 12, 2012, EPA proposed a rulemaking to amend the definition of ''regulated NSR pollutant'' promulgated in the 2008 NSR $PM_{2.5}$ Rule regarding the PM condensable provision at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(i) and EPA's Emissions Offset Interpretative Ruling. *See* 77 FR 15656. The rulemaking proposes to remove the inadvertent requirement in the NSR $PM_{2.5}$ Rule that the measurement of condensable ''particulate matter emissions'' be included as part of the measurement and regulation of ''particulate matter emissions.'' The term ''particulate matter emissions'' includes particles that are larger than $PM_{2.5}$ and PM_{10} and is an indicator measured under various New Source Performance Standards (NSPS) (40 CFR part 60).[12] Jefferson County's February 11, 2011, SIP revision IBR EPA's definition for regulated NSR pollutant for condensables (at 40 CFR 52.21(b)(50)(vi)), including the term ''particulate matter emissions'', as promulgated in the NSR $PM_{2.5}$ Rule. EPA's review of Jefferson County's February 11, 2011, SIP revision with regards to the NSR $PM_{2.5}$ Rule condensable provision is provided below in Section III.

C. EPA's Analysis of Jefferson County's SIP Revision To Adopt the NSR $PM_{2.5}$ PSD Permitting Requirements

Jefferson County's Regulation 2.05—*Prevention of Significant Deterioration of Air Quality* IBR the provisions at 40 CFR 52.21, as amended in the NSR $PM_{2.5}$ Rule for PSD. Specifically, Jefferson County's June 1, 2009, and February 8, 2011, proposed SIP revisions IBR the following NSR $PM_{2.5}$ provisions for PSD: (1) Requirement for NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) significant emission rates for direct

[9] Additional information on this issue can also be found in an August 12, 2009, final order on a title V petition describing the use of PM_{10} as a surrogate for $PM_{2.5}$. In the Matter of *Louisville Gas & Electric Company,* Petition No. IV–2008–3, Order on Petition (August 12, 2009) (available at *http://www.epa.gov/region07/air/title5/petitiondb/petitions/lg_e_2nddecision2006.pdf*).

[10] Sources that applied for a PSD permit under the federal PSD program on or after July 15, 2008, are already excluded from using the 1997 PM_{10} Surrogate Policy as a means of satisfying the PSD requirements for $PM_{2.5}$. *See* 73 FR 28321.

[11] On July 21, 2011, as a result of reconsidering the interpollutant (IPT) policy, EPA issued a memorandum indicating that the existing preferred precursor offset ratios associated with the IPT policy and promulgated in the NSR $PM_{2.5}$ Rule were no longer considered approvable. The memorandum stated that any $PM_{2.5}$ precursor offset ratio submitted as part of the NSR SIP for $PM_{2.5}$ nonattainment areas would need to be accompanied by a technical demonstration exhibiting how the ratios are suitable for that particular nonattainment area. *See* Memorandum from Gina McCarthy to Regional Air Division Directors, ''Revised Policy to Address Reconsideration of Interpollutant Trading Provisions for Fine Particles ($PM_{2.5}$)'' (July 21, 2011) (available at *http://www.epa.gov/nsr/documents/20110721PM25InterpollutantTradingPolicy.pdf.*

[12] In addition to the NSPS for PM, it is noted that states regulated ''particulate matter emissions'' for many years in their SIPs for PM, and the same indicator has been used as a surrogate for determining compliance with certain standards contained in 40 CFR part 63, regarding National Emission Standards for Hazardous Air Pollutants.

$PM_{2.5}$ and precursor pollutants (SO_2 and NO_X); (3) PSD and NNSR requirement of states to address condensable PM in establishing enforceable emission limits for PM_{10} or $PM_{2.5}$; and (4) $PM_{2.5}$ emission offsets Regarding the PM_{10} ''grandfathering'' provision, Jefferson County's SIP revisions include the provision at 40 CFR 52.21(i)(1)(ix) promulgated in the NSR $PM_{2.5}$ Rule. As mentioned in Section III.B, EPA took final action to repeal the PM_{10} grandfathering provision on May 18, 2011. *See* 76 FR 28646. Therefore, EPA is not taking action to approve this provision into the Jefferson County portion of the Kentucky SIP. Jefferson County will need to update its PSD provisions to reflect the repeal of the PM_{10} grandfathering provision in federal regulations at 40 CFR 52.21. At this time Jefferson County's PSD regulations are approvable because they are at least as stringent as the current federal regulations, and are consistent with section 110 of the CAA.

Jefferson County's February 11, 2011 SIP revision also IBR, into the Jefferson County portion of the Kentucky SIP, PSD regulations regarding the requirement to address condensable PM in applicability determinations and in establishing enforceable emission limits in PSD and NNSR permits, as established in the NSR $PM_{2.5}$ Rule. As discussed above in Section III.B, under a separate action, EPA has proposed to correct the inadvertent inclusion of ''particulate matter emissions'' in the definition of ''regulated NSR pollutant'' as an indicator for which condensable emissions must be addressed. *See* 77 FR 75656 (March 16, 2012). Further, on May 14, 2012, the State of Kentucky, on behalf of LMAPCD, provided a letter to EPA with clarification of Jefferson County's intent in light of EPA's March 12, 2012, proposed rulemaking. Specifically, in the letter, the State of Kentucky requested that EPA not approve (into the Jefferson County portion of the SIP) the term ''particulate matter emissions'' (at Regulation 2.05) as part of the definition for ''regulated NSR pollutant'' that condensable emissions be accounted for in applicability determinations and in establishing emissions limitations for PM. Therefore given the state's and LMAPCD's request and EPA's intention to amend the definition of ''regulated NSR pollutant,'' EPA is not proposing action to approve the terminology ''particulate matter emissions'' into the Jefferson County portion of the Kentucky SIP (at Regulation 2.05) for the condensable provision at the definition of ''regulated NSR pollutant.'' EPA is, however, proposing to approve into the SIP at Regulation 2.05 the remaining condensable requirement at 40 CFR 51.166(b)(49)(vi) that condensable emissions be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10}. EPA has preliminarily determined that Jefferson County's June 1, 2009, and February 8, 2011, SIP revisions are consistent with the NSR $PM_{2.5}$ Rule for PSD and with section 110 of the CAA. *See* NSR $PM_{2.5}$ Rule, 75 FR 31514.

IV. What is EPA's proposed action for the Phase II Rule?

A. Background

Today's proposed action on Jefferson County's portion of the Kentucky SIP also relates to EPA's November 29, 2005, Phase II Rule. *See* 70 FR 71612. In the Phase II Rule, EPA made a number of changes to the NSR rules including: recognizing NO_X as an ozone precursor for PSD purposes; changing the NNSR rules that establish major stationary thresholds (marginal, moderate, serious, severe, and extreme nonattainment area classifications) and significant emission rates for the 8-hour ozone, PM_{10} and carbon monoxide NAAQS; revising the criteria for crediting emission reductions credits from operation shutdowns and curtailments as offsets, and changing offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas. The following provides the background for the Phase II Rule requirements for NO_X as an ozone precursor.

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million—also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as attainment, nonattainment and unclassifiable for the 1997 8-hour ozone NAAQS. In addition, as part of the framework to implement the 1997 8-hour ozone NAAQS, EPA promulgated an implementation rule in two phases (Phase I and II). The Phase I Rule (effective on June 15, 2004) provided the implementation requirements for designating areas under subpart 1 and subpart 2 of the CAA. *See* 69 FR 23951 (April 30, 2004).

On November 29, 2005, EPA promulgated the second phase for implementation provisions related to the 1997 8-hour ozone NAAQS—also known as the Phase II Rule. *See* 70 FR 71612. The Phase II Rule addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS, such as reasonably available control technology, reasonably available control measures, reasonable further progress, modeling and attainment demonstrations, NSR, and the impact to reformulated gas for the 1997 8-hour ozone NAAQS transition. The Phase II Rule NSR requirements include, among other changes, a provision stating that NO_X is an ozone precursor. *See* 70 FR at 71679. In the Phase II Rule, EPA stated as follows:

> The EPA has recognized NO_X as an ozone precursor in several national rules because of its contribution to ozone transport and the ozone nonattainment problem. The EPA's recognition of NO_X as an ozone precursor is supported by scientific studies, which have long recognized the role of NO_X in ozone formation and transport. Such formation and transport is not limited to nonattainment areas. Therefore, we believe NO_X should be treated consistently as an ozone precursor in both our PSD and nonattainment NSR regulations. For these reasons, we have promulgated final regulations providing that NO_X is an ozone precursor in attainment areas.

The Phase II Rule made changes to federal regulations 40 CFR 51.165, 51.166 and 52.21 (which governs the NNSR and PSD permitting programs respectively). Pursuant to these requirements, states were required to submit SIP revisions adopting the federal requirements of the Phase II Rule (at 40 CFR 51.165, 51.166 and 52.21) into their SIP no later than June 15, 2007. Jefferson County's June 1, 2009, and February 8, 2011, SIP revisions both address the federal PSD-only provisions requirements promulgated in the Phase II rule recognizing NO_X as an ozone precursor (at 40 CFR 52.21).[13]

B. EPA's Analysis of Jefferson County's SIP Revisions To Adopt the Phase II Rule

Jefferson County's June 1, 2009, SIP revision updated LMAPCD's PSD program to include NO_X as an ozone precursor for PSD permitting, consistent with changes to the federal regulations set forth in the Phase II Rule at 40 CFR 52.21. Subsequently, on February 8, 2011, KDAQ, submitted a SIP revision which included the June 1, 2009, changes in addition to other federal PSD permitting updates to the Jefferson County portion of the Kentucky SIP. Jefferson County's SIP revisions IBR the federal PSD regulations (at 40 CFR 52.21) to include the NO_X as a precursor PSD-only permitting provisions

[13] Jefferson County's SIP submittals proposed for approval in this rulemaking do not include NNSR provisions for the Phase II Rule. These permitting requirements (at Regulation 2.04) are still under development by LMAPCD.

promulgated in the Phase II Rule into the Jefferson County portion of the Kentucky SIP at Regulation 2.05—Prevention of Significant Deterioration of Air Quality (version 10) as of July 1, 2010. EPA has preliminarily determined that Jefferson County's SIP revisions are consistent with the PSD Phase II Rule permitting requirements and section 110 of the CAA.

V. What are EPA's Proposed Actions for NSR Reform and Reasonable Possibility?

A. Background

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 CFR parts 51 and 52 regarding the CAA's PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the ''2002 NSR Reform Rules.'' The 2002 NSR Reform Rules are part of EPA's implementation of parts C and D of title I of the CAA, 42 U.S.C. 7470–7515. Part C of title I of the CAA, 42 U.S.C. 7470–7492, consists of the PSD program and applies to attainment and unclassifiable areas. Part D of title I of the CAA, 42 U.S.C. 7501–7515, includes the NNSR program and applies in nonattainment areas. Collectively, the PSD and NNSR programs are referred to as the ''New Source Review'' or NSR programs.

The 2002 NSR Reform Rules made changes to five areas of the NSR programs. In summary, the 2002 NSR Reform Rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with plant-wide applicability limits (PALs) to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs) from the definition of ''physical change or change in the method of operation.'' On November 7, 2003 (68 FR 63021), EPA published a notice of final action on its reconsideration of the 2002 NSR Reform Rules, which added a definition for ''replacement unit'' and clarified an issue regarding PALs. For additional information on the 2002 NSR Reform Rules, see 67 FR 80186 (December 31, 2002) and *http://www.epa.gov/nsr.*

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), industry, state, and environmental petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR Rules, 45 FR 52676 (August 7, 1980). On June 24, 2005, the United States Court of Appeals for the District of Columbia (D.C. Circuit Court) issued a decision on the challenges to the 2002 NSR Reform Rules. *New York* v. *U.S. EPA,* 413 F.3d 3 (D.C. Cir. 2005). In summary, the D.C. Circuit Court vacated portions of the rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping and the term ''reasonable possibility'' found in 40 CFR 52.21(r)(6) and 40 CFR 51.165(a)(6) and 51.166(r)(6), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to remove from federal law all provisions pertaining to clean units and the PCPs exemption that were vacated by the D.C. Circuit Court.

The 2002 NSR Reform Rules required that state agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. State agencies may meet the requirements of 40 CFR 51 and the 2002 NSR Reform Rules with different but equivalent regulations.

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping, the U.S. Court of Appeals remanded to EPA either to provide an acceptable explanation for its ''reasonable possibility'' standard or devise an appropriate alternative. To satisfy the courts, on December 21, 2007, EPA took final action to clarify that a ''reasonable possibility'' applies where source emissions equal or exceed 50 percent of the CAA NSR significance levels for any pollutant. *See* ''Prevention of Significant Deterioration and Nonattainment New Source Review: Reasonable Possibility in Recordkeeping:'' Final Rule, 72 FR 72607 (December 21, 2007) (the Reasonable Possibility Rule). The ''reasonable possibility'' provision identifies for sources and reviewing authorities the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records. EPA's December 21, 2007, final rule on the recordkeeping and reporting provisions also explains state obligations with regard to the reasonable possibility related rule changes.[14] *See* 72 FR at 72613–72614. The final rule gave states and local permitting authorities three years from publication to submit revisions to incorporate the reasonable possibility provisions or to submit notice to EPA that their regulations fulfill these requirements.

On June 1, 2009, and February 8, 2011, KDAQ, on behalf of LMAPCD, submitted to EPA revisions to the Jefferson County portion of Kentucky's SIP to IBR the federal PSD permitting regulations promulgated in the 2002 NSR Reform Rule and the Reasonable Possibility Rule. EPA is now proposing to approve these SIP revisions consistent with section 110 of the CAA.

B. EPA's Analysis of Jefferson County's SIP Revision To Adopt the NSR Reform and Reasonable Possibility

As mentioned in Section I, LMAPCD's PSD Program at Regulation 2.05—*Prevention of Significant Deterioration for Air Quality* establishes the preconstruction review program as required under part C of title I of the CAA. The changes to LMAPCD's PSD rules, which EPA is now proposing to approve into the Jefferson County portion of the Kentucky SIP, were established to update the existing PSD Program to meet the requirements of the 2002 NSR Reform Rules. Jefferson County's SIP revisions IBR the 2002 NSR Reform PSD changes regarding baseline actual emissions, actual-to-projected-actual applicability tests, and PAL provisions. Jefferson County's June 1, 2009, and February 8, 2011, SIP revisions both address the federal PSD requirements promulgated in the 2002 NSR Reform rules. The proposed revisions explicitly exclude the PCPs and clean unit portions of the 2002 NSR Reform Rules that were vacated as part of the DC Circuit Court's June 2005 decision.

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping and EPA's December 21, 2007, clarifications of the term ''reasonable possibility'' (72 FR 72607), Jefferson County's SIP revisions IBR the federal revised ''reasonable possibility'' provisions at 40 CFR 52.21(r)(6). Thus, LMAPCD's recordkeeping and reporting provisions are the same as the federal

[14] On January 14, 2009, EPA denied a petition by the State of New Jersey (submitted February 8, 2008) for reconsideration and stay of the December 21, 2007, final rule for ''reasonable possibility.'' However, on March 11, 2009, New Jersey reiterated its request for reconsideration, which EPA granted on April 24, 2009. EPA has not taken action on the reconsideration therefore, the current recordkeeping rules established in the December 21, 2007, final rule are approvable.

requirements promulgated in EPA's December 21, 2007, final action.

In addition to incorporating the federal PSD regulations, Jefferson County's February 8, 2011, SIP revision includes a technical support document (TSD), which assesses the impact of adopting the 2002 NSR Reform provisions into Jefferson County's PSD permitting program and the air quality impacts. As mentioned above, LMAPCD has a SIP-approved PSD program. However, due to the limited number of sources in Jefferson County, the permitting program does not assess many major PSD permits. In fact, in nearly ten years, LMAPCD has only analyzed two projects under PSD. Most sources in Jefferson County are permitted through LMAPCD's minor source program, which allows sources to take emission limits to avoid PSD permitting. Additionally, regarding criteria pollutants, the TSD explains that sources typically subject to PSD permitting (i.e. point sources) have not been the primary driver for past or current nonattainment NAAQS designations in Jefferson County. See the TSD in the Docket ID No. EPA–R04–OAR–2011–0227.

LMAPCD's TSD concluded that adoption of the 2002 NSR Reform improvements would not impede the LMAPCD's ability to comply with the NAAQS or any reasonable progress towards continued maintenance. After evaluating Jefferson County's SIP revision, and the TSD provided with the February 8, 2011, SIP revision, EPA has determined that the proposed SIP revisions to adopt NSR Reform and reasonable possibility provisions are consistent with the federal program requirements for the preparation, adoption and submittal of implementation plans for the PSD of air quality, set forth at 40 CFR 52.21, and the 2002 NSR Reform Rule.

VI. What is EPA's proposed action for the automatic rescission clause?

A. Jefferson County's Proposed Automatic Rescission Clause

Jefferson County's February 8, 2011, proposed SIP revision adds a new section to Regulation 2.05, Section 2—Effect of Stay, Vacatur, or Withdrawal, also known as an automatic rescission clause. This clause provides that in the event that EPA or a federal court stays, vacates, or withdraws any section or subsection of 40 CFR 52.21, that section or subsection shall automatically be deemed stayed, vacated or withdrawn from Jefferson County's SIP-approved PSD program at Regulation 2.05. The period of delay resulting from a stay would begin and end for purposes of Jefferson County's SIP on the date specified by EPA in a **Federal Register** notice announcing the stay. Likewise, any provision that is vacated or withdrawn shall be null and void for purposes of Jefferson County's SIP as of the date specified in the notice of vacatur or withdrawal published by EPA in a **Federal Register** notice.

B. EPA's analysis of the approvability of Jefferson County's automatic rescission clause

EPA has preliminarily concluded that Jefferson County's automatic rescission clause is approvable. In assessing the approvability of this provision, EPA considered two key factors: (1) Whether the public will be given reasonable notice of any change to the SIP that occurs as a result of the automatic rescission clause, and (2) whether any future change to the SIP that occurs as a result of the automatic rescission clause would be consistent with EPA's interpretation of the effect of the triggering EPA or federal court action (e.g., the extent of an administrative or judicial stay). These criteria are derived from the SIP revision procedures set forth in the CAA and federal regulations.

Regarding public notice, CAA section 110(l) provides that any revision to a SIP submitted by a state to EPA for approval ''shall be adopted by such State after reasonable notice and public hearing.'' In accordance with CAA section 110(l), the LMAPCD followed applicable notice-and-comment procedures prior to adopting the automatic rescission clause. Thus, the public is on notice that the Jefferson County portion of the Kentucky SIP will automatically update to reflect any EPA or federal action that stays, withdraws, or vacates any portion of 40 CFR 52.21. In addition, the automatic rescission clause provides that no change to the SIP will occur until EPA publishes a **Federal Register** notice announcing that a portion of 40 CFR 52.21 has been stayed, vacated, or withdrawn. Thus, the timing and extent of any future SIP change resulting from the automatic rescission clause will be clear to both the regulated community and the general public.

EPA's consideration of whether any SIP change resulting from the proposed automatic rescission clause would be consistent with EPA's interpretation of the effect of the triggering action on federal regulations is based on 40 CFR 51.105. Under 40 CFR 51.105, ''[r]evisions of a plan, or any portion thereof, will not be considered part of an applicable plan until such revisions have been approved by the Administrator in accordance with this part.'' *See* 40 CFR 51.105. While EPA is approving the automatic updating of the Jefferson County portion of the Kentucky SIP to reflect the stay, withdrawal or vacatur of any section or subsection of 40 CFR 52.21, there could be varying interpretations of the timing and extent of changes to 40 CFR 52.21 resulting from a given EPA or federal court action. By tying the automatic updating of the SIP to EPA's publication of a **Federal Register** notice announcing the change to 40 CFR 52.21, the proposed automatic rescission clause ensures that any change to the SIP will be consistent with EPA's interpretation of the triggering action.

VII. Proposed Actions

EPA is proposing to approve Jefferson County's June 1, 2009, and February 8, 2011, SIP revisions which adopt federal requirements for NSR PSD permitting. Jefferson County's SIP revisions consist of changes to the LMAPCD Air Quality Regulation 2.05—*Prevention of Significant Deterioration of Air Quality* and address several NSR PSD permitting requirements promulgated at 40 CFR 52.21. Specifically, Jefferson County's June 1, 2009, SIP revision adopts federal regulations relating to PSD requirements for the NSR $PM_{2.5}$ Rule, the Phase II Rule, the 2002 NSR Reform Rule, and the NSR Reasonable Possibility Rule into the Jefferson County portion of the Kentucky SIP. Jefferson County's February 8, 2011, proposed SIP revision includes all of the aforementioned updates to LMAPCD's PSD regulations but also provides Jefferson County with the authority to regulate GHGs under its PSD program, establishes appropriate emissions thresholds for determining PSD applicability with respect to new and modified GHG-emitting sources (in accordance with EPA's Tailoring Rule), and incorporates an automatic rescission clause for 40 CFR 52.21 regulations. EPA has preliminarily determined that these SIP revisions are approvable because they are in accordance with the CAA and EPA regulations regarding PSD permitting. In addition, EPA is proposing to rescind the FIP promulgated on January 14, 2011 at 40 CFR 52.37(b)(7) once the proposed GHG PSD permitting revision has been approved into the Jefferson County portion of the Kentucky SIP.

VIII. 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, these proposed actions merely approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

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

In addition, this proposed 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 Commonwealth, and it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Greenhouse Gas, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 24, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–13694 Filed 6–5–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0238; FRL–9681–8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plans (SIP), submitted by the State of South Carolina, through the Department of Health and Environmental Control (DHEC), as demonstrating that the State meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. South Carolina certified that the South Carolina SIP contains provisions that ensure the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS is implemented, enforced, and maintained in South Carolina (hereafter referred to as ''infrastructure submission''). South Carolina's infrastructure submissions, provided to EPA on March 14, 2008, and on September 18, 2009, addressed all the required infrastructure elements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS with the exception of section 110(a)(2)(E)(ii) and 110(a)(2)(G) which were submitted by South Carolina on April 3, 2012. South Carolina's April 3, 2012, submittal is being addressed in a separate action.

DATES: Written comments must be received on or before July 6, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0238, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2012–0238,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0238. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA

Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

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

SUPPLEMENTARY INFORMATION:

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I. Background

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m³) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA also established a 24-hour NAAQS of 65 μg/m³. *See* 40 CFR 50.7. On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a new 24-hour $PM_{2.5}$ NAAQS of 35 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. Pursuant to the CAA, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs to EPA no later than July 2000 for the 1997 annual $PM_{2.5}$ NAAQS, no later than October 2009 for the 2006 24-hour $PM_{2.5}$ NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the ''infrastructure'' requirements for the 1997 annual $PM_{2.5}$ NAAQS. On March 10, 2005, EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS by October 5, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state for the 1997 $PM_{2.5}$ NAAQS as of October 3, 2008.

On October 22, 2008, EPA published a final rulemaking entitled, ''Completeness Findings for Section 110(a) State Implementation Plans Pertaining to the Fine Particulate Matter ($PM_{2.5}$) NAAQS'' making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 $PM_{2.5}$ NAAQS (*See* 73 FR 62902). For those states that did receive findings, the findings of failure to submit for all or a portion of a state's implementation plan established a 24-month deadline for EPA to promulgate a Federal Implementation Plan to address the outstanding SIP elements unless, prior to that time, the affected states submitted, and EPA approved, the required SIPs.

The findings that all or portions of a state's submission are complete established a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k). South Carolina's infrastructure submissions were received by EPA on March 14, 2008, for the 1997 annual $PM_{2.5}$ NAAQS and on September 18, 2009, for the 2006 24-hour $PM_{2.5}$ NAAQS. The submissions were determined to be complete on September 14, 2008, and March 18, 2010, respectively. South Carolina was among other states that did not receive findings of failure to submit because it had provided a complete submission to EPA to address the infrastructure elements for the 1997 $PM_{2.5}$ NAAQS by October 3, 2008.

On July 6, 2011, WildEarth Guardians and Sierra Club filed an amended complaint related to EPA's failure to take action on the SIP submittal related to the ''infrastructure'' requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. On October 20, 2011, EPA entered into a consent decree with WildEarth Guardians and Sierra Club which required EPA, among other things, to complete a **Federal Register** notice of the Agency's final action either approving, disapproving, or approving in part and disapproving in part the South Carolina 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure SIP submittal addressing the applicable requirements of sections 110(a)(2)(A)–(H), (J)–(M), except for section 110(a)(2)(C) the nonattainment area requirements and section 110(a)(2)(D)(i) interstate transport requirements, by September 30, 2012.

Today's action is proposing to approve South Carolina's infrastructure submission for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for sections 110(a)(2)(A)–(H), (J)–(M), except for sections 110(a)(2)(C)—the nonattainment area requirements; 110(a)(2)(D)(i)—the interstate transport requirements; 110(a)(2)(E)(ii)—board requirements; and 110(a)(2)(G)—emergency powers. Requirements supporting EPA action on sections 110(a)(2)(E)(ii) and 110(a)(2)(G) were submitted by South Carolina through a SIP revision on April 3, 2012. South Carolina's April 3, 2012, SIP revision is being addressed in a separate action. This action is not approving any specific rule, but rather proposing that South Carolina's already approved SIP meets certain CAA requirements.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools

available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, some states may need to adopt language specific to the $PM_{2.5}$ NAAQS to ensure that they have adequate SIP provisions to implement the $PM_{2.5}$ NAAQS.

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

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

III. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[5] Those Commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (SSM), that may be contrary to the CAA and EPA's policies addressing such excess emissions; and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (director's discretion). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (minor source NSR); and (ii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIPs for the 1997 and 2006 $PM_{2.5}$ NAAQS from South Carolina.

EPA intended the statements in the other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a re-approval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion,

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

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

[3] Today's proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 and 2006 $PM_{2.5}$ NAAQS. Interstate transport requirements were formerly addressed by South Carolina consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the DC Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008). Prior to this remand, EPA took final action to approve South Carolina SIP revision, which was submitted to comply with CAIR. *See* 72 FR 57209 (October 9, 2007). In so doing, South Carolina CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i) for the 1997 and 2006 $PM_{2.5}$ NAAQS. In response to the remand of CAIR, EPA has recently finalized a new rule to address the interstate transport of nitrogen oxides (NO_X) and sulfur dioxide (SO_2) in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule''). That rule was recently stayed by the DC Circuit Court of Appeals. EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

[4] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' and the September 25, 2009, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards,'' but as mentioned above is not relevant to today's proposed rulemaking.

[5] *See* Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit re-approval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the infrastructure SIP for South Carolina.

Unfortunately, the Commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPs are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[6] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[7]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[8] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[9] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's implementation plans. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[10]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements

[6] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[7] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's implementation plan contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. *See* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[8] *See Id.,* 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[9] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. *See* ''Guidance for State Implementation Plan (SIP) Submissions To Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director, Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[11] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.''[12] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.''[13] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.''[14] However, for the one exception to that general assumption (*i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS), EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's implementation plans for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[15] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS (e.g., the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS). Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the infrastructure SIPs for South Carolina.

EPA believes that this approach to the infrastructure SIP requirement is reasonable because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to

[11] *See* ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director, Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance'').

[12] *Id.,* at page 2.

[13] *Id.,* at attachment A, page 1.

[14] *Id.,* at page 4. In retrospect, the concerns raised by the Commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[15] *See* ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[16] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[17] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[18]

IV. What is EPA's analysis of how South Carolina addressed the elements of sections 110(a)(1) and (2) ''Infrastructure'' provisions?

South Carolina's infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A): *Emission limits and other control measures:* South Carolina's infrastructure submissions provide an overview of the provisions of the South Carolina's Air Pollution Control Requirements relevant to air quality control regulations. The regulations listed below have been federally approved in the South Carolina SIP and include enforceable emission limitations and other control measures:

- Regulation 61–62.1—*Definitions, Permit Requirements, and Emissions Inventory;*
- Regulation 61–62.2—*Prohibition of Open Burning;*
- Regulation 61–62.5—Standard No. 1, *Emissions form Fuel Burning Operations;* Standard No. 2, *Ambient Air Quality Standards;* and Standard No. 4, *Emission from Process Industries;* Standard No. 6, *Alternative Emissions Limitation Options;*
- Regulation 61–62.6— *Control of Fugitive Particulate Matter;* and,
- Regulation 61–30—(state-only regulation)—*Environmental Protection Fees.*

EPA has made the preliminary determination that the provisions contained in these chapters and South Carolina's practices are adequate to protect the $PM_{2.5}$ annual and 24-hour NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999), and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having deficient SSM provisions to take steps to correct it as soon as possible.

Additionally, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient air quality monitoring/data system:* South Carolina's Regulation 61–62.1, Section II, *Permit Requirements,* and Section IV, *Source Tests,* along with the South Carolina Network Description and Ambient Air Monitoring Network Plan, provide for an ambient air quality monitoring system in the State. Annually, EPA approves the ambient air monitoring network plan for the state agencies. On July 18, 2011, South Carolina submitted its plan to EPA. On October 12, 2011, EPA approved South Carolina's monitoring network plan. South Carolina's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0238. EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for the ambient air quality monitoring and data systems related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

3. 110(a)(2)(C) *Program for enforcement of control measures including review of proposed new sources:* The regulations described below have been federally approved in the South Carolina SIP and pertain to the construction or modification of any major stationary source in areas designated as attainment, nonattainment or unclassifiable:

- Regulation 61–62.1, Section II, *Permit Requirements;*
- Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration;* and,
- Regulation 61–62.5, Standard No. 7.1, *Nonattainment New Source Review.*

South Carolina's SIP is current with regard to PSD requirements.[19] On June 23, 2011, EPA approved several revisions to South Carolina's SIP to

[16] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21639 (April 18, 2011).

[17] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. *See* ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. *See* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[18] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See* 75 FR 42342, 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

[19] On June 11, 2010, the South Carolina Governor signed an Executive Order to confirm that the State had authority to implement appropriate emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for their Greenhouse Gas emissions at the state level. A copy of the Executive Order and a letter of clarification can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0238.

update requirements for the State's PSD program. *See* 76 FR 36875.

In this action, EPA is proposing to approve South Carolina's infrastructure SIP for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for program enforcement of control measures including review of proposed new sources related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

4. 110(a)(2)(D)(ii) *Interstate and International transport provisions:* Regulation 61–62.5 Standard 7, *Prevention of Significant Deterioration,* outlines how the State will notify neighboring states of potential impacts from new or modified sources. South Carolina does not have any pending obligation under sections 115 and 126 of the CAA. EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

5. 110(a)(2)(E) *Adequate resources:* Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. As with the remainder of the infrastructure elements addressed by this notice, EPA is proposing to approve South Carolina's SIP as meeting the requirements of sub-elements 110(a)(2)(E)(i) and (iii). With respect to 110(a)(2)(E)(ii) (regarding state boards), South Carolina's submission is being addressed in a separate action. EPA's rationale for today's proposals respecting sub-elements (i) and (iii) is described in turn below.

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), DHEC's legal authority to establish SIPs and implement related plans, in general, is prescribed in S.C. Code Ann. Title 48, Chapter 1, *Pollution Control Act.* Specifically, S.C. Code Ann. Section 48–1–50(12) grants DHEC the statutory authority to ''[a]ccept, receive and administer grants or other funds or gifts for the purpose of carrying out any of the purposes of this chapter; accept, receive and receipt for Federal money given by the Federal government under any Federal law to the State of South Carolina for air or water control activities, surveys or programs * * *.'' S.C. Code Ann. Title 48, Chapter 2, *Environmental Protection Funds,* grants DHEC statutory authority to establish environmental protection funds. Additionally, Regulation 61–30, *Environmental Protection Fees,* provides DHEC with the ability to access fees for environmental permitting programs. In addition, the requirements of 110(a)(2)(E)(i) and 110(a)(2)(E)(iii) are met when EPA performs a completeness determination for each SIP submittal. This determination ensures that each submittal provides evidence that adequate personnel, funding, and legal authority under State Law has been used to carry out the state's implementation plan and related issues. South Carolina's authority is included in all prehearings and final SIP submittal packages for approval by EPA.

Annually, states update grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS, including 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. On March 8, 2012, EPA submitted a letter to South Carolina outlining 105 grant commitments and current status for fiscal year 2011. The letter EPA submitted to South Carolina can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0238. There were no outstanding issues, therefore South Carolina's grants were finalized and closed out. EPA has made the preliminary determination that South Carolina has adequate resources for implementation of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128 of the CAA. Section 128 requires that: (1) The majority of members of the state body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such body be adequately disclosed. As stated above section 110(a)(2)(E)(ii) is being addressed in a separate action.

6. 110(a)(2)(F) *Stationary source monitoring system:* Regulation 61–62.1, *Definitions and General Requirements,* Section III—*Emissions Inventory,* of the South Carolina SIP provides for an emission inventory plan that establishes reporting requirements. DHEC uses this data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements.

Additionally, South Carolina is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System (EIS). States report emissions data for the six criteria pollutants and the precursors that form them—NO_X, SO_2, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds (VOCs). Many states also voluntarily report emissions of hazardous air pollutants. South Carolina made its latest update to the NEI on December 21, 2011. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through

the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for the stationary source monitoring systems related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

7. 110(a)(2)(H) *Future SIP revisions:* As previously discussed, DHEC is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. South Carolina has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the PM NAAQS. Specific to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, South Carolina has provided the following submissions:

- November 19, 2004, SIP Revision—(EPA approval, 72 FR 46903, August 22, 2007) Revisions to Ambient Air Quality Standards;
- August 14, 2007, SIP Revision—(EPA approval, 72 FR 57209, October 9, 2007) Clean Air Interstate Rule;
- December 2, 2010, SIP Revision—(EPA approval, 76 FR 36875, June 23, 2011) New Source Review $PM_{2.5}$; and,
- March 14, 2011, SIP Revision—(EPA approval, 76 FR 36875, June 23, 2011) New Source Review $PM_{2.5}$.

EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

8. 110(a)(2)(J) (121 consultation) *Consultation with government officials:* South Carolina Air Regulation 61–62.5, *Air Pollution Control Standards,* Standard No. 7, *Prevention of Significant Deterioration,* as well as the Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. More specifically, South Carolina adopted state-wide consultation procedures for the implementation of transportation conformity which includes the consideration of the development of mobile inventories for SIP development. Required partners covered by South Carolina's consultation procedures include federal, state and local transportation and air quality agency officials. EPA approved South Carolina's consultation procedures on July 28, 2009 (*See* 74 FR 37168). EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate consultation with government officials related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

9. 110(a)(2)(J) (127 public notification) *Public notification:* DHEC has several public notice mechanisms in place to notify the public of $PM_{2.5}$ and other pollutant forecasting, including an air quality monitoring Web site. South Carolina also has an extensive outreach program to educate the public and promote the use of voluntary emissions reduction measures. Such outreach programs include the State's open burning awareness program. In addition DHEC has produced public education materials including factsheets on the following topics: PM generally including a link to EPA PM Web page, ''How smoke from fires can affect your health, ''Particle pollution and your health'' and ''Protect your lungs from wildlife smoke.'' Regulation 61–62.3, *Air Pollution Episodes,* requires that DHEC notify the public of any air pollution episode or NAAQS violation. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

10. 110(a)(2)(J) (PSD) *PSD and visibility protection:* South Carolina demonstrates its authority to regulate new and modified sources of PM to assist in the protection of air quality in Regulation 61–62.1, *Definitions and General Requirements,* Section II, *Permit Resources,* and Regulation 61–62.5, *Air Pollution Control Standards,* Standard No. 7, *Prevention of Significant Deterioration,* and 7.1, *Nonattainment New Source Review.* South Carolina's SIP is current with regard to PSD requirements. On June 23, 2011, EPA approved several revisions to South Carolina's SIP to update requirements for the State's PSD program. *See* 76 FR 36875.

With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under Part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, EPA finds that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. This would be the case even in the event a secondary $PM_{2.5}$ NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. South Carolina has submitted SIP revisions for approval to satisfy the requirements of the CAA Section 169A, and the regional haze and best available retrofit technology rules contained in 40 CFR 51.308. These revisions are currently under review and will be acted on in a separate action. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate the State's ability to implement PSD programs and to provide for visibility protection related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

11. 110(a)(2)(K) *Air quality and modeling/data:* South Carolina Regulation 61–62.5, *Air Pollution Control Standards,* Standards No. 2, *Ambient Air Quality Standards,* and No. 7, *Prevention of Significant Deterioration,* require that air modeling be conducted to determine permit applicability. These standards demonstrate that South Carolina has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Additionally, South Carolina supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, for the Southeastern states. Taken as a whole, South Carolina's air quality regulations demonstrate that South Carolina has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

12. 110(a)(2)(L) *Permitting fees:* Pursuant to S.C. Code Ann. Section 48–2–50, DHEC shall charge fees for environmental programs it administers pursuant to federal and state law and regulations. Regulation 61–30, *Environmental Protection Fees,* prescribes fees applicable to applicants and holders of permits, licenses, certificates, certifications, and registrations as well as establishes procedures for the payment of fees, provides for the assessment of penalties for nonpayment, and establishes an appeals process for refuting fees. EPA has made the preliminary determination

that South Carolina's SIP and practices adequately provide for permitting fees related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

13. 110(a)(2)(M) *Consultation/ participation by affected local entities:* Regulation 61–62.5, *Air Pollution Control Standards,* Standard No. 7, *Prevention of Significant Deterioration,* of the South Carolina SIP requires that DHEC notify the public of the application, preliminary determination, degree of incremental consumption, and the opportunity for comment prior to making a final permitting decision. DHEC has worked closely with local political subdivisions when developing its Transportation Conformity SIP, Regional Haze Implementation Plan, Early Action Compacts, and the 8-hour Ozone Attainment Demonstration for York County, South Carolina portion of the Charlotte-Gastonia-Rock Hill NC–SC nonattainment area. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate consultation with affected local entities when necessary.

V. Proposed Action

As described above, DHEC has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, and September 25, 2009, guidance to ensure that the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in South Carolina. EPA is proposing to approve South Carolina's infrastructure submission for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, specifically 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for sections 110(a)(2)(A)–(H), (J)–(M), with the exception of 110(a)(2)(C) the nonattainment area requirements, 110(a)(2)(D)(i), sub-element 110(a)(2)(E)(ii) and 110(a)(2)(G) for section because its March 14, 2008, and September 18, 2009, submissions are consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

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

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

EPA has preliminarily determined that this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because there are no ''substantial direct effects'' on an Indian Tribe as a result of this action. The Catawba Indian Nation Reservation is located within the South Carolina portion of the bi-state Charlotte nonattainment area. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, ''all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' Thus, the South Carolina SIP applies to the Catawba Reservation. EPA has also preliminarily determined that these revisions will not impose any substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 24, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–13716 Filed 6–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0238; FRL– 9681–9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the South Carolina State Implementation Plan (SIP), submitted by the South Carolina Department of Health and Environmental Control (SC DHEC), on April 3, 2012, pertaining to Clean Air Act (CAA) Section 110(a)(2)(E) and (G) for the 1997 annual and 2006 24-hour fine particulate matter National Ambient Air Quality Standards (NAAQS). EPA is also proposing to approve portions of a certification submission provided by SC DHEC on March 14, 2008, to address CAA section 110(a)(1) and (2) requirements for the 1997 annual fine particulate matter ($PM_{2.5}$) NAAQS, as well as portions of a certification submission provided on September 18, 2009, to address CAA section 110(a)(1) and (2) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. Specifically, EPA is proposing action on two separate but related requirements addressed in South Carolina's April 3, 2012, SIP revision, and two previous certifications. First, South Carolina's SIP revision addresses the CAA section 128 requirements. Second, South Carolina's March 14, 2008, and September 18, 2009, certification submissions (as clarified in a letter on November 9, 2009), and the State's April 3, 2012, SIP revision were submitted to address sections 110(a)(2)(E)(ii) and 110(a)(2)(G), of the CAA for both the 1997 and 2006

$PM_{2.5}$ NAAQS. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP. SC DHEC certified that the South Carolina SIP contains provisions that ensure the 1997 and 2006 $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in South Carolina (hereafter referred to as ''infrastructure submission''). South Carolina's infrastructure submissions, provided to EPA on April 3, 2012, March 14, 2008, and September 18, 2009 (as clarified in a letter on November 3, 2009), as a whole, addressed the required infrastructure elements for the 1997 and 2006 $PM_{2.5}$ NAAQS, however the subject of this notice is limited to infrastructure elements 110(a)(2)(E)(ii) and 110(a)(2)(G). All other applicable South Carolina infrastructure elements will be addressed in a separate rulemaking.

DATES: Written comments must be received on or before July 6, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0238, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2012–0238,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0238. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

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

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I. Background

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m³) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA also established a 24-hour NAAQS of 65 μg/m³. *See* 40 CFR 50.7. On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a new 24-hour NAAQS of 35 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs to EPA no later than July 2000 for the 1997 annual $PM_{2.5}$ NAAQS, and no later than October 2009 for the 2006 24-hour $PM_{2.5}$ NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the ''infrastructure'' requirements for the 1997 annual $PM_{2.5}$ NAAQS. On March 10, 2005, EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS by October 5, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state for

the 1997 $PM_{2.5}$ NAAQS as of October 3, 2008.

On October 22, 2008, EPA published a final rulemaking entitled, ''Completeness Findings for Section 110(a) State Implementation Plans Pertaining to the Fine Particulate Matter ($PM_{2.5}$) NAAQS'' making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 $PM_{2.5}$ NAAQS (*See* 73 FR 62902). For those states that did receive findings, the findings of failure to submit for all or a portion of a state's implementation plan established a 24-month deadline for EPA to promulgate a Federal Implementation Plan (FIP) to address the outstanding SIP elements unless, prior to that time, the affected states submitted, and EPA approved, the required SIPs.

The findings that all or portions of a state's submission are complete established a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k). South Carolina's infrastructure submissions were received by EPA on March 14, 2008, for the 1997 annual $PM_{2.5}$ NAAQS and on September 18, 2009, for the 2006 24-hour $PM_{2.5}$ NAAQS. The submissions were determined to be complete on September 14, 2008, and March 18, 2010, respectively. South Carolina was among other states that did not receive findings of failure to submit because it had provided a complete submission to EPA to address the infrastructure elements for the 1997 $PM_{2.5}$ NAAQS by October 3, 2008.

On July 6, 2011, WildEarth Guardians and Sierra Club filed an amended complaint related to EPA's failure to take action on the SIP submittal related to the ''infrastructure'' requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. On October 20, 2011, EPA entered into a consent decree with WildEarth Guardians and Sierra Club which required EPA, among other things, to complete a **Federal Register** notice of the Agency's final action either approving, disapproving, or approving in part and disapproving in part the South Carolina 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure SIP submittal addressing the applicable requirements of sections 110(a)(2)(A)–(H), (J)–(M), except for section 110(a)(2)(C) the nonattainment area requirements and section 110(a)(2)(D)(i) interstate transport requirements, by September 30, 2012.

Today's action is proposing to approve South Carolina's infrastructure submissions for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for sections 110(a)(2)(E)(ii) and 110(a)(2)(G). Additionally, EPA is proposing to approve the April 3, 2012, SIP revision to address section 128 requirements. EPA is taking action on South Carolina's infrastructure submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS for sections 110(a)(2)(A)–(D), E(i) and E(iii), (F), (H), (J)–(M), except for section 110(a)(2)(C) the nonattainment area requirements and section 110(a)(2)(D)(i) interstate transport requirements in a separate action.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 and 2006 $PM_{2.5}$ NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous PM NAAQS.

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

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

In today's action, EPA is only addressing section 110(a)(2)

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

[2] This element is only addressed in the $PM_{2.5}$ context as it relates to attainment areas.

[3] Today's proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by South Carolina consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the D.C. Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008). Prior to this remand, EPA took final action to approve South Carolina's SIP revision, which was submitted to comply with CAIR. *See* 72 FR 46388 (August 20, 2007). In so doing, South Carolina's CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has promulgated a new rule to address the interstate transport. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule''). That rule was recently stayed by the D.C. Circuit Court of Appeals. EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

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

requirements related to sub-elements 110(a)(2)(E)(ii) and 110(a)(2)(G) for South Carolina for both the 1997 and 2006 $PM_{2.5}$ NAAQS. EPA is addressing the other 1997 and 2006 $PM_{2.5}$ NAAQS infrastructure requirements in a separate rulemaking.

III. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[5] Those Commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (SSM); and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (director's discretion). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (minor source NSR); and (ii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIPs for the 1997 and 2006 $PM_{2.5}$ NAAQS from South Carolina.

EPA intended the statements in the other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a re-approval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit re-approval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the infrastructure SIP for South Carolina.

Unfortunately, the Commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPs are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements

[5] *See* Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

for both authority and substantive provisions.[6] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[7]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[8] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[9] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's implementation plans. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[10]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[11] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.''[12] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.''[13] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.''[14] However, for the one exception to that general assumption (*i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS), EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State

[6] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[7] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. *See* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[8] *See Id.,* 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[9] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. *See* ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[11] *See* ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance'').

[12] *Id.,* at page 2.

[13] *Id.,* at attachment A, page 1.

[14] *Id.,* at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's implementation plans for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[15] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS (e.g., the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS). Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the infrastructure SIPs for South Carolina.

EPA believes that this approach to the infrastructure SIP requirement is reasonable because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[16] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[17] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[18]

IV. What is EPA's analysis of how South Carolina addressed the section 128 requirements?

Section 128 of the CAA requires that states include provisions in their SIP to address conflict interest for state boards that oversee CAA permits and enforcement orders. Specifically, CAA section 128 reads as follows:

(a) Not later than the date one year after August 7, 1977, each applicable implementation plan shall contain requirements that—

(1) Any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this chapter, and

(2) Any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. A State may adopt any requirements respecting conflicts of interest for such

[15] *See* ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[16] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 76 FR 21639 (April 18, 2011).

[17] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. *See* ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. *See* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[18] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See* 75 FR 42342, 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements submitted as part of an implementation plan.

During the evaluation of South Carolina's SIP in regards to EPA's pending action on the State's March 14, 2008, and September 18, 2009 (as clarified on November 3, 2009), infrastructure submissions related to the section 110(a)(2)(E)(ii) sub-elements for the 1997 and 2006 $PM_{2.5}$ NAAQS, EPA noted that the State's implementation plan did not include provisions to address CAA 128 requirements. EPA alerted the State to this missing component of its implementation plan, and as a result, South Carolina provided the April 3, 2012, SIP revision to address the section 128 requirements.

South Carolina's April 3, 2012, SIP revision, proposes to include existing state statues to meet the requirements of section 128. Specifically, South Carolina is requesting that EPA approve portions of South Carolina's Ethics Reform Act into the South Carolina SIP to address section 128 requirements.[19] The State provides that the Ethics Reform Act satisfies the requirements of CAA section 128 for the SC DHEC Board, which is the ''board or body which approves permits and enforcement orders'' under the CAA in South Carolina. S.C. Code Ann. Section 8–13–100(31) defines ''State board, commission, or council * * * [as] an agency created by legislation which has statewide jurisdiction and which exercises some of the sovereign power of the State.'' South Carolina proposes that the aforementioned definition in conjunction with three sections of the Ethics Reform Act meet the CAA section 110(a)(1) requirements. These three sections are as follows:

(1) S.C. Code Ann. Section 8–13–730 provides that ''[u]nless otherwise provided by law, no person may serve as a member of a governmental regulatory agency that regulates business with which that person is associated.''

(2) S.C. Code Ann. Section 8–13–700(A) provides in part that ''[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.''

(3) S.C. Code Ann Section 8–13–700(B) provides in part that ''[n]o public official, public member, or public employee may make, participate in making, or in any way attempt to use his official office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest.''

South Carolina asserts that S.C. Code Ann. Section 8–13–700(B)(1)–(5) provides for disclosure of any conflicts of interest by public official, public members or public employee, which meets the requirement of CAA section 128(a)(2) that ''any potential conflicts of interest * * * be adequately disclosed.'' As mentioned in South Carolina's April 3, 2012, SIP revision, the South Carolina Attorney General concluded in an Opinion dated November 5, 1993, that the South Carolina Ethics, Government Accountability and Campaign Reform Act of 1991 (''Ethics Reform Act'')[20] in effect met the requirements of CAA section 128. This document can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0238.

Today, EPA is proposing to approve S.C. Code Ann. Sections 8–13–100(31), 8–13–730, 8–13–700(A) and 8–13–700(B)(1)–(5) into the South Carolina's SIP as meeting the requirements of section 128 of the CAA. This proposed approval supports EPA's proposed approval of the section 110(a)(2)(E)(ii) for South Carolina's infrastructure submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS as discussed below.

V. What is EPA's analysis of how South Carolina addressed elements (E)(ii) and (G) of sections 110(a)(1) and (2) ''infrastructure'' provisions?

The South Carolina infrastructure submissions address the provisions of sections 110(a)(1) and (2) with respect to elements (E)(ii) and (G), as described below.

1. 110(a)(2)(E) *Adequate resources:* Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. In today's action, EPA is proposing to approve South Carolina's SIP as meeting the requirements of section 110(a)(2)(E)(ii) (which is one of the three sub-elements required pursuant to section 110(a)(2)(E)) as described in South Carolina's certification submissions dated March 14, 2008, for the 1997 $PM_{2.5}$ NAAQS, and September 18, 2009, for the 2006 $PM_{2.5}$ NAAQS. See Section IV of this proposed rulemaking for EPA's analysis of South Carolina's SIP revision to address CAA section 128 requirements. EPA has made the preliminary determination that the South Carolina SIP will meet the section 128 requirements for implementation of the 1997 and 2006 $PM_{2.5}$ NAAQS once the proposed revisions discussed above in section IV have been adopted into the South Carolina SIP. EPA is taking action on 110(a)(2)(E)(i) and 110(a)(2)(E)(iii) as it relates to South Carolina in certification submissions dated March 14, 2008, for the 1997 $PM_{2.5}$ NAAQS, and September 18, 2009, for the 2006 $PM_{2.5}$ NAAQS in a separate rulemaking.

2. 110(a)(2)(G) *Emergency episodes:* Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs. The Executive Director of the SC DHEC is empowered by the South Carolina Code to respond to air pollution episodes and other air quality and the SC DHEC has contingency plans to implement emergency episode provisions in the SIP. On September 25, 2009, EPA released the guidance entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particulate ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS).'' This guidance clarified that ''to address the section 110(a)(2)(G) element, states with air quality control regions identified as either Priority I, IA, or Priority II by the 'Prevention of Air Pollution Emergency Episodes' rule at 40 CFR 51.150, must develop emergency episode contingency plans.'' EPA's September 25, 2009, guidance also states that ''until the Agency finalized changes to the emergency episode

[19] On November 12, 1993, South Carolina submitted a package addressing the requirements of section 507 of the CAA and 40 CFR 70. As provided in the Attorney General's November 5, 1993 opinion on the title V submission, South Carolina included a specific reference to the state laws and regulations that addressed CAA section 128 requirements. Specifically, while EPA approved the delegation title V permitting authority, effective July 26, 1995 (40 CFR 70 Appendix A), EPA did not receive this as a SIP revision and as such has not yet approved the state statues that related to CAA section 128 into the South Carolina SIP.

[20] S.C. Code Ann. Section 8–13–700 (2011).

regulation to establish for $PM_{2.5}$ specific levels for classifying areas as Priority I, IA, or II for $PM_{2.5}$, and to establish a significant harm level (SHL) * * *,'' the Agency recommends that states with a 24-Hour $PM_{2.5}$ concentration above 140 μg/m³ (using the most recent three years of data) develop an emergency episode plan.

On March 14, 2008, and September 18, 2009, SC DHEC submitted certifications that its SIP adequately addressed the section 110(a)(2)(G) requirements for the 1997 and 2006 $PM_{2.5}$ NAAQS. On November 3, 2009, following EPA's release of the September 25, 2009, guidance, South Carolina submitted a clarification to the *South Carolina Fine Particulate Matter Air Quality Implementation Plan: CAA 110(a)(2)(G) requirements for the 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS.* South Carolina had not previously public noticed its certification submissions with regard to 110(a)(2)(G) for the $PM_{2.5}$ NAAQS, so on April 3, 2012, South Carolina submitted a SIP revision to address the 110(a)(2)(G) requirements for the $PM_{2.5}$ NAAQS and provided public notice for this element.

EPA has reviewed South Carolina's April 3, 2012, SIP revision and has made the preliminary determination, that this SIP revision, and in combination with South Carolina's March 14, 2008, and September 8, 2009 (as clarified on November 3, 2009), would meet the requirements of 110(a)(2)(G). First, EPA has determined that the 2008–2010 ambient air quality monitoring data for South Carolina do not exceed 140.0 μg/m³ (the State's $PM_{2.5}$ levels have consistently remained below the 140.0 μg/m³ level). Second, the State has appropriate general emergency powers to address $PM_{2.5}$ related episodes to protect the environment and public health. Given the State's monitored $PM_{2.5}$ levels, EPA is proposing that South Carolina is not required to submit an emergency episode plan and contingency measures at this time, for the 1997 and 2006 $PM_{2.5}$ standards. As a result, EPA is proposing to approve South Carolina's infrastructure submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS as these submissions related to the section 110(a)(2)(G) requirement. EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for emergency powers related to the 1997 and 2006 $PM_{2.5}$ NAAQS.

VI. Proposed Action

As described above, EPA is proposing to approve South Carolina's April 3, 2012, SIP revision to incorporate provisions into the South Carolina SIP to address section 128 requirements of the CAA. In today's rulemaking, EPA is also proposing to approve portions of a certification submission provided by SC DHEC on March 14, 2008, to address infrastructure requirements for the 1997 $PM_{2.5}$ NAAQS, and to approve portions of a certification submission provided on September 18, 2009, to address infrastructure requirements for the 2006 $PM_{2.5}$ NAAQS. Specifically, EPA is proposing to approve infrastructure elements 110(a)(2)(E)(ii) and 110(a)(2)(G) of South Carolina's March 15, 2008, and September 19, 2009 (as clarified on November 3, 2009), infrastructure submissions because they are consistent with section 110 of the CAA.[21]

VII. Statutory and Executive Order Reviews

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

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

EPA has preliminarily determined that this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because there are no ''substantial direct effects'' on an Indian Tribe as a result of this action. The Catawba Indian Nation Reservation is located within the South Carolina portion of the bi-state Charlotte nonattainment area. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, ''all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' Thus, the South Carolina SIP applies to the Catawba Reservation. EPA has also preliminarily determined that these revisions will not impose any substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 24, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–13714 Filed 6–5–12; 8:45 am]

BILLING CODE 6560–50–P

[21] As discussed in section V.1 above, EPA's proposed approval the section 110(a)(2)(E)(ii) sub-element is contingent upon the Agency taking final action to approve today's proposed substantive revisions to the South Carolina SIP discussed in section IV to address the requirements of CAA section 128.

Notices

Federal Register

Vol. 77, No. 109

Wednesday, June 6, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Designation for the Topeka, KS; Cedar Rapids, IA; Minot, ND; and Cincinnati, OH Areas; Correction

AGENCY: Grain Inspection, Packers and Stockyards Administration.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration published a document in the **Federal Register** on May 30, 2012, concerning the announcement for the Designation for the Topeka, KS; Cedar Rapids, IA; Minot, ND; and Cincinnati, OH Areas. The document contained an incorrect abbreviation.

FOR FURTHER INFORMATION CONTACT: Eric Jabs, (816) 659–8404.

Correction

In the **Federal Register** of May 30, 2012, in FR Doc. 2012–13019, on page 31831, in the second column, correct the ''Summary'' paragraph to read:

SUMMARY:

GIPSA is announcing the designation of Kansas Grain Inspection Service, Inc. (Kansas); Mid-Iowa Grain Inspection, Inc. (Mid-Iowa); Minot Grain Inspection, Inc. (Minot); and Tri-State Grain Inspection Service, Inc. (Tri-State) to provide official services under the United States Grain Standards Act (USGSA), as amended.

Dated: May 31, 2012.

Alan R. Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2012–13646 Filed 6–5–12; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0036]

Notice of Request for Extension of Approval of an Information Collection; Lacey Act Declaration Requirement; Plants and Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection required by the Lacey Act for the importation of certain plants and plant products.

DATES: We will consider all comments that we receive on or before August 6, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0036-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0036, 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-2012-0036* 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: For information on special need requests under the Plant Protection Act, contact Mr. George Balady, Agriculturist, QPAS, PPQ, APHIS, 4700 River Road, Riverdale, MD 20737; (301) 851–2240. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Lacey Act Declaration Requirement; Plants and Plant Products.

OMB Number: 0579–0349.

Type of Request: Extension of approval of an information collection.

Abstract: The Lacey Act, as amended, makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported or sold in violation of the laws of the United States, a State, an Indian tribe, or any foreign law that protects plants. The Act also makes it unlawful to make or submit any false record, account or label for, or any false identification of, any plant covered by the Act.

In addition, section 3 of the Act makes it unlawful to import certain plants and plant products without an import declaration. The declaration must contain, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the plant was harvested. For paper and paperboard products with recycled plant content, the importer will not be required to specify the species or country of harvest with respect to the recycled plant product component, but will be required to provide the average percentage of recycled content. If the product also contains non-recycled plant materials, the basic declaration requirements still apply to that component of the product imported.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the 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 our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.476953 hours per response.

Respondents: Importers of certain plants and plant products.

Estimated annual number of respondents: 20,352.

Estimated annual number of responses per respondent: 21.

Estimated annual number of responses: 427,392.

Estimated total annual burden on respondents: 203,846 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 31st day of May 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–13758 Filed 6–5–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0130]

ArborGen, LLC; Availability of an Environmental Assessment for Controlled Release of a Genetically Engineered *Eucalyptus* Hybrid

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment for a proposed controlled field release of a genetically engineered clone of a *Eucalyptus* hybrid. The purpose of the field release is to assess the effectiveness of gene constructs intended to confer cold tolerance, to test the efficacy of genes introduced to alter lignin biosynthesis, to test the efficacy of genes designed to alter growth, and to test the efficacy of genes designed to alter flowering. After assessing the application for a permit for the field release, reviewing pertinent scientific information, and considering comments from the public, we have concluded that the field release is unlikely to pose a plant pest risk or to have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared for this field release.

DATES: *Effective Date:* June 6, 2012.

ADDRESSES: You may read the documents referenced in this notice and the comments we received on the Regulations.gov Web site at *http://www.regulations.gov/#!docketDetail;D=APHIS–2011–0130.* The documents are also available on the Internet at *http://www.aphis.usda.gov/brs/biotech_ea_permits.html.* You may also view the documents and comments we received in our reading room. The reading room 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: Mr. David S. Reinhold, Assistant Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road, Riverdale, MD 20737–1236; (301) 851–3885. To obtain copies of the environmental assessment, finding of no significant impact, and responses to comments, contact Ms. Cynthia Eck at (301) 851–3892; email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release in the environment of a regulated article.

On February 21, 2011, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 11–052–101rm) from ArborGen, LLC, in Summerville, SC, for a controlled field release of genetically engineered *Eucalyptus* hybrids in six locations encompassing a total of 14.7 acres in the States of Alabama, Florida, Mississippi, and South Carolina.

Permit application 11–052–101rm describes *Eucalyptus* trees derived from a hybrid of *Eucalyptus grandis* X *Eucalyptus urophylla.* The purpose of the field tests is to assess the effectiveness of gene constructs intended to confer cold tolerance; to test the efficacy of genes introduced to alter lignin biosynthesis; to test the efficacy of genes designed to alter growth; and to test the efficacy of genes designed to alter flowering. In addition, the trees have been engineered with a selectable marker that confers resistance to the antibiotic kanamycin. These DNA sequences were introduced into *Eucalyptus* trees using disarmed *Agrobacterium tumefaciens.*

The subject *Eucalyptus* trees are considered regulated articles under 7 CFR part 340 because they were created using donor sequences from plant pests.

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risks associated with the proposed release under permit of these genetically engineered *Eucalyptus* trees, APHIS prepared an environmental assessment (EA). APHIS announced the availability of the EA for public comment in a notice published in the **Federal Register** on February 10, 2012 (77 FR 7123–7124, Docket No. APHIS–2011–0130). Comments on the EA were required to be received on or before March 12, 2012. We received 246 comments by the close of the comment period. All expressed concerns about the permit or opposed granting the permit. APHIS reviewed all comments to identify new issues, alternatives, or information.

Pursuant to the regulations promulgated under the Plant Protection Act, APHIS has determined that this field release is unlikely to pose a risk of introducing or disseminating a plant pest. Additionally, based upon analysis described in the EA, APHIS has determined that the action proposed in Alternative B of the EA—issue the permit with supplemental permit conditions—is unlikely to have a

significant impact on the quality of the human environment. The EA and finding of no significant impact (FONSI) are available as indicated in the **ADDRESSES** section of this notice. Responses to the comments received on the EA are provided as an attachment to the FONSI.

The EA and FONSI were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 31st day of May 2012.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–13760 Filed 6–5–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Beaverhead-Deerlodge National Forest; Montana; Supplemental EIS for the Beaverhead-Deerlodge National Forest Land and Resource Management Plan To Comply With District of Montana Court Order

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Beaverhead-Deerlodge National Forest will prepare a Supplemental Environmental Impact Statement (SEIS) to the 2009 Beaverhead-Deerlodge National Forest Revised Land and Resource Management Plan (Forest Plan) environmental analysis in response to an April 2, 2012 Order, from the U.S. District Court for the District of Montana. The Court directed the Forest Service to apply the minimization criteria mandated by Executive Order (EO) 11644 ''at the route-specific level where specific snowmobile routes are designated.'' The supplement will evaluate the effects of specific snowmobile routes delineated on maps in the 2009 Forest Plan in order to make an informed decision in accordance with EO 11644.

DATES: Under 40 CFR 1502.9(c)(4), there is no formal scoping period for this proposed action. The Draft SEIS is expected June, 2012 and the Final SEIS is expected September, 2012.

ADDRESSES: The line officer responsible for the decision is Northern Region Regional Forester Faye Krueger.

FOR FURTHER INFORMATION CONTACT: Noelle Meier, Beaverhead-Deerlodge National Forest, 420 Barrett Street, Dillon, MT 59725, (406) 683–3900. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The 2009 Forest Plan provides management direction for activities on the Beaverhead-Deerlodge National Forest for the next 10 to 15 years, including direction on eight revision topics (vegetation, wildlife, aquatic resources, recreation and travel management, fire management, livestock grazing, timber and recommended wilderness). In 2010, Wildlands CPR, Inc., Friends of the Bitterroot Inc., and Montanans for Quiet Recreation filed a complaint in U.S. District Court for the District of Montana (Case 9:10–cv–00104–DWM) alleging inadequate analysis of the impacts of winter motorized travel when developing the Forest Plan and failure to analyze criteria intended to minimize off-road vehicle impacts. In an April 2, 2012 Order, the U.S. District Court for the District of Montana found the Forest Service had adequately applied the minimization criteria of EO 11644 for areas generally open to snowmobile use. However, the court found ''to the extent that specific routes have been designated for snowmobile use'', the Forest Service failed to show it adequately applied the minimization criteria at the route-specific level. The court ordered as follows: ''that this case is remanded to the Forest Service for the limited purpose of applying the minimization criteria mandated by EO 11644 at the route specific level where specific snowmobile routes are designated. The Forest Service shall perform this analysis and updated the Revised Forest Plan by September 30, 2012. A failure to do so will result in the suspension of the winter travel management portion of the Revised Forest Plan as of October 1, 2012.''

The SEIS will provide additional environmental analysis of three routes delineated in the Forest Plan as exceptions to winter, non-motorized areas. These routes are: (1) Snowmobile use in the vicinity of Thunderbolt Creek and Cottonwood Lake (Jefferson County, Montana) as delineated on page 94 of the Forest Plan, (2) snowmobile use through the non-motorized area on the Road #056 corridor in the vicinity of Antelope Basin (Beaverhead County, Montana) as delineated on page 128 of the Forest Plan, and (3) snowmobile use on the route to Antone Cabin (open to motorized vehicles yearlong) in the southwest portion of the Snowcrest Mountains (Beaverhead County, Montana) as delineated on page 152 of the Forest Plan. The analysis will evaluate the potential effects from these routes on soil, watershed, vegetation, wildlife, and recreation users. This analysis will be used to determine if snowmobile use on these routes complies with EO 11644 or whether a change is warranted.

A Draft SEIS is expected to be available for public review and comment in late June 2012; and a Final SEIS in September 2012. The comment period for the Draft SEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplemental environmental impact statement.

Dated: May 31, 2012.

Victoria C. Christiansen,

Regional Forester.

[FR Doc. 2012–13669 Filed 6–5–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–SM–2012–N044; FXFR13350700640L6–123–FF07J00000]

Subsistence Management Program for Public Lands in Alaska

AGENCY: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Departments, in compliance with the determinations of the District Court in *Peratrovich* v. *United States*, No. 3:92–cv–00734–HRH (D. Alaska), announce the initiation of reviews of pre-statehood withdrawals and reservations in the Tongass National Forest. These reviews, as ordered by the United States District Court for the District of Alaska, will be used in regulatory proceedings for the purpose of implementing Title VIII of the Alaska National Interest Lands Conservation Act with respect to submerged public lands within the Tongass National Forest.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov*. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743–9461 or *skessler@fs.fed.us*.

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This Program provides a priority for taking of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to implement this Program in the **Federal Register** on June 29, 1990 (55 FR 27114), and final regulations in the **Federal Register** on May 29, 1992 (57 FR 22940). The Secretaries have amended these regulations a number of times. Because this Program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, ''Parks, Forests, and Public Property,'' and Title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain the following subparts: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Litigation

In *Peratrovich* v. *United States,* No. 3:92–cv–00734–HRH (D. Alaska), the plaintiffs challenged, in part, the failure to include as public lands, subject to the priority under Title VIII of ANILCA (16 U.S.C. 3113–3126), certain marine waters in the Tongass National Forest. In its May 31, 2011, order, the Court partially held in favor of the plaintiffs. The Court stated that ''it is the duty of the Secretaries [Agriculture & Interior] to identify any submerged lands (and the marine waters overlying them) within the Tongass National Forest to which the United States holds title.'' Because, if such title exists, it ''creates an interest in [the overlying] waters sufficient to make those marine waters public lands for purposes of [the subsistence provisions] of ANILCA.''

In the regulations, the Secretaries excluded the marine waters within the Tongass National Forest as public lands subject to the subsistence priority since marine waters within the exterior boundaries of a National Forest are not subject to reserved water rights. Subsequently, the United States also disclaimed interest in the marine submerged lands within the exterior boundaries of the Tongass National Forest in *Alaska* v. *United States,* No. 128 Orig., 546 U.S. 413 (2006).

In that case, the State of Alaska sought to quiet title to lands underlying marine waters within the boundaries of the Tongass National Forest and elsewhere within southeastern Alaska. In the course of that litigation, the United States disclaimed ownership to submerged lands in the Tongass National Forest, with some exceptions that generally involve small tracts, *Alaska* v. *United States,* 546 U.S. at 415. The Supreme Court accepted the disclaimer.

When the United States assumed control over the subsistence program in Alaska in 1990, the Secretaries responded to comments on the scope of the program during promulgation of the interim regulations, published in the **Federal Register** on June 29, 1990 (55 FR 27114). The Secretaries stated that ''the United States generally does not hold title to navigable waters and thus navigable waters generally are not included within the definition of public lands.'' That position was changed in 1999 when the subsistence priority was extended to waters subject to a Federal reserved water right in the Katie John litigation. *Alaska* v. *Babbitt,* 72 F. 3d 698 (9th Cir. 1995). Later the Secretaries identified certain submerged marine lands that did not pass to the State where the subsistence priority applied. The regulations recognized that additional marine waters might subsequently be determined to be public lands. Over the years, small areas of submerged marine lands in the Tongass National Forest have been identified as public lands subject to the subsistence priority (71 FR 49997, August 24, 2006, as amended by 74 FR 34696, July 17, 2009).

The court acknowledged in its order that inventorying all these lands could be an expensive undertaking, but that it is a burden ''necessitated by the 'complicated regulatory scheme' which has resulted from the inability of the State of Alaska to implement Title VIII of ANILCA.''

In its October 17, 2011, order, the court ''enjoined'' the United States ''to promptly initiate regulatory proceedings for the purpose of implementing the subsistence provisions in Title VIII of ANILCA with respect to submerged public lands within Tongass National Forest'' and directed entry of judgment.

Purpose of Notice

To comply with the order, the Federal Subsistence Board is proceeding to identify for the Secretaries those submerged lands within the Tongass National Forest that did not pass to the State at statehood and that are subject to Title VIII of ANILCA.

The Bureau of Land Management (BLM) has commenced the review of pre-statehood (January 3, 1959) withdrawals of submerged lands in the marine waters of the Tongass National Forest following the Court's May 31, 2011, order that preceded the final October 17, 2011, order. The BLM review process is proceeding. In addition to BLM, the U.S. Forest Service has started its review of records to identify lands filled in, built up, or otherwise reclaimed by the United States for its own use prior to Alaska statehood, and other areas that may not have passed to the State at statehood.

This notice announces to the public, including rural Alaska residents and federally recognized Tribes of Alaska, the initiation of reviews of pre-statehood withdrawals in the Tongass National Forest. When final, these

reviews will be used in regulatory proceedings, either by the Secretaries, or the Board, for the purpose of implementing Title VIII of ANILCA with respect to submerged public lands within the Tongass National Forest, as ordered by the U.S. District Court for Alaska.

Dated: May 11, 2012.

Peter J. Probasco,

Assistant Regional Director, U.S. Fish and Wildlife Service, Acting Chair, Federal Subsistence Board.

Steve Kessler,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 2012–13673 Filed 6–5–12; 8:45 am]

BILLING CODE 3410–11–P–4310–55–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent to Request an Extension of a Currently Approved Information Collection

AGENCY: National Institute of Food and Agriculture, USDA

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act of 1995, this notice announces the National Institute of Food and Agriculture's (NIFA) intention to request approval for an extension of a currently approved information collection for Children, Youth, and Families at Risk (CYFAR).

DATES: Written comments on this notice must be received by August 6, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments concerning this notice and requests for copies of the information collection may be submitted by any of the following methods: Email: *gmendez@nifa.usda.gov*; Fax: 202–720–0857; Mail: Office of Information Technology (OIT), NIFA, USDA, STOP 2216, 1400 Independence Avenue SW., Washington, DC 20250–2216.

FOR FURTHER INFORMATION CONTACT: Gidel Mendez, eGovernment Program Leader; Email: *gmendez@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Children, Youth, and Families at Risk (CYFAR) Year End Report.

OMB Number: 0524–0043.

Expiration Date of Current Approval: January 31, 2011

Type of Request: Intent to seek approval for the extension of a currently approved information collection for three years.

Abstract: Funding for the Children, Youth, and Families at Risk (CYFAR) community project grants is authorized under section 3(d) of the Smith-Lever Act (7 U.S.C. 341 *et seq.*), as amended, and other relevant authorizing legislation, which provides jurisdictional basis for the establishment and operation of extension educational work for the benefit of youth and families in communities. The CYFAR funding program supports community-based programs serving children, youth, and families in at-risk environments. CYFAR funds are intended to support the development of high quality, effective programs based on research and to document the impact of these programs on intended audiences. The CYFAR Year End Report collects demographic and impact data from each community site to conduct impact evaluations of the programs on its intended audience.

The collection of information serves several purposes. It allows NIFA staff to gauge whether the program is reaching the target audience and make programmatic improvements. This collection also allows program staff to demonstrate the impacts that are realized as well as program capacity that is realized in the locales where federal assistance is provided.

The evaluation processes of CYFAR are consistent with the requirements of Congressional legislation and OMB. The Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62), the Federal Activities Inventory Reform Act (FAIR Act) (Pub. L. 105–207), and the Agricultural, Research, Extension and Education Reform Act (AREERA) of 1998 (Pub. L. 105–185), together with OMB requirements, support the reporting requirements requested in this information collection. One of the five Presidential Management Agenda initiatives, Budget and Performance Integration, builds on GPRA and earlier efforts to identify program goals and performance measures, and link them to the budget process. The FAIR Act requires the development and implementation of a system to monitor and evaluate agricultural research and extension activities in order to measure the impact and effectiveness of research, extension, and education programs. AREERA requires a performance evaluation to be conducted to determine whether federally funded agricultural research, extension, and education programs result in public benefits that have national or multi-state significance.

The immediate need of this information collection is to provide a means for satisfying accountability requirements. The long term objective is to provide a means to enable the evaluation and assessment of the effectiveness of programs receiving federal funds and to fully satisfy requirements of performance and accountability legislation in GPRA, the FAIR Act, and AREERA.

Estimate of Burden: There are currently CYFAR projects in 48 states and 3 territories. Each state and territory is required to submit an annual year-end report which includes demographic and impact data on each of the community projects. NIFA estimates the burden of this collection to be 322 hours per response. There are currently 51 respondents, thus making the total annual burden of this collection an estimated 16,422 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Done in Washington, DC, this 29th day of May, 2012.

Catherine E. Woteki,

Under Secretary, Research, Education, and Economics.

[FR Doc. 2012–13728 Filed 6–5–12; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Extend a Currently Approved Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44977, Aug. 29, 1995), this notice announces the National Institute of Food and Agriculture's (NIFA) intention to revise a currently approved information collection entitled, ''Reporting Requirements for State Plans of Work for Agricultural Research and Extension Formula Funds.''

DATES: Written comments on this notice must be received by August 6, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments concerning this notice may be submitted by any of the following methods: Email: *gmendez@nifa.usda.gov;* Fax: 202–720–0857; Mail: Office of Information Technology (OIT), NIFA, USDA, STOP 2216, 1400 Independence Avenue SW., Washington, DC 20250–2216.

FOR FURTHER INFORMATION CONTACT: Gidel Mendez, eGovernment Program Leader; Email: *gmendez@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements for State Plans of Work for Agricultural Research and Extension Formula Grants.

OMB Number: 0524–0036.

Expiration Date of Current Approval: August 31, 2012.

Type of Request: Intent to seek approval for the extension of a currently approved information collection for three years.

Abstract: The purpose of this collection of information is to continue implementing the requirements of sections 202 and 225 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) which require that a plan of work must be submitted by each institution and approved by the National Institute of Food and Agriculture (NIFA) before formula funds may be provided to the 1862 and 1890 land-grant institutions. The formula funds are authorized under the Hatch Act for agricultural research activities at the 1862 land-grant institutions, under the Smith-Lever Act for the extension activities at the 1862 land-grant institutions, and under sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 for research and extension activities at the 1890 land-grant institutions. The plan of work must address critical agricultural issues in the State and describe the programs and projects targeted to address these issues using the NIFA formula funds. The plan of work also must describe the institution's multistate activities as well as their integrated research and extension activities.

This collection of information also includes the reporting requirements of section 102(c) of AREERA for the 1862 and 1890 land-grant institutions. This section requires the 1862, 1890, and 1994 land-grant institutions receiving agricultural research, education, and extension formula funds from NIFA of the Department of Agriculture (USDA) to establish and implement processes for obtaining input from persons who conduct or use agricultural research, extension, or education concerning the use of such funds by October 1, 1999. Section 102(c) further requires that the Secretary of Agriculture promulgate regulations that prescribe what the institutions must do to meet this requirement and the consequences of not complying with this requirement. The Stakeholder Input Requirements for Recipients of Agricultural Research, Education, and Extension Formula Funds (7 CFR Part 3418) final rule (65 FR 5993, Feb. 8, 2000) applies not only to the land-grant institutions receiving formula funds but also to the veterinary and forestry schools that are not land-grant institutions but receive forestry research funds under the McIntire-Stennis Act of 1962 and animal health and disease research funds under section 1433 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA). Failure to comply with the requirements of this rule may result in the withholding of a recipient institution's formula funds and redistribution of its share of formula funds to other eligible institutions. The institutions are required to annually report to NIFA: (1) The actions taken to seek stakeholder input to encourage their participation; (2) a brief statement of the process used by the recipient institution to identify individuals and groups who are stakeholders and to collect input from them; and (3) a statement of how collected input was considered. There is no legislatively prescribed form or format for this reporting requirement. However, the 1862 and 1890 land-grant institutions are required to report on their Stakeholder Input Process annually as part of their Annual Report of Accomplishments and Results.

Section 103(e) of AREERA requires that the 1862, 1890, and 1994 land-grant institutions establish a merit review process, prior to October 1, 1999, in order to obtain agricultural research and extension funds. Section 104(h) of AREERA also stipulated that a scientific peer review process be established for research programs funded under section 3(c)(3) of the Hatch Act (commonly referred to as Hatch Multistate Research Funds).

I. Initial 5-Year Plan of Work

Estimate of Burden: The Initial 5-Year Plan of Work was submitted for the FY 2007–2011 Plan of Work in 2006. Thus, this reporting burden has been satisfied and will no longer be collected. Consequently, the total reporting and record keeping requirements for the submission of the ''Initial 5-Year Plan of Work'' is estimated to average 0 hours per response.

II. Annual Update to 5-Year Plan of Work

Estimate of the Burden: The total reporting and record keeping requirements for the submission of the ''Annual Update to the 5-Year Plan of Work'' is estimated to average 64 hours per response. There are five components of this ''5-Year Plan of Work'': ''Planned Programs,'' ''Stakeholder Input Process,'' ''Program Review Process,'' ''Multi state Activities,'' and ''Integrated Activities.''

Estimated Number of Respondents: 75.

Estimated Number of Responses: 150.

Estimated Total Annual Burden on Respondents: 9,600 hours.

Frequency of Responses: Annually.

III. Annual Report of Accomplishments and Results

Estimate of the Burden: The total annual reporting and record keeping requirements of the ''Annual Report of Accomplishments and Results'' is estimated to average 260 hours per response.

Estimated Number of Respondents: 75.

Estimated Number of Responses: 150.

Estimated Total Annual Burden on Respondents: 39,000 hours.

Frequency of Responses: Annually.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Obtaining a Copy of the Information Collection: A copy of the information collection and related instructions may be obtained free of charge by contacting Gidel Mendez as directed above.

Done in Washington, DC this 29th day of May, 2012.

Catherine E. Woteki,

Under Secretary, Research, Education, and Economics.

[FR Doc. 2012–13733 Filed 6–5–12; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the National Institute of Food and Agriculture's (NIFA) intention to request approval to extend the currently approved information collection in support of authorizations to use the 4–H Club Name and/or Emblem.

DATES: Written comments on this notice must be received by August 6, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments may be submitted by any of the following methods: Email: *gmendez@nifa.usda.gov;* Fax: 202–720–0857; Mail: Office of Information Technology (OIT), NIFA, USDA, STOP 2216, 1400 Independence Avenue SW., Washington, DC 20250–2216.

FOR FURTHER INFORMATION CONTACT: Gidel Mendez, eGovernment Program Leader; Email: *gmendez@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Application for Authorization to Use the 4–H Club Name and/or Emblem.

OMB Number: 0524–0034.

Expiration Date of Current Approval: August 31, 2012.

Type of Request: Intent to seek approval for the extension of a currently approved information collection for three years.

Abstract: Use of the 4–H Club Name and/or Emblem is authorized by an Act of Congress (18 U.S.C. 707). Use of the 4–H Club Name and/or Emblem by anyone other than 4–H Clubs and those duly authorized by them, representatives of the United States Department of Agriculture, the land grant colleges and universities, and persons authorized by the Secretary of Agriculture is prohibited by the provisions of 18 U.S.C. 707. The Secretary of Agriculture has delegated authority to the Director of NIFA to authorize others to use the 4–H Club Name and Emblem. The Director has promulgated regulations at 7 CFR Part 8 that govern such use. The regulatory requirements for use of the 4–H Club Name and/or Emblem reflect the high standards of 4–H and its educational goals and objectives. Pursuant to provisions of 7 CFR Part 8 anyone requesting authorization from the Director to use the 4–H Club Name and/or Emblem is asked to describe the proposed use in a formal application. The collection of this information is used to determine whether the applicant's proposed use will meet the regulatory requirements in 7 CFR Part 8 and whether an authorization for use should be granted.

Need and Use of the Information: NIFA will collect information on the name of the individual, partnership, corporation, or association; the organizational address; the name of an authorized representative; the telephone number, facsimile number, and email address; the proposed use of the 4–H Club Name and/or Emblem; and the plan for sale or distribution of the product bearing the 4–H Club Name and/or Emblem. The information collected by NIFA will be used to determine if those applying to use the 4–H Name and/or Emblem meet the regulatory requirements. If the information is not collected, it would not be possible to ensure that the products, services, and materials meet the regulatory requirements as well as 4–H educational goals and objectives.

Estimate of Burden: No changes have been proposed to this collection, and the public reporting burden remains at the estimated average .5 hours per response.

Respondents: Individuals, households, businesses or other for-profit or not-for-profit institutions.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and, clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Obtaining a Copy of the Information Collection: A copy of the information collection and related instructions may be obtained free of charge by contacting Gidel Mendez as directed above.

Done in Washington, DC, this 29th day of May, 2012.

Catherine E. Woteki,

Under Secretary, Research, Education, and Economics.

[FR Doc. 2012–13730 Filed 6–5–12; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance (TAA) from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[05/08/2012 through 05/30/2012]

Firm name	Firm address	Date accepted for investigation	Product(s)
Lanco Assembly Systems, Inc.	12 Thomas Drive, Westbrook, ME 04092.	05/08/12	The firm manufactures turnkey assembly and material handling equipment.
Liberty Tool	4259 W Seltice Way, Coeur D Alene, ID 83814.	05/09/12	The firm manufactures custom injection molds.
F.E. Hale Manufacturing	120 Benson Place, Frankfort, NY 13340.	05/10/12	The firm manufactures wooden bookcases and other wooden library and office furniture.
Sytech Engineering, Inc	200 Stanley Street, Elk Grove Village, IL 60007.	05/18/12	The firm manufactures manufacturer Quick Die Change equipment.
Boardman Molded Products, Inc.	1110 Thalia Avenue, Youngstown, OH 44512.	05/24/12	The firm manufactures diverse injection molded plastic components, including flooring.
Major Custom Cable, Inc	281 Lotus Drive, Jackson, MO 63755.	05/30/12	The firm manufactures custom pre-termed fiber optic and copper cable assemblies.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: May 31, 2012.

Bryan Borlik,

Director, TAA for Firms.

[FR Doc. 2012–13664 Filed 6–5–12; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–815]

Light-Walled Rectangular Pipe and Tube From Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to a request from Noksel Celik Boru Sanayi A.S., (Noksel), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on light-walled rectangular pipe and tube from Turkey. Atlas Tube, Inc. and Searing Industries, Inc., are petitioners in this case. The review covers exports of the subject merchandise to the United States produced and exported by Noksel. The period of review (POR) is May 1, 2010, through April 30, 2011.

We preliminarily find that Noksel did not make sales at less than normal value (NV) during the POR. If these preliminary results are adopted in our final results of this review, we shall instruct U.S. Customs and Border Protection (CBP) to liquidate Noksel's entries subject to this administrative review without regard to antidumping duties and to set the cash deposit rate for Noksel to zero.

DATES: *Effective Date:* June 6, 2012.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on light-walled rectangular ripe and tube from Turkey on May 30, 2008.[1] On May 2, 2011, the Department published the notice of opportunity to request an administrative review of light-walled rectangular pipe and tube from Turkey for the period January 30, 2010, through April 30, 2011.[2] On May 27, 2011, Noksel requested an administrative review for this period. On June 28, 2011, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 37781 (June 28, 2011). On August 5, 2011, the Department issued its antidumping questionnaire to Noksel.

Noksel submitted its response to section A of the Department's antidumping questionnaire on September 26, 2011 (Noksel's section A Response). Noksel submitted its response to sections B and C of the Department's antidumping questionnaire on October 13, 2011 (Noksel's sections B and C Responses).

On January 12, 2012, the Department issued a supplemental questionnaire to Noksel regarding Noksel's section A Response and Noksel's sections B and C Responses. Noksel submitted its response to the Department's supplemental questionnaire on February 15, 2012 (Noksel's Supplemental Response).

Scope of the Order

The merchandise subject to this order is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm. The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of

[1] *See Notice of Antidumping Duty Order: Light-Walled Rectangular Pipe and Tube from Turkey,* 73 FR 31065 (May 30, 2008).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 24460 (May 2, 2011).

molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope.

The welded carbon-quality rectangular pipe and tube subject to this order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and CBP's customs purposes, our written description of the scope of the order is dispositive.

Limited Home Market Reporting

In accordance with the contemporaneity rules as described in section B of the Department's questionnaire and 19 CFR 351.414(e)(2), Noksel requested that the reporting period for home market sales be limited to the period September 1, 2010, through April 30, 2011. Noksel reported U.S. sales which were invoiced in only one calendar month of the POR. *See* Noksel's September 30, 2011, letter; *see also* Noksel's Supplemental Response at Exhibit 1. Noksel reported that it had no other U.S. sales during the POR. *Id.* The Department's contemporaneity rules (as described in section B of the questionnaire and 19 CFR 351.414(e)(2)) limit the matching of any particular U.S. sale to the nearest matching comparison market sale in the three months previous—or the two months subsequent—to the month containing the date of sale of that U.S. sale. Hence, for each U.S. sale, there is a six-month ''window'' for the purposes of matching to a comparison market sale.[3] (For further explanation of our determination of date of sale in both markets, *see* the ''Fair Value Comparisons'' section below.)

Our past practice in cases in which respondents made sales of subject merchandise in only a portion of the POR has been to allow respondents, when requested properly and in a timely manner, to limit their home market sales reporting period to those home market sales which are contemporaneous with their U.S. sales.[4] Therefore, to ensure that we would have the necessary home market sales, regardless of our choice of date of sale, we allowed Noksel to limit its reporting of home market sales to those sales made during the period September 1, 2010, through April 30, 2011. Our analysis indicated that, based on the totality of the record evidence, the appropriate dates of sale of Noksel's U.S. sales are in December 2010. (For further explanation of our determination of date of sale in both markets, *see* the ''Fair Value Comparisons'' section below.)

Noksel also reported that it made sales of certain ''second quality'' merchandise for which Noksel claimed it lacked complete sales records. *See* Noksel's section B Response at page B–4 and at Exhibit B–4; *see also* Noksel's Supplemental Response at pages S–16 to S–18. Noksel further explained that it could not differentiate the sales of these products according to product type (*i.e.,* cannot generate a control number to permit matching to U.S. sales). Noksel did not report these sales in its sales home market database, but did report all the information it maintained about these sales. *See* Noksel's section B Response at Exhibit B–4. Based on the information on the record, we preliminarily determine that these are sales of ''second quality'' merchandise that would not be suitable for matching to the prime quality pipe Noksel sold in the United States.

Fair Value Comparisons

In calculating the preliminary weighted-average dumping margin for the mandatory respondent, the Department applied the calculation methodology adopted in the *Final Modification for Reviews.*[5] In particular, the Department compared monthly weighted-average export prices (EPs) with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin. Application of this methodology in these preliminary results affords parties an opportunity to meaningfully comment on the Department's implementation of this recently adopted methodology in the context of this administrative review. The Department intends to consider, pursuant to 19 CFR 351.414(c), whether another method is appropriate in these administrative reviews in light of any comments on the issue that parties may include in their case and rebuttal briefs.

To determine whether sales of light-walled rectangular pipe and tube from Turkey in the United States were made at less than NV, we compared U.S. price to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. Because we determined Noksel made only EP sales during the POR, we used EP as the basis for U.S. price in all of our comparisons.

In accordance with 19 CFR 351.410(i), the Department ''normally'' will use invoice date as the date of sale unless ''a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' Based on evidence on the record, we preliminarily determine that the material terms of sale for U.S. sales were established at the time of the issuance of the purchase order/contract. Noksel explained that base price and discount rate can vary between the purchase order date and the invoice date in the home market. *See* Noksel's section A Response at page A–22 to A–24; *see also* Noksel's Supplemental response at pages S–7 to S–9. However, in the case of Noksel's U.S. sales, no such variance occurred; neither quantity nor unit price varied between purchase order and invoice. *See* Noksel's section A Response at page A–22. We preliminarily determine that Noksel's use of the contract/purchase order date as the date of sale for its U.S. sales better

[3] Noksel submitted its request to shorten the reporting period at a point in the administrative review when there was doubt as to what date the Department would use for date of sale with regard to U.S. sales. Noksel summed the possibilities as: ''The date of sale for Noksel's earliest U.S. sale is either in December 2010 (if the Department considers the date of contract as the date of sale) or in January 2011 (if the Department considers the date of invoice to be the date of sale). The date of sale for Noksel's latest U.S. sale is either in December 2010 (if the Department considers the date of contract as the date of sale) or in February 2011 (if the Department considers the date of invoice to be the date of sale).'' *See* Noksel's September 30, 2011, letter. We agree. In our margin calculations, U.S. sales made in December 2010 could potentially be compared to the prices of home market sales at any time between September 1, 2010, and February 28, 2011; U.S. sales made in February 2011 could potentially be compared to the prices of home market sales made between November 1, 2010, and April 30, 2011. U.S. sales made in December 2010, January 2011, or February 2011 could not match to home market sales made in any months outside of the period of September 1, 2010, to April 30, 2011.

[4] *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review,* 71 FR 2018 (January 12, 2006) (unchanged in *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Duty Administrative Review,* 71 FR 40694 (July 18, 2008); *Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review,* 70 FR 17406 (April 6, 2005) (unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil,* 70 FR 58683 (October 7, 2005); and *Light-Walled Rectangular Pipe and Tube from Turkey; Notice of Final Results of Antidumping Duty Administrative Review,* 75 FR 61127 (October 4, 2010); *see also Light-Walled Rectangular Pipe and Tube From Turkey; Notice of Final Results of Antidumping Duty Administrative Review,* 76 FR 57953 (September 19, 2011) (the previous administrative review of Noksel, in which the same issue was presented).

[5] *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) (''Final Modification for Reviews'').

reflects the date on which the exporter or producer established the material terms of sale than the invoice date during this POR.

Based on the same record evidence, we preliminarily determine that the material terms of sale for home market sales were not established at the time of the purchase order. *See* Noksel's section A Response at page A–22 to A–24; *see also* Noksel's Supplemental response at pages S–7 to S–9. Therefore, we preliminarily determine that Noksel's use of the earlier of the invoice date or the shipping date better reflects the date on which the exporter or producer established the material terms of sale than the contract/purchase order date during this POR.[6]

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Noksel covered by the description in the ''Scope of the Order'' section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. As mentioned above, we limited the reporting period for home market sales to the period of September 1, 2010, through April 30, 2011. We relied on six characteristics to match U.S. sales of subject merchandise to home market sales of the foreign like product (listed in order of priority): (1) Steel input type; (2) metallic coating; (3) painted/non-painted; (4) perimeter; (5) wall thickness; and (6) shape. *See* the antidumping questionnaire at Appendix 5. In our normal practice where there are no contemporaneous sales of identical merchandise in the home market to compare to U.S. sales, we compare U.S. sales to contemporaneous sales of the next most similar foreign like product on the basis of these product characteristics and the reporting instructions listed in the antidumping questionnaire. *See* Preliminary Analysis Memorandum at page 2. For these preliminary results, we compared U.S. sales to identical foreign like products. In our normal practice, where there are no sales of identical or similar merchandise in the home market suitable for comparison to U.S. sales, we compare U.S. sales to constructed value (CV). For these preliminary results, because there were sales of identical merchandise in the home market suitable for comparison to each U.S. sale, we compared no U.S. sales to CV in these preliminary results.

Export Price

Section 772(a) of the Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,'' as adjusted under section 772(c). In accordance with section 772(a) of the Act, we used EP for all of Noksel's U.S. sales. We preliminarily find that these sales are properly classified as EP sales because these sales were made before the date of importation and were made directly to unaffiliated U.S. customers, and because our constructed export price (CEP) methodology was not otherwise warranted.

We based EP on the prices to unaffiliated customers in the United States. We made adjustments for duty drawback. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, and exporter's association fee. *See* Preliminary Analysis Memorandum at pages 3–4. Additionally, we made adjustments for differences in circumstances of sale (COS) for home market and U.S. credit and banking expenses in accordance with section 773(a)(6)(C)(iii) of the Act and section 351.410 of the Department's regulations. *Id.*

Noksel requested a duty drawback adjustment. *See* Noksel's section C Response at page C–33. Section 772(c)(1)(B) of the Act states: ''The price used to establish export price and constructed export price shall be increased by * * * the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.'' Based upon this statutory language, the Department applies a two-prong test to determine entitlement to a duty drawback adjustment. That is, the party claiming such adjustment must establish that: (1) The import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to exportation); and (2) there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the manufactured product. *See Duty Drawback Practice in Antidumping Proceedings,* 70 FR 37764 (June 30, 2005).

Noksel reported that it collects rebates of import duties for purchases of raw materials, based upon its exports of merchandise manufactured from those raw materials, under the Turkish Inward Processing Regime (IPR). *See* Noksel's section C Response at pages C–33 to C–34. However, despite being requested to do so, Noksel did not segregate subject merchandise from non-subject merchandise. *See* Noksel's Supplemental Response at page S–36. Noksel calculates its duty drawback claim by dividing the total amount of duties paid on imported coil by the total amount of exports of finished products made from those imported coils. *See* Noksel's section C Response at C–34 and at Exhibit C–12. We draw no adverse inference; but because this duty drawback claim is value-based, and no segregation between subject and non-subject merchandise is made, it is not possible for the Department to evaluate whether the amount claimed is appropriate. Specifically, we cannot evaluate whether the import duty paid on the reported raw materials and the rebate payment due with regard to the subject merchandise sold during this POR are directly linked to, and dependent upon, one another. Therefore, in accordance with section 772(c)(1)(B) of the Act, we have not made an adjustment to U.S. price for duty drawback. *See* Preliminary Analysis Memorandum at pages 7–8.

Normal Value

A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Noksel's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. Because Noksel's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined the home market was viable. Therefore, we have based NV on home market sales.

[6] *See* Memorandum from Mark Flessner to the File entitled, ''Light-Walled Rectangular Pipe and Tube from Turkey: Preliminary Results Analysis Memorandum for Noksel Celik Boru Sanayi A.S. (Noksel),'' dated May 30, 2012 (Preliminary Analysis Memorandum) at page 2.

B. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers. Noksel had sales to an affiliate in the home market who did not resell the Noksel material as subject merchandise, but rather incorporated it into its own products. *See* Noksel's section A Response at page A–11. Noksel did not contend that these sales were at arm's length. *See* Noksel's Supplemental Response at page S–3. We therefore disregarded these sales. *See* Preliminary Analysis Memorandum at page 4. We made adjustments for billing adjustments, where appropriate. We made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost (*i.e.,* DIFMER), where those differences were attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and section 351.411 of the Department's regulations. We also made adjustments for differences in COS in accordance with section 773(a)(6)(C)(iii) of the Act and section 351.410 of the Department's regulations. We made COS adjustments for imputed credit expenses and banking charges. *See* Preliminary Analysis Memorandum at pages 5 and 8. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we base NV on sales made in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is based on the starting price of sales in the home market or, when NV is based on CV, on the LOT of the sales from which SG&A expenses and profit are derived.

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. *See* 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar.[7] Noksel reported that it sold light-walled rectangular pipe and tube at only one level of trade and in only one channel of distribution in the home market and at one level of trade and in one channel of distribution in the U.S. market. *See* Noksel's section A Response at pages A–17 to A–21; *see also* Noksel's Supplemental Response at pages S–3 to S–5 and Exhibit SA–2. Based on our analysis of the record evidence provided by Noksel, we preliminarily determine that a single LOT exists in the home market. We obtained information from Noksel regarding the marketing stages involved in making its reported home market and U.S. sales. Noksel described all selling activities performed, and provided a table comparing the selling functions performed in both markets. *Id.* We find Noksel performed virtually the same level of customer support services on its EP sales as it did on its home market sales and that the minor differences that do exist do not establish a distinct and separate level of trade. Consequently, the record evidence supports a finding that, in both markets, Noksel performs essentially the same level of services. While we found minor differences between the home and U.S. markets (based on our analysis of the selling functions performed on EP sales in the United States and its sales in the home market), we determine that the EP and the starting price of home market sales represent the same stage in the marketing process, and are thus at the same LOT. *See* Noksel's Supplemental Response at pages S–4 to S–5 and Exhibit SA–2. For this reason, we preliminarily find that a LOT adjustment is not appropriate for Noksel. As there are no CEP sales, no CEP offset is appropriate.

Currency Conversions

In accordance with section 773A(a) of the Act, we made Turkish lira-U.S. dollar currency conversions, where appropriate, based on the exchange rates in effect on the dates of the U.S. sales, as collected by Dow Jones Reuters Business Interactive LLC (marketed as Factiva) and as published on the Import Administration's Web site (*http://ia.ita.doc.gov/exchange/index.html*).

[7] *See Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review,* 65 FR 30068 (May 10, 2000), and accompanying Issues and Decision Memorandum at Comment 6.

Preliminary Results of Review

As a result of our review, we preliminarily find the following weighted-average dumping margin exists for the period May 1, 2010, through April 30, 2011:

Manufacturer/Exporter	Weighted average dumping margin (percent)
Noksel	0.00

Disclosure and Public Hearing

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with section 351.224(b) of the Department's regulations. An interested party may request a hearing within thirty days of publication. *See* section 351.310(c) of the Department's regulations. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to section 351.310(d) of the Department's regulations. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

Comments

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Upon completion of this administrative review, pursuant to section 351.212(b) of the Department's regulations, the Department will calculate an assessment rate on all appropriate entries. Noksel has reported entered values for all of its sales of subject merchandise to the United States during the POR. Therefore, in accordance with section 351.212(b)(1) of the Department's regulations, we will calculate importer-specific duty assessment rates on the basis of the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the examined sales of that importer. If Noksel's weighted-average dumping margin remains zero (or below *de minimis*) for the final results of this administrative review, we shall direct CBP to liquidate entries subject to this administrative review without regard to antidumping duties. *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

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

Cash Deposit Requirements

Furthermore, the following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of light-walled rectangular pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Noksel will be the rate established in the final results of review; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all-others rate of 27.04 percent *ad valorem* from the LTFV investigation. *See Notice of Antidumping Duty Order: Light-Walled Rectangular Pipe and Tube From Turkey,* 73 FR 31065 (May 30, 2008). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–13707 Filed 6–5–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–937]

Citric Acid and Certain Citrate Salts From the People's Republic of China: Preliminary Results of the Second Administrative Review of the Antidumping Duty Order; and Partial Rescission of Administrative Review

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

SUMMARY: The Department of Commerce (''Department'') is conducting the second administrative review of the antidumping duty order on citric acid and certain citrate salts (''citric acid'') from the People's Republic of China (''PRC''), covering the period May 1, 2010, through April 30, 2011. The Department has preliminarily determined that during the period of review (''POR'') the respondent in this proceeding did not make sales of subject merchandise at less than normal value (''NV''). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act'').

DATES: *Effective Date:* June 6, 2012.

FOR FURTHER INFORMATION CONTACT: Krisha Hill or Maisha Cryor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4037 or (202) 482–5831, respectively.

Background

On May 29, 2009, the Department published in the **Federal Register** the antidumping duty order on citric acid from the PRC.[1] On June 28, 2011, the Department published the initiation of the second administrative review of the antidumping duty order on citric acid from the PRC,[2] and initiated review on two exporters: (1) Huangshi Xinghua Biochemical Co., Ltd. (''Xinghua'') and (2) RZBC Co., Ltd., RZBC Imp. & Exp. Co., Ltd., RZBC (Juxian) Co., Ltd. (collectively ''RZBC''). On May 20, 2011, and May 31, 2011, RZBC and Xinghua each requested to be selected as a mandatory respondent in this review, respectively.[3] On July 8, 2011, Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Ingredients Americas LLC (''Petitioners'') submitted comments on

[1] *See Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Antidumping Duty Orders,* 74 FR 25703 (May 29, 2009).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 37781, 37785 (June 28, 2011) (''*Initiation*'').

[3] *See* Letter from RZBC to the Department, regarding ''Citric Acid and Citrate Salt from People's Republic of China: Antidumping Duty Administrative Review Request,'' dated May 20, 2011; *see also* Letter from Xinghua to the Department, regarding ''Citric Acid and Certain Citrate Salts from the People's Republic of China: Request for AD Administrative Review (05/01/10–04/30/2011),'' dated May 31, 2011.

mandatory respondent selection and requested that the Department identify both RZBC and Xinghua as mandatory respondents in this review. On July 27, 2011, Xinghua withdrew its review request. Between August 16, 2011, and April 4, 2012, the Department sent the original antidumping questionnaire and supplemental questionnaires to RZBC. RZBC submitted timely questionnaire responses between October 17, 2011, and April 30, 2012.

On December 6, 2011, the Department issued a letter to all interested parties soliciting comments on selecting a surrogate country and surrogate values (''SVs'').[4] On December 20, 2011, we received comments on surrogate country selection from Petitioners.[5] On January 3, 2012, we received rebuttal surrogate country comments from both RZBC and Petitioners.[6] On January 6, 2012, we received SV comments from both RZBC and Petitioners.[7] We received rebuttal SV comments from both RZBC and Petitioners on January 11, 2012.[8]

On January 10, 2012, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review by 90 days to April 30, 2012, pursuant to section 751(a)(3)(A) of the Act.[9] Additionally, on April 16, 2012, the Department published a notice in the **Federal Register** fully extending the deadline for the preliminary results by 30 days to May 30, 2012.[10]

Period of Review

The POR is May 1, 2010, through April 30, 2011.

Scope of the Order

The scope of the order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of the order also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of the order does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of the order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (''HTSUS''), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Partial Rescission of the Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the initiation notice of the requested review. Further, pursuant to 19 CFR 351.213(d)(1), the Department is permitted to extend this time if it is reasonable to do so.

On July 27, 2011, Xinghua timely withdrew its request for an administrative review of its exports to the United States. Because no other parties requested a review of Xinghua's exports to the United States, the Department hereby rescinds the administrative review of citric acid with respect to Xinghua in accordance with 19 CFR 351.213(d)(1).

Non-Market-Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market-economy (''NME'') country.[11] In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. Accordingly, the Department has calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

In antidumping proceedings involving NME countries, pursuant to section 773(c)(1) of the Act, the Department generally bases NV on the value of the NME producer's factors of production (''FOP''). In accordance with section 773(c)(4) of the Act, in valuing the FOP, the Department uses to the extent possible the prices or costs of the FOP in one or more market economy countries that are (1) at a level of economic development comparable to that of the NME country and (2) significant producers of merchandise comparable to the subject merchandise. Moreover, as we stated in Policy Bulletin No. 04.1,[12] it is the

[4] *See* the Department's letter to Interested Parties entitled, ''Second Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Surrogate Country List,'' (December 6, 2011).

[5] *See* RZBC's letter to the Department entitled, ''Citric Acid and Citrate Salt from People's Republic of China: Surrogate Country Comments,'' (December 20, 2011); *see also* Petitioners' letter to the Department entitled, ''Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Petitioners' Comments Concerning Surrogate Country Selection,'' (December 20, 2011).

[6] *See* RZBC's letter to the Department entitled, ''Citric Acid and Citrate Salt from People's Republic of China: Rebuttal Surrogate Country Comments,'' (January 3, 2012); *see also* Petitioners' letter to the Department entitled, ''Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Petitioners' Rebuttal Comments Concerning Surrogate Country Selection,'' (January 3, 2012).

[7] *See* RZBC's letter to the Department entitled, ''Citric Acid and Citrate Salt from People's Republic of China: Surrogate Value Comments,'' (January 6, 2012); *see also* Petitioners' letter to the Department entitled, ''Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Petitioners' Surrogate Value Comments,'' (January 6, 2012).

[8] *See* RZBC's letter to the Department entitled, ''Citric Acid and Citrate Salt from People's Republic of China: Rebuttal Surrogate Value Comments,'' (January 11, 2012); *see also* Petitioners' letter to the Department entitled, ''Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Petitioners' Surrogate Value Rebuttal Comments,'' (January 11, 2012).

[9] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 77 FR 1455 (January 10, 2012).

[10] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 77 FR 22560 (April 16, 2012).

[11] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007).

[12] *See* the Department's Policy Bulletin No. 04.1, regarding, ''Non-Market Economy Surrogate Country Selection Process,'' (March 1, 2004)

Department's practice to select an appropriate surrogate country based on the availability and reliability of data from these countries.

In the instant review, the Department has identified Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine as countries that are at a level of economic development comparable to the PRC.[13] The Department uses per capita gross national income (''GNI'') as the primary basis for determining economic comparability.[14] Once the countries that are economically comparable to the PRC have been identified, the Department selects an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether data for valuing FOPs are both available and reliable.

With respect to interested parties' surrogate country comments, Petitioners argued that Thailand is the most appropriate surrogate country from which to derive surrogate factor values for the PRC because Thailand: (a) Has a per capita GNI which is economically most comparable to that of the PRC when compared with the other considered countries; (b) is also a significant producer of citric acid; (c) provides robust data sources, and in certain instances more specific, to value RZBC's FOPs; and (d) the potential Thai surrogate company is most representative of RZBC when compared with the potential Indonesian surrogate company.[15] RZBC recommended that the Department select Indonesia, consistent with the Department's determination in the original investigation and the first administrative review that Indonesia is economically comparable to the PRC and is a significant producer of identical and comparable merchandise.[16]

The Department has determined that it is appropriate to use Indonesia as a surrogate country, pursuant to section 773(c)(4) of the Act, based on the following: (1) It is at a comparable level of economic development to the PRC; (2) it is a significant producer of comparable merchandise, and (3) the Department has reliable data from Indonesia that it can use to value the FOPs.[17] Additionally, the Indonesian surrogate company offers greater detail and more reliable financial ratios when compared with the Thai surrogate company. Accordingly, we have calculated NV using Indonesian prices when available and appropriate to value each respondent's FOPs.[18] In certain instances where Indonesian SVs were not deemed the best available data, we have relied on Thai SVs in the alternative. Thailand is at a similar level of economic development to the PRC and is a significant producer of comparable merchandise.[19]

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of an administrative review, interested parties may submit publicly available information to value the FOPs within 20 days after the date of publication of these preliminary results.[20]

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assigned a single antidumping duty rate.[21] It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from *Sparklers* as further developed in *Silicon Carbide.*[22] However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate-rate analysis is not necessary to determine whether it is independent from government control.

In order to demonstrate separate-rate status eligibility, the Department normally requires entities, for whom a review was requested, and who were assigned a separate rate in a previous segment of this proceeding, to submit a separate-rate certification stating that they continue to meet the criteria for obtaining a separate rate.[23] For entities that were not assigned a separate rate in the previous segment of a proceeding, to demonstrate eligibility, the Department requires a separate-rate application.[24] In this instance, the Department received a completed response to the Section A portion of the NME antidumping questionnaire from RZBC, which contains information pertaining to the company's eligibility for a separate rate.[25]

a. Absence of de Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative

(''Policy Bulletin 04.1''), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull04-1.html.*

[13] *See* the Department's letter to Interested Parties entitled, ''Second Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Surrogate Country List,'' (December 6, 2011).

[14] *See* Policy Bulletin No. 04.1.

[15] *See* Petitioners' letter to the Department entitled, ''Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Petitioners' Comments Concerning Surrogate Country Selection,'' (December 20, 2011).

[16] *See* RZBC's letter to the Department entitled, ''Citric Acid and Citrate Salt from People's Republic of China: Surrogate Country Comments,'' (December 20, 2011).

[17] *See* Memorandum from Krisha Hill to Abdelali Elouaradia regarding ''Second Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Selection of a Surrogate Country,'' dated May 30, 2012 (''Surrogate Country Memorandum'').

[18] *See* Memorandum from Krisha Hill and Maisha Cryor to Robert Bolling, regarding ''Preliminary Results of the Second Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Surrogate Value Memorandum,'' dated May 30, 2012 (''Surrogate Value Memorandum''); *see also* ''Factor Valuations'' section, below.

[19] *See* Surrogate Value Memorandum at 2.

[20] In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record, alternative SV information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[21] *See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 24892, 24899 (May 6, 2010), unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 59217 (September 27, 2010).

[22] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as further developed in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*'').

[23] *See Initiation.*

[24] *Id.*

[25] *See* Letter from RZBC to the Department, regarding ''Citric Acid and Citrate Salt from the People's Republic of China: Section A, C and D Questionnaire Response,'' dated October 17, 2011 (''Original Response'') at A–2 to A–13.

enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[26]

The evidence provided by RZBC supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of the companies.[27]

b. Absence of de Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[28]

The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control over export activities that would preclude the Department from assigning separate rates. For RZBC, we determine that the evidence on the record supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing the following: (1) RZBC sets its own export prices independent of the government and without the approval of a government authority; (2) RZBC retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) RZBC has the authority to negotiate and sign contracts and other agreements; and (4) RZBC has autonomy from the government regarding the selection of management.[29] Additionally, RZBC's questionnaire responses indicate that their pricing during the POR does not involve coordination among exporters.

The evidence placed on the record of this review by RZBC demonstrates an absence of *de jure* and *de facto* government control with respect to RZBC's exports of subject merchandise, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* Therefore, we are preliminarily granting RZBC a separate rate.

Targeted Dumping

On March 8, 2012, Petitioners alleged targeted dumping by RZBC and stated that there are patterns of export prices for comparable merchandise that differ significantly among time periods and regions.[30] Petitioners noted that they conducted their own targeted dumping analysis of RZBC's U.S. sales using the Department's targeted dumping methodology as applied in *Steel Nails* and modified in *Wood Flooring.*[31] Based on their own analysis, Petitioners recommended that the Department apply average-to-transaction method to calculate RZBC's dumping margin, as the patterns of pricing differences cannot be taken into account using the average-to-average margin calculation methodology.[32]

For purposes of these preliminary results, the Department did not conduct a targeted dumping analysis. In calculating the preliminary weighted-average dumping margin, the Department applied the calculation methodology adopted in *Final Modification for Reviews.*[33] In particular, the Department compared monthly weighted-average export prices (or constructed export prices) with monthly weighted-average normal values and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin. Application of this methodology in these preliminary results affords parties an opportunity to meaningfully comment on the Department's implementation of this recently adopted methodology in the context of this administrative review. The Department intends to continue to consider, pursuant to 19 CFR 351.414(3)(c), whether another method is appropriate in this administrative review in light of both parties' pre-preliminary comments and any comments on the issue that parties may include in their case briefs.

Fair Value Comparisons

To determine whether RZBC's sales of subject merchandise were made at less than NV, we compared export price (''EP'') to NV, as described in the ''Export Price'' and ''Normal Value'' sections below.[34] *See* section 773(a)(1)(B)(ii) of the Act; 19 CFR 351.414(c)(1) and (d).

Export Price

In accordance with section 772(a) of the Act, EP is ''the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,'' as adjusted under section 772(c) of the Act. We used EP methodology, in accordance with section 772(a) of the Act, for sales in which the subject merchandise was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States and for sales in which constructed export price was not otherwise indicated.

We based EP on the price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, marine insurance, and domestic and market-economy brokerage and handling. We valued

[26] *See Sparklers,* 56 FR at 20589.

[27] *See* Original Response at A–2 to A–13.

[28] *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

[29] *See* Original Response at A–2 to A–13.

[30] *See* Letter from Petitioners to the Department, regarding ''Citric Acid And Certain Citrate Salts From The People's Republic Of China: Targeted Dumping Allegation,'' dated March 8, 2012.

[31] *See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 33977 (June 16, 2008) and *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value,* 73 FR 33985 (June 16, 2008) (''*Steel Nails*''); *see also Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318 (October 18, 2011) (''*Wood Flooring*'').

[32] RZBC submitted untimely comments concerning targeted dumping which were not taken into consideration for the preliminary results, however the Department shall consider these comments for the final results. *See* Memorandum to the File, through Robert Bolling, Program Manager, from, Krisha Hill, Analyst, Regarding ''RZBC's Pre-Preliminary Results Comments,'' dated May 14, 2012.

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

[34] In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Final Modification for Reviews.* In particular, the Department compared monthly weighted-average EPs (or constructed EPs) with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Indonesia. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India as reported in ''Doing Business 2011: Indonesia'' published by the World Bank.[35]

Normal Value

We compared NV to individual EP transactions in accordance with section 777A(d)(2) of the Act, as appropriate. Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOPs include but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; and (3) representative capital costs. The Department used FOPs reported by RZBC for materials, labor, packing and by-products.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by RZBC for the POR. In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a market economy and pays for it in market economy currency, the Department normally will value the factor using the actual price paid for the input.[36] To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available SVs (except as discussed below). In selecting SVs, we considered the quality, specificity, and contemporaneity of the data.[37] As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to import SVs surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997).

For the preliminary results, except where noted below, we used data from the Indonesian and Thai import statistics in the Global Trade Atlas (''GTA'') and other publicly available Indonesian and Thai sources in order to calculate SVs for RZBC's FOPs (*i.e.*, direct materials, energy, and packing materials) and certain movement expenses. As Indonesia is the primary surrogate country, we used Indonesian data and applied Thai data where there were no usable Indonesian data. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.[38] The record shows that Indonesian and Thai import statistics obtained through GTA are contemporaneous with the POR, product-specific, and tax-exclusive.[39] In those instances where we could not obtain publicly available information contemporaneous to the POR with which to value factors, we adjusted the SVs using, where appropriate, the Indonesian Wholesale Price Index, as published by the Organization for Economic Cooperation and Development.

In accordance with legislative history, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized.[40] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[41] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Therefore, the Department has not used prices from India, Indonesia, South Korea and Thailand in calculating the import-based SVs.

Additionally, we disregarded prices from NME countries.[42] Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies.[43]

We valued truck freight expenses using a price list for domestic shipments from the Indonesian shipping company, PT Mantap Abiah Abadi.

To calculate the labor input, we based our calculation provided by the Department in *Labor Methodologies,* which recommends using single-country labor cost and compensation

[35] *See* Surrogate Value Memorandum at 6.

[36] *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components Div of Ill Tool Works* v. *United States,* 268 F.3d 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

[37] *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China,* 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5.

[38] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004).

[39] *See* Surrogate Value Memorandum at 3.

[40] Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

[41] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4–5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at 17, 19–20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand,* 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at 23.

[42] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final determination,* 74 FR 9591, 9600 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 36656 (July 24, 2009) and *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order,* 74 FR 46971 (September 14, 2009).

[43] *See id.*

data from Chapter 6A of the International Labor Organization (''ILO'').[44] However, in this case, the Department notes that Chapter 6A does not contain recent Indonesian labor data from the ILO Yearbook. Therefore, for the preliminary results of this administrative review, the Department is valuing labor using an Indonesian industry-specific wage rate based on labor cost and compensation data from Chapter 5B of the ILO. The Department calculated an Indonesian industry-specific wage rate of 8423.6133 Rupiah per hour for the preliminary results. Specifically, the Department has calculated the wage rate using data provided to the ILO under Sub-Classification 24 of the ISIC–Revision 3–D standard, and inflated this wage rate using the Indonesian Consumer Price Index as published in the IMF's International Financial Statistics. The Department finds the description under Sub-Classification 24 of the ISIC–Revision 3–D (''Manufacture of Chemicals and Chemical Products'') to be the best available wage rate SV source on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. A full description of the industry-specific wage rate calculation methodology is provided in the Surrogate Value Memorandum.[45]

We were unable to segregate and, therefore, were unable to exclude energy costs from the calculation of the surrogate financial ratios. Accordingly, for the preliminary results, we have disregarded the respondents' energy inputs (electricity, coal and steam) in the calculation of NV, in order to avoid double-counting energy costs that have necessarily been captured in the surrogate financial ratios.[46]

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements for the year ending December 2010 of PT Budi Acid Jaya TBK, a producer of comparable merchandise from Indonesia.[47] The Department may consider other publicly available financial statements for the final results, as appropriate.

RZBC reported that it has recovered by-products in their production of subject merchandise and successfully demonstrated that all of them have commercial value; therefore, we have granted a by-product offset for the quantities of each respondent's reported by-products, valued using Indonesian GTA data.

Export Subsidy Adjustment

Section 772(c)(1)(C) of the Act states that U.S. price ''shall be increased by the amount of any countervailing duty imposed on the subject merchandise * * * to offset an export subsidy.''[48] The Department determined in its preliminary results of the companion countervailing duty administrative review that RZBC's merchandise benefited from export subsidies.[49] Therefore, we have increased RZBC's U.S. price for countervailing duties imposed attributable to export subsidies, where appropriate.[50]

Currency Conversion

Where appropriate, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

The weighted-average dumping margin for RZBC is as follows:

Exporter	Margin
RZBC Co., Ltd./RZBC Imp. & Exp. Co., Ltd./RZBC (Juxian) Co., Ltd	0.00

Disclosure

The Department intends to disclose calculations performed for these preliminary results to the parties within 10 days of the date of the public announcement of the results of this review in accordance with 19 CFR 351.224(b).

Comments

Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.[51] Rebuttal comments must be limited to the issues raised in the written comments and may be filed no later than five days after the time limit for filing the case briefs.[52] Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[53] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined.[54] Parties should confirm by telephone the date, time, and location of the hearing. The Department intends to issue the final results of the administrative review, which will include the results of its analysis of issues raised in the briefs, within 120 days of publication of these preliminary results, in accordance with section 751(a)(3)(A) of the Act, unless the time limit is extended.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[55] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For any individually examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the

[44] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*'').

[45] *See* Surrogate Value Memorandum at 5.

[46] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 74 FR 16838 (April 13, 2009) and accompanying Issues and Decision Memorandum, at Comment 2.

[47] *See* Surrogate Value Memorandum at 4; *see also* Memorandum from Maisha Cryor and Krisha Hill to Robert Bolling, regarding ''Second Administrative Review of the Antidumping Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for RZBC Co., Ltd., RZBC Import & Export Co., Ltd., and RZBC (Juxian) Co., Ltd.,'' dated May 30, 2012 (''Preliminary Analysis Memo'').

[48] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review,* 75 FR 38076, 38077 (July 1, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

[49] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review,* dated May 30, 2012 (not yet published).

[50] *See* Preliminary Analysis Memo.

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

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

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

[54] *See* 19 CFR 351.310.

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

importer's examined sales and the total entered value of sales, in accordance with 19 CFR 351.212(b)(1).[56] Where we calculate a margin by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions, in this and future reviews, we will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR. Where an importer (or customer)-specific per-unit rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importer's/customer's entries during the POR.[57] Where an importer (or customer)-specific per-unit rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[58] We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate we determine in the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For RZBC the cash deposit rate will be its respective rate established in the final results of this review, except if the rate is zero or *de minimis* no cash deposit will be required; (2) for previously investigated or reviewed PRC, and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 156.87 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied those non-PRC exporters. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification of Interested Parties

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

This administrative review and this notice are in accordance with sections 751(a)(1) and (3) and 777(i) of the Act, and 19 CFR 351.213.

Dated: May 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

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[56] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Final Modification for Reviews, i.e.,* on the basis of monthly average-to-average comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons.

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

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

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–929]

Small Diameter Graphite Electrodes From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination

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

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that certain small diameter graphite electrodes (''SDGE'') are being exported from the United Kingdom (''U.K.'') to the United States by UK Carbon and Graphite Co., Ltd. (''UKCG'') in circumvention of the antidumping duty order on SDGE from the People's Republic of China (''PRC''),[1] as provided in section 781(b) of the Tariff Act of 1930, as amended (''the Act'').

DATES: *Effective Date:* June 6, 2012.

FOR FURTHER INFORMATION CONTACT: Brendan Quinn, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5848.

SUPPLEMENTARY INFORMATION:

Background

On October 12, 2010, SGL Carbon LLC and Superior Graphite Co. (''Petitioners'') filed a submission alleging that UKCG, a company located in the United Kingdom, is engaged in circumvention of the *SDGE Order* by importing artificial graphite rods/unfinished SDGE components[2] from the PRC to the United Kingdom, performing minor completion and assembly on these items, and exporting finished subject merchandise to the United States as SDGE of U.K. origin.[3] In this submission, Petitioners requested that the Department initiate a scope inquiry to clarify whether the unfinished graphitized SDGE components imported by UKCG from the PRC are included in the *SDGE Order.* In the alternative, should the Department find it appropriate based on the available information, Petitioners requested that the Department initiate an anticircumvention proceeding, pursuant to 19 CFR 351.225(h), to determine whether the importation of the PRC-origin SDGE components by UKCG for finishing in the United Kingdom and subsequent sale to the United States constitutes circumvention of the *SDGE Order,* as defined in section 781(b) of the Act.

On March 18, 2011, the Department initiated an anticircumvention inquiry on imports of SDGE exported by UKCG.[4] This inquiry covers the period July 1, 2009, through June 30, 2010.

Questionnaires

Subsequent to the initiation of this proceeding, the Department issued questionnaires to UKCG regarding the nature of its sales of SDGE to the United States and sourcing of inputs from the

[1] *See Antidumping Duty Order: Small Diameter Graphite Electrodes from the People's Republic of China,* 74 FR 8775 (February 26, 2009) (''*SDGE Order*'').

[2] According to Petitioners, the unfinished merchandise in question is defined in UKCG's submissions as, *e.g.,* ''graphite electrodes,'' ''rods,'' ''graphite billets,'' graphite shapes,'' ''synthetic graphite electrode rod,'' and ''re-machined graphite electrode.'' Petitioners characterize these inputs as ''unfinished SDGE,'' whereas UKCG refers to them as ''blanks'' or ''artificial graphite.'' For customs purposes, these materials are, generally, classified under Harmonized Tariff Schedule (''HTS'') sub-heading 3801.10.00, defined as ''Artificial Graphite; Colloidal or Semi-Colloidal Graphite; Preparations Based on Graphite or Other Carbon in the Form of Pastes, Blocks, Plates or Other Semi-Finished Goods.'' For ease of reference, these materials are referred to as ''unfinished SDGE components'' or ''artificial graphite rods'' throughout this notice.

[3] *See* Letter from Petitioners to the Department entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China,'' dated October 12, 2010 (''Petitioners' Initiation Request'').

[4] *See Small Diameter Graphite Electrodes from the People's Republic of China: Initiation of Anticircumvention Inquiry,* 76 FR 14910, 14912, 14916–17 (March 18, 2011) (''*Initiation Notice*'').

PRC on May 20, 2011,[5] August 3, 2011,[6] September 16, 2011,[7] and January 26, 2012.[8] UKCG submitted timely responses to the Department on June 24, 2011,[9] September 6, 2011,[10] September 23, 2011,[11] and February 6, 2012.[12] UKCG provided further information on July 18, 2011,[13] July 19, 2011[14] and October 7, 2011.[15] Petitioners submitted comments regarding UKCG's submissions, and the anticircumvention proceeding in general, on July 11, 2011,[16] September 20, 2011,[17] October 7, 2011,[18] October 18, 2011,[19] and February 13, 2012.[20]

Surrogate Country and Surrogate Value Submissions

On August 15, 2011, we requested that the Import Administration's Office of Policy provide a list of surrogate countries that are economically similar to the PRC for use in this proceeding.[21] On August 29, 2011, the Office of Policy provided the requested list.[22] On September 2, 2011, the Department notified interested parties of the potential surrogate country list and requested that parties provide comment on surrogate country selection and surrogate factors valuation.[23] UKCG provided comments on surrogate country selection on September 16, 2011.[24] Petitioners provided comments on surrogate country and surrogate value (''SV'') selection on September 20, 2011.[25] UKCG provided SV comments on September 23, 2011.[26]

Verification

On February 16 and February 17, 2012, the Department conducted a verification of the aforementioned questionnaire responses at UKCG's facilities in Belper and Rotherham, United Kingdom, in accordance with 19 CFR 351.307. The Department used standard verification procedures, including the examination of relevant accounting and production records, as well as original source documents provided by UKCG.[27]

Scope of the Antidumping Duty Order

The merchandise covered by this order includes all small diameter graphite electrodes of any length, whether or not finished, of a kind used in furnaces, with a nominal or actual diameter of 400 millimeters (16 inches) or less, and whether or not attached to a graphite pin joining system or any other type of joining system or hardware. The merchandise covered by this order also includes graphite pin joining systems for small diameter graphite electrodes, of any length, whether or not finished, of a kind used in furnaces, and whether or not the graphite pin joining system is attached to, sold with, or sold separately from, the small diameter graphite electrode. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes are most commonly used in primary melting, ladle metallurgy, and specialty furnace applications in industries including foundries, smelters, and steel refining operations. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite

[5] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Anticircumvention Inquiry Regarding Imports of Small Diameter Graphite Electrodes from the UK Carbon and Graphite Company, Ltd.: Supplemental Questionnaire,'' dated May 20, 2011.

[6] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Anticircumvention Inquiry Regarding Imports of Small Diameter Graphite Electrodes from the UK Carbon and Graphite Company, Ltd.: Second Supplemental Questionnaire,'' dated August 3, 2011.

[7] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Anticircumvention Inquiry Regarding Imports of Small Diameter Graphite Electrodes from the UK Carbon and Graphite Company, Ltd.: Second Supplemental Questionnaire,'' dated September 16, 2011. Please note that the Department made an inadvertent error by not changing the title of this letter to reflect the proper sequence, and this document is actually the third, and not the second, supplemental questionnaire.

[8] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Anticircumvention Inquiry Regarding Imports of Small Diameter Graphite Electrodes from the UK Carbon and Graphite Company, Ltd.: Post-Preliminary Determination Supplemental Questionnaire,'' dated January 26, 2012. Please note that the Department made an inadvertent error by not changing the title of this letter to reflect the proper sequence, and this document is actually the fourth supplemental questionnaire issued prior to this preliminary determination.

[9] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Supplemental Questionnaire Response,'' dated June 24, 2011 (''UKCG's First SQR'').

[10] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Second Supplemental Questionnaire Response,'' dated September 6, 2011; Letter from UKCG to the Department entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Supplement to Second Supplemental Questionnaire Response,'' dated September 9, 2011; and Letter from UKCG to the Department entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Correction to Second Supplemental Questionnaire Response,'' dated September 30, 2011 (collectively, ''UKCG's Second SQR'').

[11] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Third Supplemental Questionnaire Response,'' dated September 23, 2011 and Letter from UKCG to the Department entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Third Supplemental Questionnaire Response—Exhibits 12–14,'' dated September 26, 2011 (collectively ''UKCG's Third SQR'').

[12] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Fourth Supplemental Questionnaire Response,'' dated February 6, 2012 (''UKCG's Fourth SQR'').

[13] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Response to Petitioners' Letter of July 11, 2011,'' dated July 18, 2011 (''UKCG's July 18 Submission'').

[14] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Submission of Renewed European Community Binding Origin Information,'' dated July 19, 2011 (''UKCG's BOI Submission'').

[15] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Comments and Submission Regarding Value Added Calculations,'' dated October 7, 2011 (''UKCG's Value-Added Submission'').

[16] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Anticircumvention Inquiry Regarding Imports of Small Diameter Graphite Electrodes from UK Carbon and Graphite Company, Ltd.,'' dated July 11, 2011 (''Petitioners' Comments on Processing and Request for Expedition of the Proceeding'').

[17] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China,'' dated September 20, 2011 (''Petitioners' Comments on UKCG's Second SQR'').

[18] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China,'' dated October 7, 2011 (''Petitioners' Comments on UKCG's Third SQR'').

[19] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China,'' dated October 18, 2011 (''Petitioners' Rebuttal to UKCG's Value-Added Submission'').

[20] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China (''PRC''): Pre-Verification Comments,'' dated February 13, 2012 (''Petitioners' Pre-Verification Comments'').

[21] *See* Memorandum entitled, ''Anticircumvention Inquiry Regarding Imports of Small Diameter Graphite Electrodes from the UK Carbon and Graphite Company, Ltd.: Selection of Surrogate Countries,'' dated August 15, 2011.

[22] *See* Memorandum entitled, ''Request for a List of Surrogate Countries for Anticircumvention Inquiry of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China,'' dated August 29, 2011 (''Surrogate Country List'').

[23] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Anticircumvention Inquiry Regarding Imports of Small Diameter Graphite Electrodes from the UK Carbon and Graphite Company, Ltd.: List of Surrogate Countries,'' dated September 2, 2011.

[24] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Surrogate Country Comments,'' dated September 16, 2011 (''UKCG's Surrogate Country Comments'').

[25] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Surrogate Country Selection,'' dated September 16, 2011 (''Petitioners' Surrogate Country Comments'').

[26] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Comments on Surrogate Values,'' dated September 23, 2011 (''UKCG's Surrogate Value Comments'').

[27] *See* Memorandum to the File entitled, ''Verification of Responses of UK Carbon & Graphite Company Limited (''UKCG'') in the Anticircumvention Inquiry of Certain Graphite Electrodes From the People's Republic of China (''PRC''),'' dated concurrently with this notice. On February 21, 2012, UKCG submitted onto the record the exhibits accepted by the Department at verification. *See* Letter from UKCG to the Department entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Verification Exhibits,'' dated February 21, 2012. These two documents are referred to as ''UKCG's Verification Report,'' collectively.

electrodes that are subject to this order are currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 8545.11.0000. The HTSUS number is provided for convenience and customs purposes, but the written description of the scope is dispositive.

Scope of the Anticircumvention Inquiry

The products covered by this inquiry are small diameter graphite electrodes produced by UKCG from PRC-manufactured artificial/synthetic graphite forms, of a size and shape (*e.g.,* blanks, rods, cylinders, billets, blocks, etc.) which requires additional machining processes (*i.e.,* tooling and shaping) to become a finished SDGE (or graphite pin joining system). The SDGE products in question are finished graphite electrodes manufactured by UKCG from PRC-originated artificial/synthetic graphite forms. While UKCG argues that the SDGE it produces and imports to the United States are of U.K. origin under U.K. law, the focus and intent of this inquiry is to determine whether artificial/synthetic graphite forms (1) Manufactured in the PRC; (2) exported to the United Kingdom for processing (finishing); and (3) re-exported to the United States as U.K. origin merchandise constitute circumvention of the *SDGE Order* under 781(b) of the Act.

Period of Review

The period of review (''POR'') is July 1, 2009, through June 30, 2010. This period corresponds to UKCG most recent complete fiscal year (''FY'') subsequent to the issuance of the *SDGE Order.*

Methodology for Valuing Inputs From the Country Subject to the Antidumping Duty Order on SDGE

In the less than fair value (''LTFV'') investigation of SDGE from the PRC, the Department treated the PRC as a non-market economy (''NME'') country.[28] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.[29] No party has challenged the designation of the PRC as an NME country in this anticircumvention inquiry. Therefore, we continue to treat the PRC as an NME country for purposes of the preliminary determination of this anticircumvention inquiry.

When conducting proceedings involving imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value (''NV''), in most cases, on the NME producer's factors of production (''FOP''), valued in a surrogate market-economy (''ME'') country considered appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department will value FOPs using ''to the extent possible, the prices or costs of the FOPs in one or more market-economy countries that are: (A) at a level of economic development comparable to that of the NME country, and (B) significant producers of comparable merchandise.'' In this anticircumvention inquiry, the artificial graphite/unfinished SDGE employed by UKCG to produce finished SDGE are produced in the PRC.

UKCG asserts that the statute neither requires nor permits the Department to use a surrogate for valuing the input sourced from the PRC in anticircumvention proceedings, and that doing so here would be unlawful. UKCG argues that the NME provisions apply only to the determination of NV, which is not calculated in anticircumvention inquiries, and thus a SV should not be applied to value inputs to merchandise produced by a ME company in an ME country. UKCG argues that the provisions of the statute that allow for the application of SVs require that subject merchandise be exported from an NME country.[30] Furthermore, UKCG contends that, the meaning of ''value'' [31] under section 781(b)(1)(D) of the Act, must be defined (as is implied by section 781(b)(2)(E) of the Act) to mean actual paid values, and not SVs. Therefore, UKCG contends that the Department should conduct the relevant analyses using actual prices paid for the input rather than constructing a NV for the input based on the NME FOP methodology.[32]

We disagree with UKCG's assertion that the use of an SV for the valuation of the artificial graphite/unfinished SDGE input is inappropriate in the instant case. The material input in question, the only raw material input of any significance in this analysis, is produced in the PRC, an NME country. While real prices paid for PRC-produced inputs are typically used in the cost buildup for ME companies in ME proceedings, we note that this is an anticircumvention proceeding initiated under the antidumping duty order on SDGE from the PRC, which is an NME proceeding. The purpose of this proceeding is not to determine the antidumping margin of a U.K. firm, but rather to determine whether PRC-produced merchandise is being sold to the United States in circumvention of the *SDGE Order* on the PRC. Thus, an analysis of UKCG's input costs falls directly and explicitly under the purview of the Department's NME methodology.[33] As such, because key elements of the Department's analysis under section 781(b)(1)(D) of the Act necessitates obtaining a value for an NME input, we have determined to use an SV for this input from an appropriate ME, consistent with both section 773(c)(1) of the Act as well as the Department's past practice.[34] However, because UKCG is a market economy firm in a market economy country, we agree with UKCG that we should use actual costs incurred by UKCG in the United Kingdom in a market economy currency, along with its actual U.S. sales prices, for aspects of the Department's analyses under sections 781(b)(1)(D) and 781(b)(2)(E) of the Act.

UKCG maintains that, because the European Union (''E.U.'') has identified

[28] *See Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part,* 74 FR 49408, 49412 (August 21, 2008), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China,* 74 FR 2049 (January 14, 2009).

[29] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007).

[30] *See* UKCG's Surrogate Value Comments at 1–5.

[31] *See* UKCG's Surrogate Value Comments at 3 (citing, *e.g., Sorenson* v. *Secretary of Treasury,* 475 U.S. 851, 860 (U.S. 1986) (quoting *Helvering* v. *Stockholms Enskilda Bank,* 293 U.S. 84, 87 (1934))).

[32] *See* UKCG's Surrogate Value Comments at 1–5.

[33] *See, e.g., Steel Wire Garment Hangers from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination,* 76 FR 27007, 27008 (May 10, 2011) (''*Hangers Anticircumvention Prelim*''), unchanged in *Steel Wire Garment Hangers From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 76 FR 66895 (October 28, 2011) (''*Hangers Anticircumvention Final*''); *Certain Tissue Paper Products From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination,* 73 FR 21580, 21584–85 (April 22, 2008) (''*Tissue Paper Anticircumvention Prelim*''), unchanged in *Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 73 FR 57591 (October 3, 2008) (''*Tissue Paper Anticircumvention Final*'').

[34] *See, e.g., id.*

UKCG finished graphite electrodes as a product of U.K. origin, the Department should use UKCG's actual purchase prices from the PRC. As explained above, the instant anticircumvention inquiry was initiated to examine specifically whether PRC-manufactured merchandise was, after alteration, re-exported to the United States in circumvention of the *SDGE Order.* The fact that finished SDGE, as exported by UKCG, were identified by the E.U. as products of the United Kingdom is not determinative in the Department's analysis. The purpose of the E.U.'s country of origin analysis was not to determine whether a U.S. antidumping order was being circumvented. Moreover, this country of origin analysis was based on the laws of the E.U. and not the laws of the United States under which the Department conducts this investigation.

Surrogate Country

In the August 29, 2011, Surrogate Country List, the Import Administration's Office of Policy identified Ukraine, South Africa, Colombia, the Philippines, Indonesia, and Thailand, as countries comparable to the PRC for the purposes of surrogate valuation. The Department released this list to interested parties and solicited comments regarding the selection of both the surrogate country and SV for the PRC-sourced input in question. On September 16, 2011, UKCG submitted comments suggesting that, in the event that the Department uses SVs to value artificial graphite/unfinished electrodes, the Department should base its SV calculations on export data from Ukraine provided by Global Trade Atlas (''GTA''). UKCG additionally provided public information demonstrating that Ukraine and South Africa are economically comparable to the PRC and significant producers of artificial graphite.[35] On September 20, 2011, Petitioners submitted comments arguing that Ukraine is the most appropriate surrogate country based on the fact that: (a) There is a well-developed graphite electrode industry in the country; (b) public information confirms the existence of a company which produces significant volumes of identical merchandise; and (c) Ukraine is a major importer of Chinese inputs similar to those sourced by UKCG.[36] Because record evidence identified Ukraine as an economically comparable country to the PRC and a significant producer of artificial graphite, the Department has preliminarily selected Ukraine as the primary surrogate country from which to value UKCG's PRC-sourced inputs.

Factor Valuation

Petitioners suggest that the Department value UKCG's artificial graphite/unfinished SDGE inputs using the weighted-average value of Ukrainian imports under HTS subcategories 3801.10 (''Artificial Graphite'') and 8545.11 (''Carbon or Graphite Electrodes, of a Kind Used for Furnaces'').[37] Petitioners additionally suggest removing certain ''aberrant'' values representing imports from Russia and Switzerland from the HTS categories.[38]

UKCG rebuts Petitioners' recommendation to include Ukrainian imports under HTS 8545.11, which includes finished SDGE. UKCG additionally argues that, while the 3801.10 HTS category better reflects the input it consumes, in this case, using the value of Ukrainian imports under HTS 3801.10 results in an unreasonable average value, seven times higher than the value of the finished product. Thus, because neither category appears to be appropriate to value artificial graphite/unfinished SDGE, UKCG argues that, should the Department conduct the relevant analysis using an SV, the Department should use Ukrainian or South African export data under HTS category 3801.10 rather than the import data suggested by Petitioners.[39]

As an initial matter the Department finds that, because the PRC-manufactured merchandise imported into the United Kingdom is not finished, HTS 3801.10 (which provides for semi-finished artificial graphite forms) is more specific to the product than HTS 8545.11 (which provides for finished ''carbon electrodes; of a kind used for furnaces''). Additionally, as discussed above, we have determined Ukraine to be the appropriate primary surrogate country for this proceeding. Accordingly, we have selected Ukrainian imports under HTS 3801.10 to value UKCG's artificial graphite/unfinished SDGE inputs.[40] In addition, we disagree with Petitioners' proposal to exclude certain country-specific average unit values (''AUVs'') from this calculation. The Department finds that Petitioners have not supported their contention that the AUV of artificial graphite imports into Ukraine from Russia and Switzerland are aberrational.[41] Though Ukrainian imports under HTS 3801.10 may result in an unreasonably high surrogate AUV when Russian and Swiss data is excluded ($31.02 U.S. dollars (''USD'') per kilogram (''Kg'')), when the data from these two countries is included, we find the resulting AUV for Ukrainian imports under HTS 3801.10 to be appropriate for the purposes of valuing artificial graphite in this case ($3.39 USD per Kg), based on the Department's standard SV methodology. As such, in response to UKCG's argument that Ukrainian imports under HTS 3801.10 provide an unreasonable average value seven times higher than the value of the finished product, as provided by Petitioners with Russian and Swiss data excluded, we note that the use of the

[35] *See* UKCG's Surrogate Country Comments.

[36] *See* Petitioners' Surrogate Country Comments.

[37] *See id.*

[38] *See id.*

[39] *See* UKCG's Surrogate Value Comments at 5–7 and UKCG's Surrogate Country Comments at Exhibit 1.

[40] The Department's preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POR, with each of these factors applied non-hierarchically to the particular case-specific facts and with preference for data from a single surrogate country. *See, e.g., Certain Cut-To-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 70 FR 12651 (March 15, 2005) (''*CTL Plate/Romania*'') and accompanying Issues and Decision Memorandum (''IDM'') at Comment 3. Although our ultimate analysis concludes that the materials in question, as imported by UKCG, are identical to the unfinished SDGE products considered within the subject of the scope of the *SDGE Order,* and need only minor processing to be used as finished SDGE under the 8545.11 HTS classification, we agree with UKCG that the input may be properly reported within the 3801.10 HTS subcategory for customs purposes. As such, for the purpose of selecting a SV for semi-manufactured artificial graphite cylinders from customs data, we find subcategory 3801.10 to be the most appropriate classification for this kind of input (however similar the input may be to the finished products imported under HTS 8545.11). Finally, we do not believe it appropriate to mix HTS categories to determine the relevant surrogate value, as our normal practice is to select the most specific single category to the product at issue. *See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 59217 (September 27, 2010) and accompanying IDM at Comment 19 (''With the exception of unusual circumstances, the Department's preference is to select the single best value and not to average multiple HTS categories.'').

[41] Department precedent requires parties to corroborate a claim of aberrationality, and that citing to the mere existence of outlying price points does not constitute *prima facie* evidence of aberrationality. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review,* 76 FR 3086 (January 19, 2011) and accompanying IDM at Comment 15 and *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 40485 (July 15, 2008) and accompanying IDM at Comment 9. In particular, we do not believe it appropriate to exclude the data from a country (Russia) that provides 91 percent of Ukraine's imports because of a relatively low AUV without any specific evidence as to why such data are inappropriate to value artificial graphite inputs.

full dataset (including data from both countries) results in a surrogate AUV ($3.39 per Kg) which is lower than that of the value of Ukrainian imports of finished product under HTS 8545.11 ($4.54 per Kg).

With respect to UKCG's alternative proposal to use Ukrainian or South African export prices to value the input, it is the Department's long standing practice to use import, not export, data when considering SVs.[42] Moreover, we note that UKCG provides no argument as to why Ukrainian import data, when taken as a whole, are unusable or why export data would be preferable in the alternative. As such, we see no reason to depart from the standard practice of using publicly available, non-export, tax-exclusive, product-specific, and contemporaneous data from the primary surrogate.

Therefore, the Department has preliminarily determined to use Ukrainian import values under HTS 3801.10 to value artificial graphite/unfinished SDGE imported from the PRC.

Extension of Determination Deadline

Pursuant to section 781(f) of the Act, to the maximum extent practicable, the Department shall issue a final determination within 300 days from the date of initiation of the antidumping circumvention inquiry. On December 14, 2011,[43] and March 26, 2012,[44] the Department extended the deadline for issuance of the final determination in the instant proceeding. As a result, the final determination of this anticircumvention inquiry is currently due June 20, 2012. Due to the complicated nature of this proceeding and the extent of comments expected to be received from interested parties, the current deadline is no longer practicable. As such, we hereby extend the deadline for the final determination until July 31, 2012.

Use of Facts Available

Section 776(a) of the Act provides that the Department shall apply facts available (''FA'') if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

For this preliminary determination, in accordance with section 776(a) of the Act, we have determined that the use of FA is warranted for a portion of the pattern of trade analysis, as discussed below.

Affirmative Preliminary Determination of Circumvention

For the reasons described below, we preliminarily determine that, pursuant to section 781(b) of the Act, circumvention of the *SDGE Order* is occurring by reason of the exportation of semi-manufactured artificial graphite/unfinished SDGE components from the PRC sold to and imported by UKCG, which subsequently undergo further manufacture in the United Kingdom before exportation as finished SDGE to the United States.

Applicable Statute

Section 781 of the Act addresses circumvention of antidumping or countervailing duty orders.[45] With respect to merchandise assembled or completed in a third country, section 781(b)(1) of the Act provides that if: (A) The merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an antidumping duty order; (B) before importation into the United States, such imported merchandise is completed or assembled in a third country from merchandise which is subject to such an order or is produced in the foreign country with respect to which such order applies; (C) the process of assembly or completion in a third country is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the Department determines that action is appropriate to prevent evasion of an order, the Department, after taking into account any advice provided by the International Trade Commission (''ITC'') under section 781(e) of the Act may include such imported merchandise within the scope of an order at any time an order is in effect.

In determining whether the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs the Department to consider: (A) The level of investment in the third country; (B) the level of research and development in the third country; (C) the nature of the production process in the third country; (D) the extent of production facilities in the third country; and (E) whether the value of processing performed in the third country represents a small proportion of the value of the merchandise imported into the United States. However, none of these five factors, by itself, is controlling on the Department's determination of whether the process of assembly or completion in a third country is minor or insignificant.[46] Accordingly, it is the Department's practice to evaluate each of these factors as they exist in the third country depending on the particular anticircumvention inquiry.[47] Further, section 781(b)(3) of the Act sets forth the factors to consider in determining whether to include merchandise assembled or completed in a third country in an antidumping duty order. Specifically, the Department shall take into account such factors as: (A) The pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise is affiliated with the person who, in the third country, uses the merchandise to complete or assemble in the merchandise which is subsequently imported into the United States; and (C) whether imports into the third country of the merchandise have increased after the initiation of the LTFV investigation that resulted in the issuance of an order.

[42] *See, e.g., CTL Plate/Romania* and accompanying IDM at Comment 3. See also, *Silicon Metal from the People's Republic of China: Notice of Final Results of 2005/2006 New Shipper Reviews,* 72 FR 58641 (October 16, 2007) and accompanying IDM at Comment 5.

[43] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Anticircumvention Inquiry Regarding Imports of Small Diameter Graphite Electrodes from the UK Carbon and Graphite Company, Ltd.: Extension of Deadline for Issuance of Final Determination,'' dated December 14, 2011.

[44] *See* Letter entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Anticircumvention Inquiry Regarding Imports of Small Diameter Graphite Electrodes from the UK Carbon and Graphite Company, Ltd.: Second Extension of Deadline for Issuance of Final Determination,'' dated March 26, 2012.

[45] Specifically, the legislative history to section 781(b) indicates that Congress intended the Department to make determinations regarding circumvention on a case-by-case basis in recognition that the facts of individual cases and the nature of specific industries vary widely. *See* S. Rep. No. 103–412 (1994), at 81–82.

[46] *See* Statement of Administrative Action (''SAA'') accompanying the Uruguay Round Agreements Act, H. Doc. No. 103–316, at 893 (1994) at 893.

[47] *See Tissue Paper Anticircumvention Final,* 73 FR at 57592.

Statutory Analysis

(A) Whether Merchandise Imported Into the United States Is of the Same Class or Kind as Merchandise That Is Subject to the SDGE Order

The finished products, as sold by UKCG to the United States, are identical to those covered by the *SDGE Order.* This is corroborated by UKCG's product list,[48] as well as the plain language of respondent's submissions in comparison to the language of the scope of the *SDGE Order,* and no interested party to this proceeding has contested this fact. As such, we find that the finished SDGE products exported to the United States by UKCG are of the same class or kind as other merchandise that is subject to the *SDGE Order.*

(B) Whether, Before Importation Into the United States, Such Imported Merchandise Is Completed or Assembled in a Third Country From Merchandise Which Is Subject to the Order or Produced in the Foreign Country That Is Subject to the Order

As noted above, the merchandise subject to this proceeding is finished SDGE exported to the United States that is finished in the United Kingdom by UKCG from inputs of PRC-origin unfinished artificial/synthetic graphite forms. There is no dispute between UKCG and Petitioners as to whether this input was produced in the PRC or that it comprises 100 percent of the direct material for the finished product. However, UKCG and Petitioners disagree as to whether the artificial graphite input constitutes ''unfinished SDGE'' as mentioned by the plain language of the scope.[49]

UKCG has argued that the term ''{SDGE} whether or not finished'' in the scope of the *SDGE Order* has no meaning in the industry and that UKCG's imports are of ''artificial graphite rods,'' which were not included in the *SDGE Order* and are distinct from unfinished SDGE, according to U.S. Customs and U.K./E.U. Customs findings.[50] To bolster its claim that there is a distinction between artificial graphite and finished SDGE, UKCG has provided a renewed E.U. Binding Origin Information (''BOI'') ruling, stating that UKCG's processing of artificial graphite blanks into finished SDGE confers U.K. country of origin status on the finished product.[51] UKCG maintains that the inputs do not comprise subject merchandise, as they are classified as artificial graphite under HTS subcategory 3801.10 and not the 8545.11 category contemplated in the scope of the *SDGE Order,* a distinction that UKCG claims is recognized by Petitioners.[52] UKCG argues that, should the Department agree with Petitioners that artificial graphite rods are ''unfinished SDGE,'' the Department would impermissibly expand the scope of the *SDGE Order* to include all items of artificial graphite, which is clearly beyond the intent of the *SDGE Order,* as artificial graphite can also be used to produce certain non-subject products.[53]

While UKCG concedes that the term ''graphite electrode'' is occasionally used in its internal recordkeeping and correspondence with suppliers to describe the artificial graphite inputs in question, it contends that this term is a reference to the physical quality of the input materials purchased and the use of this term should not be construed to mean that such materials are interchangeable with finished SDGE.[54] Instead, UKCG emphasizes the use of the term ''blanks'' [55] as specified in UKCG's purchase orders to its PRC suppliers), and notes that these ''blanks'' can also be used to produce certain non-subject products.[56]

The Department finds that the merchandise subject to this anticircumvention inquiry was completed or assembled in the United Kingdom from PRC-origin merchandise that is subject to the *SDGE Order* for the reasons articulated below. As an initial matter, the Department continues to find that U.S. and E.U. customs rulings are not controlling in determining whether the artificial graphite imported by UKCG from the PRC is subject to the instant *SDGE Order* within the context of U.S. anticircumvention proceedings, as the two determinations are made for different reasons and under different laws.[57]

We also preliminarily disagree with UKCG's assessment that by not including ''artificial graphite'' within the language of the scope Petitioners were providing an explicit exclusion for artificial graphite. The scope of an antidumping duty order must be read in its entirety to ensure a full and proper understanding of the scope. In this case, the Petition specifically defined ''unfinished {SDGE} within the scope of this petition'' as any semi-manufactured SDGE product that ''undergo{s} no further processing beyond the graphitization stage other than machining.'' We find this language is sufficiently broad to include any graphitized product that only requires machining to produce finished SDGE. Additionally, the Petition further states that ''{the merchandise subject to the scope includes all SDGE} whether or not with a machine finished outside surface * * * including finished and unfinished graphite electrodes.'' [58] The

[48] *See* UKCG's First Supplemental Response at Exhibit 6.

[49] *See, e.g.,* Petitioners' Comments on Processing and Request for Expedition of the Proceeding at 5–8.

[50] *See Initiation Notice,* 76 FR at 14914–14915.

[51] *See* UKCG's First Supplemental Response at 10–14. *See also* UKCG BOI Submission.

[52] *See* UKCG's July 18 Submission at 2–3. While UKCG acknowledges that the HTS numbers included in the scope description are not dispositive of the scope of the order, the respondent argues that the inclusion of specific numbers is particularly relevant to the instant proceeding because Petitioners were aware that unfinished blanks or rods could be imported under 3801.10 at the time when the scope language was being formulated during the initial petition and LTFV investigation, but made an explicit decision not to include them in the scope of the *SDGE Order.* As evidence of this decision on the part of Petitioners, UKCG provides documentation (at Exhibit 1 of the same submission) showing that, prior to the initial petition, Petitioners imported ''graphite nipple rods'' under HTS 3801 and ''graphite nipples'' under HTS 8545, with the implication that the former were an unfinished version of the latter. *See id.* at Exhibit 1. UKCG provides other similar import documentation to demonstrate that Petitioners have continued to make this distinction between rods and finished products in their importation of materials subsequent to the LTFV investigation, despite their arguments against such a practice in the instant proceeding.

[53] *See* UKCG's July 18 Submission at 4. *See also* UKCG's First Supplemental Response at 6 and Exhibits 10 and 11.

[54] *See* UKCG's First Supplemental Response at 6–7.

[55] *See, e.g.,* Letter from UKCG to the Department entitled, ''Small Diameter Graphite Electrodes from the People's Republic of China: Comments on Surrogate Values,'' dated September 23, 2011 (''UKCG's Surrogate Value Comments'') at 1, stating that the ''only item being purchased from China * * * {is} the rods (sometimes known as blanks).''

[56] *See* UKCG's July 18 Submission at 4; UKCG's First SQR at 6–7 and Exhibits 9, 10, and 11; and UKCG's Verification Report at Section II.B (''Other Issues'') and Exhibit 1.

[57] Throughout this proceeding UKCG places repeated emphasis on European Union BOI rulings as evidence that a sovereign government has already determined that UKCG's production substantially transforms the PRC-sourced input in question into a new product of UK origin. *See, e.g.,* UKCG's BOI Submission and UKCG's July 18 Submission. As noted in the *Initiation Notice,* 76 FR at 14917, we again emphasize that rulings from other agencies (whether a European BOI or U.S. Customs and Border Protection (''CBP'') ruling) are not legally binding for the purposes of antidumping proceedings in the United States, as we make these decisions for different reasons, including circumvention and whether the merchandise is subject to the antidumping order. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007–2008 Administrative Review of the Antidumping Duty Order,* 75 FR 844 (January 6, 2010) and accompanying IDM at Comment 1.

[58] *See* Petitioners' Initiation Request at Exhibit 8 (*i.e.,* Letter from Petitioners entitled, ''Antidumping Petition on Small Diameter Graphite Electrodes

ITC Final Report similarly finds that ''unfinished SDGE undergo no further processing beyond the graphitization stage other than machining.'' [59] Therefore, because the Petition and *ITC Final Report* clearly cover artificial/synthetic graphite forms that need only machining to become finished SDGE and the scope of the *SDGE Order* explicitly includes both finished and unfinished SDGE, the Department finds the artificial/synthetic graphite imported by UKCG from the PRC meet the description of merchandise covered by the scope of the *SDGE Order.* Thus, notwithstanding the HTS classification, the general definition of ''unfinished SDGE'' imparted by the scope language specifically includes the type of artificial/synthetic graphite imported by UKCG into the United Kingdom from the PRC.

While the import information submitted by UKCG does suggest that Petitioners have themselves used the HTS subheadings in a manner that may differentiate between artificial graphite and finished SDGE, the Department does not agree with UKCG's conclusion that Petitioners' use of the term electrode ''rods'' to describe certain imports under 3801.10 constitutes a tacit admission that such unfinished materials are expressly excluded from the scope of the *SDGE Order.* As discussed above, and clearly articulated in the scope itself, the language of the scope of an order is controlling, not the HTS category numbers, which are listed for convenience and customs purposes. Moreover, we do not believe that Petitioners' classification of imports provides reason to compel the Department to reexamine the intent behind the inclusion of products covered under the initial scope language nor does it provide insight or justification regarding the actions of UKCG during the POR. More compelling is the plain language of the scope of the *SDGE Order.* Based on a full review of the record, including a review of the submissions by the parties, the plain language of the scope of the *SDGE Order,* as well as the language from the Petition and the ITC investigation, as discussed above, the Department preliminarily determines that the unfinished artificial graphite inputs sourced from the PRC by UKCG constitute products identical to the ''unfinished electrodes'' considered subject merchandise under the scope of the *SDGE Order.*

The Department also disagrees with UKCG's argument that finding UKCG's artificial graphite inputs to be the ''unfinished'' SDGE covered by the scope of the *SDGE Order* would impermissibly expand the scope to cover all unfinished graphite products. For this preliminary determination, the Department is not finding that all artificial graphite is definitively ''unfinished'' SDGE subject to the scope of this order, but rather is finding that UKCG's imported artificial graphite rods are unfinished SDGE as described by the plain language of the scope. As with any scope or circumvention proceeding, any such determination is made on a case-by-case basis taking into consideration the specific facts of each proceeding.

Finally, the Department does not agree with UKCG's assertion that, because the input materials may be cut and machined to create certain non-electrode products, that they are necessarily manufactured for use as inputs in a variety of end products and thus are not within the scope of the proceeding. First, the totality of the sourcing/procurement information and corresponding sales documentation on record clearly demonstrate that the inputs in question are either custom ordered for the exact length, width, diameter, and chemical composition required by a customer's order of SDGE or as stock orders for industry-standard sizes of finished electrodes and, as such, the artificial graphite inputs are procured (and, thus, initially manufactured) specifically for an intended end-use as finished SDGE.[60] Moreover, the fact that UKCG is able to demonstrate that that the inputs in question may be used, on occasion,[61] to make other non-electrode products does not constitute evidence that the inputs themselves are substantially dissimilar from subject merchandise. While artificial graphite may be used to manufacture non-subject merchandise, this fact has no bearing on the Department's finding that the finished SDGE imported into the U.S. by UKCG was manufactured from artificial graphite sourced from the PRC that constitutes unfinished SDGE as specifically discussed by the scope of the *SDGE Order.*

(C) Whether the Process of Assembly or Completion in the Third Country is Minor or Insignificant

Pursuant to section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act provides the criteria for determining whether the process of assembly or completion is minor or insignificant. These criteria are:

781(b)(2)(A): the level of investment in the third country;

781(b)(2)(B): the level of research and development in the third country;

781(b)(2)(C): the nature of the production process in the third country;

781(b)(2)(D): the extent of the production facilities in the third country; and

781(b)(2)(E): whether the value of the processing performed in the third country represents a small proportion of the value of the merchandise imported into the United States.

The SAA explains that no single factor listed in section 781(b)(2) of the Act will be controlling.[62] Accordingly, it is the Department's practice to evaluate each of the factors as they exist in the United States or foreign country depending on the particular anticircumvention inquiry.[63] In this anticircumvention inquiry, based on the record, we have considered and evaluated each statutory criterion and all factors in determining whether the process of converting the PRC-sourced artificial graphite rod/unfinished SDGE components in the U.K. was minor or insignificant, in accordance with section 781(b)(2) of the Act, consistent with our analysis in prior anticircumvention inquiries.[64]

from China,'' dated January 17, 2008 (''Petition'') at 4 and 6).

[59] *See Small Diameter Graphite Electrodes from China,* Inv. 731–TA–1143 (Final), ITC Pub. 4062, dated February 2009 (''*ITC Final Report''*) at I–9.

[60] *See* UKCG's Verification Report at Section IV. *See also* UKCG's First SQR at Exhibit 9 and UKCG's Second SQR at Exhibits 4–11.

[61] *See* UKCG's First SQR at Exhibits 9, 10, and 11; and UKCG's Verification Report at Section II.B. and Exhibit 1.

[62] *See* SAA at 893.

[63] *See Tissue Paper Anticircumvention Final,* 73 FR at 57592.

[64] *See, e.g., Anticircumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta From Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders,* 68 FR 46571 (August 6, 2003) (''*Pasta Circumvention Prelim''*), unchanged in *Anticircumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders,* 68 FR 54888 (September 19, 2003) (''*Pasta Circumvention Final''*); and *Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom; Negative Final Determination of Circumvention of Antidumping and Countervailing Duty Orders,* 64 FR 40336, 40347–48 (July 26, 1999) (explaining that Congress has directed the Department to focus more on the nature of the production process and less on the difference in value between the subject merchandise and the imported parts or components and that any attempt to establish a numerical standard would be contrary to the intent of Congress).

781(b)(2)(A) & (B): The Levels of Investment and Research and Development

On June 24, 2011, UKCG provided further information regarding the level of its investment, including the initial investment in the company in 2002 as well as the amount of fixed assets included in its most recent financial statement.[65] UKCG notes that all investments are used primarily to produce SDGE, but that they can be used to produce larger electrodes as well.[66] A review of the facility used by UKCG to produce subject merchandise during the POR at verification supported the level of investment information previously submitted on the record.[67] UKCG notes that it does not have a separate Research and Development (''R&D'') department or facility, but that ''all R&D is conducted as a part of the ongoing improvement of the production process and is conducted as a part of the regular duties of the production and other personnel.'' [68]

The record in this case continues to demonstrate that PRC producers have invested extensively in the SDGE industry, which includes significant investment in both manufacturing facilities and production equipment worth many millions of dollars, the bulk of which goes to the heavy industrial processes required for the production of SDGE (*e.g.,* raw material handling, mixing, forming, baking, impregnating, and graphitizing), each of which occur prior to the final machining stage.[69] On the contrary, the total worth of UKCG's plant, including its single machine shop and finishing equipment, as shown in UKCG's financial statement, demonstrates that the level of investment required for a PRC manufacturer to produce an unfinished graphitized electrode is far greater than the level of investment needed by UKCG to perform its finishing processes.[70]

Accordingly, pursuant to section 781(b)(2)(A) of the Act, we preliminarily find that the level of investment in the United Kingdom by UKCG in the equipment used to complete the PRC-origin input is minor compared to the level of investment, both in initial capital and equipment, required by the producers of the input in the PRC.[71] Pursuant to section 781(b)(2)(B) of the Act, we also preliminarily find that the UKCG has not provided any substantial evidence of R&D programs or expenditures and that R&D is not a significant factor in UKCG's processing.

781(b)(2)(C) & (D): The Nature of Production Processes, and Extent of Production Facilities in the United Kingdom

With regard to the nature of the production process and the extent of its production facilities, UKCG provides a detailed description of its facilities and the processes performed by UKCG in order to transform the artificial graphite/unfinished electrode component into a finished SDGE for shipment to the United States, including all movement, testing, unpacking, packing, and machining processes involved.[72] UKCG also explained that its production facilities included one manufacturing plant and one sales/administrative location.[73] Details regarding the specific type of production equipment owned by UKCG, as well as the number of workers employed in its production shop, were provided in several proprietary exhibits.[74] The Department's review of the production facility and processes used by UKCG to produce subject merchandise during the POR at verification supported the production process information previously submitted on the record.[75] UKCG also provided a narrative describing how its manufacturing and testing processes differ from similar finishing processes as performed by PRC producers of graphite electrodes, arguing that its machining processes are more exacting, precise, and employ a higher quality control than that found with PRC finishing and, thus, provide significant value-added to the product.[76]

Petitioners argue that, in order to properly evaluate whether UKCG's further manufacturing is minor or insignificant, the Department's analysis must consider UKCG's business processes in comparison to the corresponding processes for a PRC manufacturer of subject SDGEs.[77] As such, Petitioners provide certain proprietary information regarding the production process of SDGEs submitted by respondents in the recent 2008–2010 administrative review of SDGE's from the PRC.[78] Using this proprietary information, Petitioners argue that the processes, production time, R&D costs, facilities, equipment, number of production employees, initial investment and fixed costs needed for a PRC SDGE manufacturer to produce the artificial graphite/unfinished SDGE component used as an input by UKCG is relatively massive when compared to the level of overall investment, R&D, sophistication of production processes, and production facilities reported by UKCG, and that the amount of resources involved in machining a graphitized electrode cylinder into a finished SDGE is minor when compared to the entirety of the SDGE production process.[79] UKCG argues that Petitioners' analysis is unreliable because it compares the average number of employees and investment for a large PRC producer of electrodes with UKCG, a small company with a comparably small customer base.[80]

We agree with the Petitioners' analysis of the record information, and find no information on the record to contradict the Department's initial findings in the *Initiation Notice* that the nature of the production process, and extent of production facilities in the United Kingdom are minor in comparison to those utilized in the PRC for the production of the unfinished artificial/synthetic graphite components sourced from the PRC.[81]

As an initial matter, the Department disagrees with UKCG's implication that the comparison between UKCG and the PRC producer is not reliable. Because UKCG only performs final stage processing of SDGE, the Department finds that it is wholly relevant to evaluate the extent of UKCG's portion of production vis-à-vis the PRC manufacturing process for the unfinished artificial/synthetic graphite. Furthermore, we find that the evaluation of the assembly/completion stages (including investment, R&D, production process, and facilities) with regard to the overall manufacture of subject merchandise is consistent with

[65] *See* UKCG First SQR at Exhibits 4, 14, and 15.

[66] *See id.* at 16. Based on UKCG's response on page 7 and Exhibits 10 and 11 of the same questionnaire, the investments may also be used to produce certain non-SDGE merchandise.

[67] *See* UKCG's Verification Report at Section VI.

[68] *See id.* at 4.

[69] *See* Petitioners' July 11, 2011, submission at 3–5 and Exhibit 1.

[70] *See* Initiation Request at 25–26 and *Initiation Notice,* 76 FR at 14916–17. *See* Analysis Memo for a full discussion of the proprietary information used in this analysis.

[71] *See* Analysis Memo.

[72] *See* UKCG Second SQR at Exhibit 2.

[73] *See* UKCG First SQR at 3–4, 14–16.

[74] *See id.* at Exhibits 14 and 15 (for production equipment details) and Exhibit 4 (UKCG's 2010 Financial Statement, which details the number of employees in each department).

[75] *See* UKCG's Verification Report at Section VI.

[76] *See* UKCG Second SQR at Exhibit 3 and Exhibit 16 and UKCG's Verification Report at II.B. Because UKCG bracketed out the details of this narrative as proprietary, *see* Analysis Memo for further detail of UKCG's arguments regarding a comparison of its production processes to those of PRC suppliers of SDGE.

[77] *See* Petitioners' Comments on Processing and Request for Expedition of the Proceeding at 3.

[78] *See id.* at Exhibit 1.

[79] *See id.* at 3–8.

[80] *See* UKCG's July 18 Submission at 6–7.

[81] *See Initiation Notice,* 76 FR at 14916–17 and Analysis Memo.

the Department's practice in prior anticircumvention proceedings.[82] In comparing UKCG's production process to the manufacturing process of the unfinished input, the Department finds that the level of investment, R&D, and facilities/equipment needed for UKCG to further manufacture artificial graphite/unfinished SDGE into finished SDGE represents a minor fraction of the overall manufacturing process and is insignificant in comparison to the production process required to manufacture the input UKCG consumes in its facility.[83]

With respect to UKCG's precision finishing and custom specifications, the Department finds no record evidence to suggest that the resources and processes utilized by UKCG's finishing differs in any significant way from the finishing applied by PRC producers of SDGE products subject to the *SDGE Order.* A qualitative analysis demonstrates the processes, types of machinery, and resources involved to be very similar with respect to the actual finishing operations performed by both UKCG and PRC suppliers subject to the *SDGE Order.*[84] Furthermore, the Department finds that, of the 39 steps listed in UKCG's detailed description of its finishing process, 29 of the steps appear to be related to unpacking, packing, movement, cleaning, and/or testing of the merchandise, while another four steps appear to be ''as needed'' manufacturing. Therefore, only six of the steps listed appear to be related to manufacturing consistently performed on the merchandise in question.[85] The Department's review of the finishing processes (along with the other non-manufacturing and ''as-needed'' steps) at verification demonstrated that the finishing is essential for the finished products' end use in a metallurgical furnace.[86] However, record evidence pertaining to the relevant statutory value-added criteria indicates that the finishing performed by UKCG does not represent significant processing when compared with the totality of the processing necessary to produce a finished electrode.[87]

UKCG also claims that it performs and applies superior quality control and testing standards to its finishing beyond that of the PRC producers. However, UKCG has not provided supporting evidence documenting any inferiority of PRC-finished products. Moreover, even if the Department were to fully accept UKCG's assertions regarding quality control and testing, and their potential competitive impact, UKCG has not demonstrated how such quality control and testing are relevant to the criteria analyzed by the Department in an anticircumvention analysis pursuant to section 781(b) of the Act, which requires the Department to consider processes of ''assembly and completion.'' Thus, we conclude that the quality control and testing—however thorough—is not a ''process of assembly or completion'' to be considered by the analysis under section 781(b)(2) of the Act.

In sum, pursuant to section 781(b)(2)(C) of the Act, the Department preliminarily finds that the finishing process occurring in the United Kingdom represents a relatively minor portion of the overall manufacturing of finished SDGE in terms of the processes involved, and total production time in comparison to the same elements utilized to manufacture the unfinished electrodes in the PRC that serve as the input for UKCG's finishing operations. Similarly, pursuant to section 781(b)(2)(D) of the Act, we find that the extent of UKCG's production facilities are relatively minor because the materials, energy, labor, and capital equipment used by UKCG in converting the PRC-origin, artificial graphite/unfinished SDGE into finished SDGE is not substantial in comparison to the materials, labor, energy, and capital equipment used by its PRC suppliers in the production of the input.

781(b)(2)(E): Whether the Value of the Processing Performed in the United Kingdom Represents a Small Proportion of the Value of the Merchandise Imported Into the United States

In prior anticircumvention inquiries, the Department has explained that Congress directed the agency to focus more on the nature of the production process and less on the difference in value between the subject merchandise and the parts and components imported into the processing country.[88] Additionally, the Department has explained that, following the Uruguay Round Agreements Act, Congress redirected the agency's focus away from a rigid numerical calculation of value-added toward a more qualitative focus on the nature of the production process.[89] In this anticircumvention inquiry, we note that the sole direct material input, artificial graphite rods/unfinished SDGE components, used by UKCG to produce finished SDGE were manufactured and supplied by producers in the PRC.[90] Aside from the cost of labor and energy, UKCG did not consume or impart any additional direct material inputs to produce the finished SDGE. Thus, we find that the value of energy and labor consumed by UKCG in the production of the finished SDGE represents an insignificant value when compared to the value of the merchandise sold to the United States.[91] Nonetheless, while the Department believes that this qualitative analysis is sufficient to determine whether the value of processing in the third country constitutes a small portion of the value of the merchandise exported to the United States, the Department has obtained the information necessary to evaluate the proportion of UKCG's processing, as discussed below.

UKCG has provided allocations of total costs during the POR broken down to reflect the processing costs related to the finishing processes it performed on the SDGE it sold to the United States.[92] UKCG suggests that the Department should compare the sales value of the merchandise exported to the United States to the value of the difference between the sales value and the price it paid for the artificial graphite input during the POR.[93] UKCG argues that this represents the ''value'' of the input, as required by the statute, and not simply the ''cost'' of further manufacture and demonstrates that the value of processing is a significant proportion of the value of the merchandise imported into the United States.[94]

[82] *See, e.g., Hangers Anticircumvention Prelim,* 76 FR at 27010–27011, unchanged in *Hangers Anticircumvention Final.*

[83] *See* Analysis Memo for a full discussion of this proprietary information.

[84] *See* Analysis Memo for a full discussion of this proprietary information.

[85] *See* UKCG's Verification Report at Section VI for a full discussion of the production process as reviewed by Department officials. *See also* Analysis Memo.

[86] *See* UKCG's Verification Report at Section VI.

[87] *See* Analysis Memo for a full discussion of this proprietary information.

[88] *See, e.g., Pasta Circumvention Prelim,* 68 FR at 46575, unchanged in *Pasta Circumvention Final.* Although that case involved assembly or processing in the United States under section 781(a) of the Act, the language regarding the value of processing or assembly is essentially the same under both sections 781(a)(2)(E) and (b)(2)(E) of the Act. Accordingly, we find that our prior rationale is equally applicable to value of assembly or processing in a third-country under section 781(b)(2)(E) of the Act. *See Hangers Anticircumvention Prelim,* 76 FR at 27012, unchanged in *Hangers Anticircumvention Final.*

[89] *See Pasta Circumvention Prelim,* 68 FR at 46575, unchanged in *Pasta Circumvention Final.*

[90] *See, e.g.,* UKCG's First SQR at 9.

[91] This is consistent with our 781(b)(2)(E) analysis in the recent *Hangers Anticircumvention Prelim. See Hangers Anticircumvention Prelim,* 76 FR at 27012, unchanged in *Hangers Anticircumvention Final.*

[92] *See* UKCG's Second SQR at Exhibit 26 and UKCG's Third SQR at Exhibit 1.

[93] *See* UKCG's Value-Added Submission at 3.

[94] *See id.*

Petitioners request that the Department determine the proportion of UKCG processing value by dividing UKCG's reported further manufacturing costs by the sum of the Ukrainian artificial graphite SV and UKCG's reported processing costs (as opposed to the actual value of sales suggested by UKCG).[95] Additionally, Petitioners maintain that UKCG mis-reported certain data. First, Petitioners argue that, by reporting the quantity and value of sales of subject merchandise to the United States during the POR based on invoice date rather than date of shipment, UKCG failed to report a significant percentage of subject sales.[96] Second, Petitioners assert that UKCG did not include certain packing expenses associated with materials acquired by UKCG in the process of importing the artificial graphite/unfinished SDGE inputs from the PRC which were subsequently re-used by UKCG when exporting the finished electrodes to the United States.[97] Third, Petitioners contend that UKCG did not report its sales and further manufacturing costs on the same basis. Specifically, they assert that UKCG included reconditioning and machining costs for re-claimed electrodes in the numerator, but excluded sales of reconditioned or re-claimed electrodes from the denominator of the further manufacturing costs to sales value ratio, thus significantly overstating the further processing occurring in the United Kingdom in this calculation. Finally, Petitioners conclude that, notwithstanding these discrepancies, the record supports a conclusion that UKCG's processing is insignificant.[98]

As discussed in the *Methodology for Valuing Inputs from the Country Subject to the Antidumping Duty Order on SDGE* section, above, the Department does not find it appropriate to use the price paid for the NME-sourced input for the purposes of this anticircumvention proceeding. As a result, we have not used UKCG's suggested calculation, which relies on the actual price paid for the PRC-sourced artificial graphite inputs, for the purposes of the instant analysis. Furthermore, we disagree with UKCG that the difference between input price and sales price should be used as the numerator in the calculation required under section 781(b)(2)(E) of the Act and that the cost of further manufacture does not represent an appropriate ''value.'' The statute directs the Department to consider the ''value of processing'' performed in the third country which is, by definition, a valuation of all processes performed in the third country (*i.e.,* the cost of further manufacture), and the use of processing costs as the numerator for this calculation is supported by the Department's practice in recent anticircumvention proceedings.[99] With respect to Petitioners' suggested calculation, we do not find it appropriate to derive an export value (*i.e.,* U.S. price) when the actual sales prices exist on the record, and have instead used UKCG's reported value of U.S. sales of subject merchandise as the denominator in the instant calculation.

Additionally, with respect to Petitioners' concerns regarding UKCG's cost and sales reporting, we examined each of these issues at verification. First, with regard to U.S. sales, UKCG reported its quantity and value of U.S. sales of subject merchandise using two different methodologies. One methodology (based on invoice, not shipment, date) was used to report sales values and quantities for purposes of the further-processing value-added ratio calculation and the other (based on shipment date (*i.e.,* dispatch from the factory)) was used for the pattern of trade analysis. At verification, the Department noted that U.S. sales of SDGE shipped in June 2010, and reported for the pattern of trade analysis, were not included in the reported quantity and value data for the further-processing value-added ratio calculation because these sales were recorded in UKCG's books based on the invoice date, and therefore were not included in the fiscal year financial statement corresponding to the POR.[100] In this way, UKCG appropriately reported costs and sales corresponding to a single fiscal year for the further-processing value-added ratio calculation, and we relied on this data for this purpose. With regard to the pattern of trade data, UKCG reported sales based on shipment date to reflect the actual pattern of exports during the period in question.

Second, regarding the packing inputs, we note that UKCG reported its per metric ton (''MT'') further-processing costs (*i.e.,* the numerator of the calculation used for this analysis, as discussed below) exclusive of all material costs, including packing.[101] As such, we find Petitioners' concern regarding the inclusion of certain packing costs in the value-added buildup to be moot, as we do not find that an exact figure reporting the quantity or value of these re-used inputs to be relevant to the Department's analysis of the 781(b)(2)(E) criteria.

Third, with respect to Petitioners' concerns regarding the inclusion of costs related to reconditioned materials in the numerator of the instant calculation, we find that UKCG sufficiently demonstrated at verification that these added costs are minimal, that the additional processes are applied to a very small percentage of sales and that the company had no way to track or separate out such costs from total costs and, thus, appropriately allocated the costs over all products.[102] Accordingly, we did not remove these costs from the numerator of our calculation. However, to ensure that the numerator and denominator were derived on the same basis, we included sales of the reconditioned and re-claimed electrodes in the denominator of the calculation.

Finally, the Department has made one additional change to the cost data reported by UKCG. We find that UKCG's inclusion of office/selling/general/administrative overhead costs and interest expenses in the cost build-up to be inappropriate. UKCG cites no authority to support the inclusion of such costs in the cost build-up. On the other hand, section 781(b)(2)(E) of the Act instructs the Department to focus on ''the value of processing.'' Because factory overhead costs directly related to UKCG's processing activities have been separately accounted for,[103] we find that

[95] *See* Petitioners' Comments on UKCG's Second SQR at 5. Petitioners also suggest a similar method for calculating this percentage on an unconverted per MT basis based upon a subsequent submission by UKCG. *See* Petitioners' Comments on UKCG's Third SQR at 4–5.

[96] *See* Petitioners' Pre-Verification Comments.

[97] *See* Petitioners' Surrogate Country Comments at 6–9 and Exhibit 2. *See also* Petitioners' Pre-Verification Comments. Because both of Petitioners' suggested value-added calculations utilize the Ukrainian SV for artificial graphite inputs in the denominator of the calculation, their corresponding assertion that certain packing surrogate values should also be included in the buildup would seem to be applicable to both the calculation discussed above (*i.e.,* the section 781(b)(2)(E) value-added analysis) and the instant value-added calculation. However, because the Department has only employed SVs to determine the value of merchandise produced in the PRC for the instant analysis pursuant to section 781(b)(1)(D) of the Act (and instead utilized UKCG's reported further processing costs and reported U.S. sales value for the section 781(b)(2)(E) calculation discussed above), we address this surrogate value issue herein.

[98] *See* Petitioners' Comments on UKCG's Second SQR at 7–10. *See also* Petitioners' Pre-Verification Comments.

[99] *See, e.g., Tissue Paper Anticircumvention Prelim,* unchanged in *Tissue Paper Anticircumvention Final.*

[100] *See* UKCG's Verification Report at Section VII.D. *See also* Analysis Memo.

[101] *See* UKCG's Verification Report at Section IX and Exhibit 7.

[102] *See* UKCG's Verification Report at Section VI and Section IX.

[103] *See* UKCG's Verification Report at Section IX and Exhibit 7.

these ''other'' office/selling/general/administrative overhead and interest expenses do not reflect costs associated with the production of the merchandise and, thus, do not reflect value-added by UKCG's processing. As such, we have removed the per MT general and administrative expense from the buildup of value-added.[104]

To determine the proportion of UKCG's further processing value, the Department has compared UKCG's further processing costs to the actual value of the merchandise exported to the United States during the POR (*i.e.,* U.S. price) and preliminarily finds that the UKCG's value-added comprises only a small proportion of the total export value.[105] This quantitative finding lends additional support to the Department's qualitative finding discussed above that, pursuant to section 781(b)(2)(E) of the Act, the value of UKCG's processing represents a small proportion of the value of the merchandise sold in the United States.[106] In sum, pursuant to section 781(b)(1)(C) of the Act, we preliminarily conclude that the record evidence of this anticircumvention inquiry supports a finding that the process or completion of the PRC-origin, artificial graphite/unfinished SDGE into finished SDGE in the United Kingdom is minor or insignificant.

(D) Whether the Value of the Merchandise Produced in the Foreign Country to Which the Order Applies Is a Significant Portion of the Total Value of the Merchandise Exported to the United States

Under section 781(b)(1)(D) of the Act, the value of the merchandise produced in the foreign country to which an antidumping duty order applies must be a significant portion of the total value of the merchandise exported to the United States in order to find circumvention. As discussed in the *Surrogate Country* and *Factor Valuation* sections, above, because semi-manufactured artificial graphite/unfinished SDGE components are sourced entirely from suppliers in the PRC, an NME country, the Department has determined to value the input merchandise produced in the country to which the *SDGE Order* applies by using Ukrainian import data for HTS subcategory 3801.10.

Similar to its suggested calculation for the analysis under section 781(b)(2)(E) of the Act, above, UKCG suggests that the Department only use actual prices paid in this analysis, resulting in a simple calculation of UKCG's reported price paid for inputs divided by the total export sales value,[107] whereas Petitioners suggest that the Department divide the per-piece or per-Kg price of processing by the SV.[108] Furthermore, as discussed in the section 781(b)(2)(E) analysis, above, Petitioners assert that any analysis which utilizes an SV buildup for the value of materials sourced from the PRC should include the value of any packing materials acquired from the PRC which were subsequently re-used to export the finished electrodes to the United States, in addition to the value of the artificial graphite inputs.[109]

As previously stated, the Department does not find the use of UKCG's prices paid for the PRC-sourced input to be appropriate in this circumstance because of the PRC's designation as an NME country.[110] Furthermore, the Department finds that Petitioners' suggested calculation, which expresses the cost of further manufacture as a percentage of the input value, does not address the intent of this segment of the analysis (*i.e.,* whether the value of the merchandise produced in the PRC is a significant portion of the total value of the merchandise exported to the United States).[111] As such, we have not used Petitioners' proposed calculation in our analysis.

With respect to the packing inputs, we agree with Petitioners that the analysis under 781(b)(1)(D) of the Act must take into account the full value of all materials sourced from the foreign country to which the order applies, including any packing materials. However, because we have relied on Ukrainian import prices for inputs in question, as reported by GTA, which represent market prices paid for artificial graphite inputs inclusive of any packing, the Department has already accounted for the value of any re-used packing materials in its analysis. Finally, our analysis under Section 781(b)(1)(d) of the Act shows the artificial graphite SV to be a significant portion of the finished product export value even without the inclusion of these materials.[112]

As established in the analysis of section 781(b)(2)(E) of the Act, above, the Department determined UKCG's sales value of finished merchandise exported to the United States based on actual sales to the United States. Therefore, we determine that the appropriate calculation expresses the SV for the artificial graphite input in question as a percentage of UKCG's reported total sales value. In comparing the SV of the artificial graphite/unfinished electrode input to UKCG's total sales value, this analysis finds that the PRC produced merchandise represents a significant percentage of the sales value of UKCG's exports of finished merchandise.[113] Therefore, based on our analysis and record evidence, we find that the value of the PRC-origin artificial graphite/unfinished SDGE constitutes a significant portion of the value of the finished product ultimately exported to the United States.

Other Factors To Consider

In making a determination whether to include merchandise assembled or completed in a foreign country within

[104] *See* Analysis Memo for a full discussion of how the Department has addressed Petitioners' concerns regarding the reporting and of how certain findings from verification have been treated with respect to this value-added analysis.

[105] This information is business proprietary. *See* Analysis Memo for exact values.

[106] *See* Analysis Memo.

[107] *See* UKCG's Value-added Submission at 2.

[108] *See* Petitioners' Comments on UKCG's Second SQR at 5–6 and Petitioners' Comments on UKCG's Third SQR at 3–4. Petitioners suggest two value-added calculations: 1) third country processing as a percentage of the value of the finished good (calculated by dividing UKCG's reported costs by the sum of the costs and the Ukrainian SV, as described in the discussion of our analysis of section 781(b)(2)(E) of the Act, above); and 2) UKCG's processing costs as a percentage of the Chinese input (calculated by simply dividing UKCG's reported costs by the Ukrainian SV). *See* Petitioners' Comments on UKCG's Second SQR at 5–6 and Petitioners' Comments on UKCG's Third SQR at 3–4. Because the former calculation expresses UKCG's reported cost of further manufacturing as a percentage of a buildup to U.S. price, we have discussed this calculation in the 781(b)(2)(E) value-added analysis section, above, and address the latter calculation herein. However, as discussed below, this calculation (where the cost of further manufacture is expressed as a percentage of the input) does not address the statutory requirements of analysis provided by either section 781(b)(2)(E) or 781(b)(1)(D) of the Act.

[109] *See* Petitioners' Surrogate Country Comments at 6–9 and Exhibit 2. *See also* Petitioners' Pre-Verification Comments.

[110] Although the Department does not agree with UKCG's suggested methodology to use the actual purchase price for inputs in this calculation, we note that UKCG's own analysis of section 781(b)(1)(D) of the Act using this methodology ''shows that this percentage qualifies as 'a significant portion' of the value of the total merchandise exported.'' *See* UKCG's Value-Added Submission at 2. Thus, regardless of the methodology used, UKCG does not contest that the finding that the PRC-produced artificial graphite inputs represent a significant portion of the total value of finished merchandise exported to the U.S.

[111] Nor does this calculation address whether the value-added by UKCG's processing represents a significant value of the merchandise imported into the U.S., pursuant to section 781(b)(2)(E) of the Act, as discussed above.

[112] Moreover, as discussed above, UKCG does not contest this finding. Instead, UKCG's own calculations confirm that the value of the input represents a significant portion of the value of the exported merchandise and requests that the Department focus its analysis on whether the process of assembly or completion in the U.K. is minor or insignificant pursuant to section 781(b)(2)(E) of the Act. *See* UKCG's Value-Added Submission at 2.

[113] This information is business proprietary. *See* Analysis Memo for exact values.

an order, section 781(b)(3) of the Act instructs the Department to take into account such factors as: (A) The pattern of trade, including sourcing patterns; (B) whether affiliation exists between the manufacturer or exporter of the merchandise in the country subject to the order and the person who uses the merchandise to assemble or complete in the third country the merchandise that is exported to the United States; and (C) whether imports into the third country of the merchandise described in section 781(b)(1)(B) of the Act have increased since the initiation of the original investigation. Each of these factors is examined below.

(A) Pattern of Trade and Sourcing

The first factor to consider under section 781(b)(3) of the Act is changes in the pattern of trade, including changes in the sourcing patterns. According to UKCG, it started sourcing PRC-origin, artificial graphite rods/unfinished SDGE component inputs and exporting finished SDGE processed from these inputs to the United States in 2002.[114] UKCG provided separate worksheets reporting the total amount of finished SDGE exported to the United States and the total amount of artificial graphite/unfinished SDGE inputs sourced from the PRC since 2002 (in MTs, broken down into monthly and yearly totals).[115]

With respect to the timing and quantities of UKCG's exports of finished SDGE to the United States, we note that between 2003 and 2008 UKCG exported an average of X metric tons a year.[116] Between 2003 and 2007, the export volume for any given year remained relatively consistent, ranging from 76 to 123 percent of X, wherein UKCG typically made shipments of SDGE to a limited set of U.S. customers. In 2008, the year of the Petition and LTFV investigation, UKCG had a very limited set of SDGE sales to the United States. However, beginning in January 2009, the month the final determination of the LTFV investigation were published, UKCG's exports of finished SDGE increased dramatically. In 2009, UKCG shipped finished SDGE to a larger set of U.S. customers for a total volume of 435 percent of X. In 2010, the total quantity of UKCG's shipments of finished SDGE to the U.S. was 1085 percent of the X baseline. Indeed, UKCG's exports of finished SDGE to the United States in the two years following the publication of the final determination were 2.65 times the volume exported in the previous five and a half years combined.[117]

The Department's analysis of the corresponding data regarding the timing and quantities of UKCG's purchases of PRC-produced artificial graphite/unfinished SDGE inputs,[118] however, demonstrates that it contains identical data as the pattern of trade in sales exhibit discussed above and, therefore, is not representative of actual purchase quantity.[119] However, due to the time constraints of the verification, the Department did not discover this discrepancy until after verification when reviewing this data in comparison to the sales data reviewed at verification.

Although the record lacks the specific input purchase quantity information necessary for the Department's pattern of trade in sourcing analysis, we find sufficient information otherwise exists on the record to demonstrate that there is a strong correlation between UKCG's pattern of trade in sourcing and its pattern of trade in sales (where the quantity figures have been reported appropriately and verified). For example, the facts available on the record demonstrate that artificial graphite rods are the sole input utilized by UKCG in the production of finished SDGE and the PRC-produced inputs are procured to fulfill specific sales orders and are not typically held in inventory longer than the time needed for final machining.[120] As such, we have relied on this other information as facts available, pursuant to section 776(a)(1) of the Act, to determine that UKCG's pattern of trade in sourcing of artificial graphite inputs has increased at a rate corresponding to UKCG's pattern of trade in sales of finished SDGE to the United States, as discussed above.

Additionally, the Department examined: (A) U.S. import data obtained from GTA noting the monthly import quantity of HTS 8545.11 from the PRC to the United States between 2004 and 2011, to evaluate whether imports of finished SDGE from the PRC have decreased since the issuance of the *SDGE Order,* and (B) U.S. import data obtained from GTA noting the monthly import quantity of HTS 8545.11 into the United States from the United Kingdom since August 2003, to corroborate UKCG's pattern of trade discussed above.[121] A review of the data shows that PRC exports of finished SDGE to the United States under the 8545.11. HTSUS category specific to graphite electrodes (both large and small diameter), which more than doubled in quantity between 2004 and 2008 (the year of the Petition and LTFV investigation), then decreased to just 41 percent of its 2008 level in 2009 and 53 percent of its 2008 level in 2010.[122] Imports to the United States from the United Kingdom for the identical HTSUS category increased by 1458 percent between 2008 and 2009 and 48 percent between 2009 and 2010. In fact, the reported quantity of imports of HTS 8545.11 from the United Kingdom to the United States since 2004 moved in proportion with UKCG's reported export

[114] *See* UKCG's First SQR at 15. *See also* UKCG's Verification Report.

[115] UKCG provided these worksheets at Exhibits 12 and 13 of its September 6, 2011, Second SQR, but noted that data were only available from August 2003.

[116] *See* UKCG's Second SQR at Exhibit 12. Due to the proprietary nature of this information, we are using the baseline ''X'' to represent the average quantity of UKCG's yearly exports of SDGE to the U.S. from 2003 until 2008. *See* Analysis Memo for actual values and full discussion of the pattern of trade analysis. Furthermore, the individual sale-specific information reported in these databases was reported with a date corresponding to the date the sale was dispatched from UKCG's factory. As a result, our analysis of the monthly and yearly trends relies on the sales date as reported for this analysis (*i.e.,* dispatch date), regardless of when the sale may have been booked or invoiced by UKCG. Also, our analysis considers yearly trends based on the calendar year, as reported, and not the fiscal year.

[117] *See id.*

[118] *See* UKCG's Second SQR at Exhibit 13.

[119] Both documents are based off of a master trade spreadsheet kept by UKCG's managing director, which tracks all sales (including the tonnage of each sale) and contains a great deal of information corresponding to each sale, including the supplier. *See* UKCG's Verification Report at III.G.3, for a discussion of this master trade sheet used in UKCG's reporting. Further review confirmed that pattern of trade in sourcing shown in Exhibit 13 of UKCG's Second SQR was identical to the list provided for sales in Exhibit 12 of the same submission, with the supplier name provided for each sale rather than the customer name, and that the minor difference in yearly quantities between the two exhibits (previously assumed to be a result of the yield loss from the finishing and/or lag between delivery date of the input and sale date of the finished product) was merely a result re-conditioned merchandise having been excluded from the latter dataset. Thus, the pattern of trade in sourcing information on the record does not actually list input purchases based on date of purchase and quantity purchased but instead re-states the pattern of trade in sales information (*i.e.,* month of sale and quantity of the sale) showing the supplier of the artificial graphite input used to produced the finished product rather than the name of the U.S. customer.

[120] *See, e.g.,* UKCG's Verification Report at Section IV. Due to the proprietary nature of certain additional information related to UKCG's pattern of trade in sourcing, *see* Analysis Memo for full discussion of the pattern of trade analysis.

[121] *See* Analysis Memo. Information for U.S. imports of both U.K. and PRC merchandise listed under the 8545110010 HTSUS subcategory specific to SDGE is not available prior to 2010, so the 8545110000 HTSUS category specific to both large and small diameter graphite electrodes was used instead.

[122] Although U.S. import data have only been broken out into large, small, and ''other'' specific data since 2010, the trends in this data show that imports of SDGE from the PRC have continued to decrease since 2010. *See* Analysis Memo.

quantities in the same period.[123] As such, an analysis of the pattern of trade based on the quantity of imports into the United States, reported in the GTA data, serves to indicate a significant upward trend in imports from the United Kingdom with a corresponding downward trend from the PRC since the publication of the *SDGE Order*. U.S. imports of electrodes from the United Kingdom were up 883 percent from the 2003–2008 baseline in 2009, 1307 percent in 2010, and the combined total of 2009–2010 import quantities (*i.e.,* imports subsequent to the issuance of the *SDGE Order*) was over four times higher than the total quantity of all electrodes imported into the United States from the United Kingdom in the period between August 2003 and December 2008.[124]

Accordingly, we find that the data show that PRC exports of SDGE have decreased significantly whereas U.K. exports to the United States, UKCG's exports to the United States, and UKCG's sourcing of relevant inputs from the PRC, have increased since the initiation of the LTFV investigation. Therefore, based on the facts on the record, we find that the patterns of trade, discussed above, since the initiation of the LTFV investigation and the imposition of the *SDGE Order* supports a finding that circumvention has occurred.

(B) Affiliation

The second factor to consider under section 781(b)(3) of the Act is whether the manufacturer or exporter of the artificial graphite/unfinished SDGE in the country subject to the order is affiliated with the entity that assembles or completes the merchandise exported to the United States. Generally, we consider circumvention to be more likely to occur when the manufacturer of the covered merchandise is related to the third country assembler and is a critical element in our evaluation of circumvention.[125] Prior to the *Initiation Notice,* UKCG claimed that it is not affiliated with any PRC suppliers, and no interested party to this proceeding has contested this fact. Since the *Initiation Notice,* UKCG has reiterated that it has no affiliation with any of its suppliers and materials submitted subsequent to the *Initiation Notice* further support this fact.[126] Therefore, we preliminarily determine that UKCG is not affiliated with any PRC-producers of artificial graphite/unfinished SDGE.

(C) Whether Imports Have Increased

The third factor to consider under section 781(b)(3) of the Act is whether imports into the third country (*i.e.,* the United Kingdom) of the merchandise described in section 781(b)(1)(B) of the Act (*i.e.,* artificial graphite rods/unfinished SDGE) have increased since the initiation of the LTFV investigation. As described in detail in the *Pattern of Trade and Sourcing* section above, the Department finds that UKCG's own data demonstrate a significant increase in the sourcing of PRC-produced artificial graphite/unfinished SDGE inputs since the initiation of the LTFV investigation. However, because the 3801.10 HTS subcategory of the input (inclusive of all types of artificial graphite forms) is a broader basket category than the HTS 8545.11 category of the finished product (inclusive of only carbon electrodes used in furnaces), a comparison of the quantity of U.K. imports from the PRC under HTS 3801.10 to the reported quantity of UKCG's imports of the artificial graphite input during the POR does not exhibit the same level of correspondence between the two datasets as is seen with the finished product above.[127] Nevertheless, GTA data for U.K. imports of HTS 3801.10 do show that artificial graphite imports from the PRC have increased an average of 60 percent per year since 2005 and, although the quantities of artificial graphite imported into the United Kingdom and the PRC-sourced inputs reported by UKCG do not approximate one another, a comparison of the trends in the monthly import totals in both datasets during the period January 2008–December 2010 demonstrates a correlation in the pattern of trade.[128]

Accordingly, we find that the data show that, in addition to the aforementioned increase in UKCG's sourcing of relevant inputs from the PRC, PRC exports of unfinished artificial graphite to the United Kingdom have also increased significantly since the initiation of the LTFV investigation.

Summary of Analysis

We preliminarily find that UKCG has circumvented the *SDGE Order* in accordance with sections 781(b)(1) and (2) of the Act. Pursuant to sections 781(b)(1)(A) and (B) of the Act, we find that the merchandise sold in the United States is identical to merchandise that is subject to the *SDGE Order* and was completed in the United Kingdom from merchandise which is: (a) indistinguishable from merchandise covered by the explicit language of the scope of the *SDGE Order,* and (b) produced in the PRC, the country to which the *SDGE Order* applies. Additionally, pursuant to section 781(b)(1)(C) of the Act, we find that the process of completion in the United Kingdom to be minor and insignificant based on each facet of the analysis under section 781(b)(2) of the Act. Furthermore, in accordance with section 781(b)(1)(D) of the Act, we find that the value of the merchandise produced in the PRC is a significant portion of the total value of the merchandise exported to the United States. Finally, upon taking into consideration section 781(b)(3) of the Act, our analysis of the pattern of trade, including sourcing, and an affirmative finding of an increase in imports of artificial graphite/unfinished SDGE between the PRC and United Kingdom since the initiation of the initial LTFV investigation, action is appropriate to prevent evasion of the *SDGE Order* pursuant to 781(b)(1)(E) of the Act. Consequently, our statutory analysis leads us to find that, during the period of time examined, there was circumvention of the *SDGE Order* as a result of UKCG's conversion of the PRC-origin artificial graphite/unfinished SDGE components to finished SDGE in the United Kingdom, as discussed above.

Suspension of Liquidation

As stated above, the Department has made a preliminary affirmative finding of circumvention of the *SDGE Order* by UKCG. This circumvention finding applies to SDGE produced by UKCG from PRC-origin inputs. A review of certain information, bracketed as proprietary, that is contained in various submissions demonstrates that UKCG may have sales of finished SDGE to the United States further manufactured from non-PRC-sourced artificial

[123] *See* Analysis Memo.

[124] *See* Analysis Memo.

[125] *See, e.g., Tissue Paper Anticircumvention Prelim,* unchanged in *Tissue Paper Anticircumvention Final.*

[126] *See* UKCG's First SQR at 20 and Exhibit 4 (containing UKCG's financial statements).

[127] For example, whereas the relative narrowness of the products included in the 8545.11 category, along with the presumably limited number of U.K. exporters of 8545.11 merchandise in general, resulted in a significant correlation between the quantity totals of all imports of finished SDGE into the U.S. from the U.K. and UKCG's reported totals, the broader scope of products included in the 3801.10 category, along with a presumably larger pool of U.K. importers of 3801.10 merchandise, results in a quantity of artificial graphite imports into the U.K. from the PRC reported by GTA which greatly exceeds the reported quantity of SDGE sold to the U.S. during the period reviewed, as reported in Exhibits 12 and 13 of UKCG's Second SQR. Because, as discussed above, the Department has applied fact available pursuant to section 776(a)(1) of the Act to conclude that UKCG's pattern of trade in sourcing closely resembles its pattern of trade in sales, we find that this import quantity of artificial graphite also greatly exceeds the amount of artificial graphite inputs sourced by UKCG for use in the production of subject merchandise.

[128] *See* Analysis Memo.

graphite/unfinished SDGE inputs,[129] and that UKCG may be able to differentiate which of its exports of finished SDGE to the United States are sourced from non-PRC-origin inputs.[130] Further proprietary statements demonstrate that UKCG sources a certain percentage of relevant inputs from PRC supplier(s) of SDGE with their own antidumping duty rates and that UKCG may be able to identify these exports and relevant PRC suppliers.[131] Moreover, UKCG stated and the Department verified that its record-keeping system is able to track orders of artificial rod inputs from the PRC (or elsewhere) to the production process of finished SDGE and through to the subsequent shipment to the customer.[132] Thus, the Department preliminarily determines, based on the aforementioned record evidence, that UKCG is able to provide documentation to its U.S. importers that would allow U.S. Customs and Border Protection (''CBP'') to distinguish between UKCG's SDGE sourced from a PRC supplier subject to the PRC-wide rate, UKCG's SDGE sourced from a PRC supplier subject to an individual rate, and UKCG's exports of non-PRC-sourced SDGE which are not within the scope of the *SDGE Order.*[133]

In accordance with section 19 CFR 351.225(l)(2), the Department will direct CBP to suspend liquidation and to require a cash deposit of estimated duties at the applicable rate on unliquidated entries of SDGE produced and/or exported by UKCG that were entered, or withdrawn from warehouse, for consumption on or after March 18, 2011, the date of initiation of the anticircumvention inquiry. Where the importer can demonstrate that the primary input material was produced by a company that has a separate rate, CBP will collect that company's cash deposit rate. Where the importer can demonstrate that the SDGE at issue was produced from reconditioned rods or rods sourced from a third country producer, CBP should not suspend those entries or collect AD duties on those entries. For all other entries of merchandise exported by UKCG, CBP will require a cash deposit equal to the PRC-wide rate of 159.64 percent. For all entries of finished SDGE produced from artificial graphite inputs subject to the scope of this proceeding which UKCG believes should be assessed at a rate other than the PRC-wide rate, UKCG is required to furnish its customers/importers with a certification identifying, as appropriate, the manufacturer/exporter of the primary input into the SDGE it processes in the U.K. prior to exportation to the United States. For all entries of SDGE produced from inputs not subject to the scope of this proceeding (*i.e.,* from reconditioned inputs or inputs produced in a third country), UKCG is required to furnish its customers/importers with a certification identifying the supplier or producer (as appropriate)[134] of the primary input into the SDGE it processes in the U.K. prior to exportation to the United States. Importers are also required to sign and maintain certifications for these types of entries. The certification formats are provided in Appendices I, II, III, and IV to this notice. The importer will be required to retain each certificate for individual entries for the later of: (1) A period of five years from the date of entry or (2) a period of three years after the conclusion of any antidumping duty litigation regarding such entries. It is the importer's responsibility to accurately declare to CBP the appropriate antidumping duty rate (or that no antidumping duty applies) for each entry. Accordingly, the Department will instruct CBP to: (i) Require cash deposits at the rate established for the PRC supplier if that supplier has its own rate; (ii) require cash deposits at the PRC-wide rate of 159.64 percent if the PRC supplier does not have its own rate or if the importer cannot identify the supplier. If the importer is able to demonstrate that the source of the artificial graphite/unfinished SDGE used in the production of finished SDGE imported from UKCG is not of PRC-origin or the finished SDGE is produced from reconditioned inputs, the imports are not subject to the *SDGE Order.*[135]

These instructions will apply to entries of SDGE produced and/or exported by UKCG that were entered, or withdrawn from warehouse, for consumption on or after March 18, 2011, the date of initiation of the anti-circumvention inquiry. For unliquidated entries made prior to March 18, 2011, UKCG will be required to provide the above-noted documentation to the importer. The importer will be required to provide the documentation to CBP within the time frame established by CBP. Consistent with past practice the Department has determined that a third-country AD case number for the United Kingdom is necessary as part of this determination for importers to identity merchandise as subject merchandise, and to ensure that CBP can collect AD duties on subject SDGEs that are processed in and exported from the United Kingdom.[136]

Notification to the International Trade Commission

The Department, consistent with section 781(e) of the Act, has notified the ITC of this preliminary determination to include the merchandise subject to this anticircumvention inquiry within the *SDGE Order.* Pursuant to section 781(e) of the Act, the ITC may request consultations concerning the Department's proposed inclusion of the subject merchandise. If, after

[129] *See, e.g.,* UKCG's First SQR at 20.

[130] *See* UKCG's First SQR at 8.

[131] *See* UKCG's First SQR at 8–9.

[132] *See* UKCG's Fourth SQR at 1–2.

[133] UKCG stated that it retains financial records for seven years, in accordance with law. *See* UKCG's Fourth SQR at 1–2. Furthermore, at verification, the Department confirmed that UKCG has maintained all necessary documentation going back to the March 18, 2011, date of initiation.

[134] UKCG purchases broken/cracked or otherwise unusable electrodes from sources in various non-PRC countries, refurbishes them, and re-sells them for use as finished electrodes. These reclaimed products are not subject to the scope of this proceeding. Although UKCG can document the country in which it sourced the reclaimed electrodes, UKCG has stated to the record that it has no way of identifying the original country in which the electrode was initially produced. *See* UKCG's May 21, 2012 Submission. As a result, the Department is only requiring that UKCG certify to the supplier of the primary reconditioned input.

[135] The exporter-supplied certification will serve as the initial demonstration supporting the importer's claim regarding which antidumping duty rate (or that no antidumping duty rate) is applicable. However, should CPB determine that further demonstration is warranted, it may seek additional documentation from the importer pursuant to 19 CFR 163.6(a) and other applicable regulations and statutory authority. Under 19 CFR 163.6(a), CBP may require the production of entry records from any party required to maintain such records as defined in 19 CFR 163.2(a). 19 CFR 163.1(a)(2)(vii) defines such records to include any information made or normally kept in the ordinary course of business that pertains to an activity ''required to be undertaken pursuant to the laws or regulations administered by Customs,'' which would include the proper assessment of antidumping duties. As such, for the purpose of demonstrating that a rate other than the PRC-wide rate should be assessed to entries subject to this proceeding, UKCG should be prepared to provide to its importers, where applicable, documentation to substantiate the supplier claim made on the UKCG certification to the importer. Thus, if CBP should determine further demonstration is necessary and request supporting documentation from the importer, UKCG will be responsible for providing to the importer additional documentation pursuant to 19 CFR 163.6(a) to substantiate the certification.

[136] *See, e.g., Laminated Woven Sacks From the People's Republic of China: Final Results of First Antidumping Dutv Administrative Review,* 76 FR 14906, 14907 (March 18, 2011) (noting that ''the Department has coordinated with CBP to resolve issues arising from differences between the Department's and CBP's respective country-of-origin classifications and from technical restrictions in CBP's electronic filing systems. As a result, the Department has added several case numbers to the Case Reference file within the Automated Commercial Environment to ensure that requisite entries are and can be properly claimed as scope merchandise.'').

consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 15 days to provide written advice to the Department.

Public Comment

Because the Department may seek additional information, the Department will establish the case and rebuttal brief schedule at a later time, and will notify parties of the schedule in accordance with 19 CFR 351.309. These comments will be addressed in our final determination.

Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days after date of publication of this preliminary determination to the Assistant Secretary for Import Administration, U.S. Department of Commerce, and electronically file the request via the Department's Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS).[137] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a hearing is requested, we will notify parties of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. Issues raised in the hearing will be limited to those raised in the case briefs, pursuant to 19 CFR 351.310(c).

Final Determination

The Department intends to issue the final determination with respect to this anticircumvention inquiry no later than July 31, 2012, including the results of the Department's analysis of any written comments. This preliminary affirmative circumvention determination is published in accordance with section 781(b) of the Act and 19 CFR 351.225.

Dated: May 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Certification of UK Carbon and Graphite Co., Ltd. for Non-Subject SDGE Exports

I hereby certify that I am an official of UK Carbon and Graphite Co., Ltd. (''UKCG'') and that that the small diameter graphite electrode products processed by UKCG in the United Kingdom into the small diameter graphite electrodes included within this shipment pursuant to Invoice numbers [138]:

- Invoice
- Invoice * * *

were produced from reconditioned rods or from non Chinese-origin artificial graphite rods.

By signing this certificate, UKCG also hereby agrees to:

- Maintain sufficient documentation supporting the above statement for all non-Chinese-origin or reconditioned artificial graphite rods/unfinished SDGE used to produce the exported small diameter graphite electrode products.
- Provide such documentation to the importer of the merchandise subject to this certification if required by U.S. Customs and Border Protection (''CBP''). UKCG is required to maintain all such documentation for individual entries until the later of 1) a period of five years from the date of entry or 2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.
- Submit to verification by the U.S. Government of the underlying documentation supporting the above statement pursuant to the administration of an antidumping duty proceeding covering small diameter graphite electrodes from the People's Republic of China.
- Provide this certification to the U.S. customer/importer at the time of shipment.

UKCG agrees that failure to submit to verification of the documentation by the U.S. Government will result in immediate revocation of certification rights and understands that the importer of the merchandise will be required to post a cash deposit equal to the PRC-wide entity rate on all entries of small diameter graphite electrode products sourced from UKCG. In addition, if the Department of Commerce (''Commerce'') identifies any misrepresentation or inconsistencies regarding the certifications, UKCG recognizes that the matter may be reported to CBP by Commerce for possible enforcement action.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Appendix II

Certification of U.S. Importer for Non-Subject SDGE Exports

I hereby certify that I am an official of {insert name of company importing small diameter graphite electrodes (''SDGE'') from UK Carbon and Graphite Co., Ltd. (''UKCG''),} and that, to the best of my knowledge, the SDGE imported under the following entry numbers was produced from either reconditioned artificial graphite rods/unfinished SDGE or non-PRC-origin artificial graphite rods/unfinished SDGE:

- Entry #
  Date of Entry:
- Entry #

Date of Entry: * * *

By signing this certificate, the importer stipulates its understanding that:

- It is the importer's responsibility to accurately declare this entry upon importation to U.S. Customs and Border Protection (''CBP'').
- The importer of the above certified merchandise is required to maintain this certification for individual entries for the later of 1) a period of five years from the date of entry or 2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.
- The importer will be required to produce this certification and the exporter's certification upon the request of CBP.
- The importer may be required to produce additional documentation, sourced from UKCG, to substantiate the supplier claim made in the certification in response to a request from CBP.
- Should further investigation prove this certification to be false, CBP may take appropriate action to penalize the importer. As such, it is the importer's responsibility to provide any documentation from UKCG that may be needed to substantiate the above certified claims.
- The importer is required to complete this certification on the date of entry.
- If the importer is not able to demonstrate that the source of the artificial graphite rods/unfinished SDGE used in the production of finished SDGE imported from UKCG is of reconditioned rods or of non-PRC-origin, the imports are considered subject to the SDGE Order.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Appendix III

Certification of UK Carbon and Graphite Co., Ltd. for Exports of PRC-Origin SDGE Sourced From PRC-Producers

I hereby certify that I am an official of UK Carbon and Graphite Co., Ltd. (''UKCG'') and that the small diameter graphite electrode (''SDGE'') products processed by UKCG in the United Kingdom into the small diameter graphite electrodes included within this shipment pursuant to Invoice numbers [139]:

- Invoice
- Invoice * * *

were produced from Chinese-origin artificial graphite rods/unfinished SDGE subject to the antidumping duty order on small diameter graphite electrodes from the People's Republic of China (''PRC'') sourced from _____ (Name of PRC Manufacturer, or if the exporter is other than the manufacturer, the PRC exporter) [140]

By signing this certificate, UKCG also hereby agrees to:

[137] *See* 19 CFR 351.303(b) and 19 CFR 351.310(c).

[138] If an individual invoice is representative of merchandise produced from both Chinese-origin artificial graphite rod inputs, as well as non-subject inputs, UKCG shall identify the non-subject merchandise in this certification, and will provide a companion certification identifying the subject merchandise based on the certification provided below in Appendix III.

[139] If an individual invoice reflects the sale of subject and non-subject merchandise, UKCG shall provide to the customer/importer two certifications (and relevant supporting documentation) identifying the respective subject and non-subject merchandise, as discussed above.

[140] If there is more than one exporter/manufacturer, identify the exporter/manufacturer with each product from each invoice.

• Maintain sufficient documentation supporting the above statement for all Chinese-origin artificial graphite rods/unfinished SDGE used to produce the exported small diameter graphite electrode products.

• Provide such documentation to the importer of the merchandise subject to this certification if required by U.S. Customs and Border Protection (CBP). UKCG is required to maintain all such documentation for individual entries until the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.

• Submit to verification by the U.S. Government of the underlying documentation supporting the above statement pursuant to the administration of an antidumping duty proceeding covering small diameter graphite electrodes from the People's Republic of China.

• Provide this certification to the U.S. customer/importer at the time of shipment.

UKCG agrees that failure to submit to verification of the documentation by the U.S. government will result in immediate revocation of certification rights and that the importer of the merchandise will be required to post a cash deposit equal to the China-wide entity rate on all entries of small diameter graphite electrode products sourced from UKCG. In addition, if the Department of Commerce (''Commerce'') identifies any misrepresentation or inconsistencies regarding the certifications, UKCG recognizes that the matter may be reported to the U.S. Customs and Border Protection by Commerce for possible enforcement action.

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Appendix IV

Certification of U.S. Importer for PRC SDGE Exports

I hereby certify that I am an official of {insert name of company importing small diameter graphite electrodes (''SDGE'') from UKCG,} and that, to the best of my knowledge, the SDGE imported under the following entry numbers was produced from PRC-origin artificial graphite rods/unfinished SDGE:

• Entry #
Date of Entry:
• Entry #
Date of Entry: * * *

By signing this certificate, the importer stipulates its understanding that:

• It is the importer's responsibility to accurately declare this entry upon importation to U.S. Customs and Border Protection (''CBP'') as an entry subject to antidumping duties and to accurately report the cash deposit rate applicable to these imports.

• The importer of the above certified merchandise is required to maintain this certification for individual entries for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.

• The importer will be required to produce this certification and UKCG's certification upon the request of CBP.

• The importer may be required to produce additional documentation, sourced from UKCG, to substantiate the supplier claim made in the certification in response to a request from CBP.

• Should further investigation prove this certification to be false, CBP may take appropriate action to penalize the importer. As such, it is the importer's responsibility to provide any documentation from UKCG that may be needed to substantiate the above certified claims.

• The importer is required to complete this certification on the date of entry.

• For entries of SDGEs from UKCG which the importer believes should be assessed at a rate other than the PRC-wide rate, the importer must have a certification from UKCG identifying the supplier of the artificial graphite rods/unfinished SDGE subject to the antidumping duty order on SDGEs from the PRC.

Signature: _____
Printed Name: _____
Title: _____
Date: _____

[FR Doc. 2012–13738 Filed 6–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order

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

SUMMARY: On March 15, 2012, the Department of Commerce (''the Department'') initiated the first five-year (''sunset'') review of the antidumping duty order on certain activated carbon from the People's Republic of China (''PRC'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties, as well as a lack of response from respondent interested parties, the Department conducted an expedited sunset review of the antidumping duty order, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the antidumping duty order on certain activated carbon from the PRC would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: *Effective Date:* June 6, 2012.

FOR FURTHER INFORMATION CONTACT: Bob Palmer, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–9068.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2012, the Department initiated the first sunset review of the antidumping duty order on certain activated carbon from the PRC, pursuant to section 751(c) of the Act and 19 CFR 351.218(c)(2).[1] The Department received a notice of intent to participate from Calgon Carbon Corporation, Norit Americas, Inc., and ADA Carbon Solutions LLC (collectively, ''the domestic interested parties'') within the deadline specified in 19 CFR 351.218(d)(1)(i).[2] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic like product in the United States.

We received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[3] We received no responses from respondent interested parties. As a result, the Department conducted an expedited sunset review of the *Order,* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

Scope of the Order

The merchandise subject to the order is certain activated carbon. Certain activated carbon is a powdered, granular, or pelletized carbon product obtained by ''activating'' with heat and steam various materials containing carbon, including but not limited to coal (including bituminous, lignite, and anthracite), wood, coconut shells, olive stones, and peat. The thermal and steam treatments remove organic materials and create an internal pore structure in the

[1] *See Initiation of Five-Year (''Sunset'') Review,* 77 FR 12562 (March 1, 2012); *see also Notice of Antidumping Duty Order: Certain Activated Carbon From the People's Republic of China,* 72 FR 20988 (April 27, 2007) (''*Order*'').

[2] *See* Letter from domestic interested parties, re: ''Five-Year (''Sunset'') Review of the Antidumping Order on Certain Activated Carbon from the People's Republic of China: Domestic Interested Parties' Intent to Participate,'' dated March 15, 2012.

[3] *See* Letter from domestic interested parties, re: ''Five-Year (''Sunset'') Review of the Antidumping Order on Certain Activated Carbon from the People's Republic of China: Domestic Industry's Substantive Response,'' dated March 30, 2012.

carbon material. The producer can also use carbon dioxide gas (CO_2) in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or CO_2 gas) activated process is a direct result of oxidation of a portion of the solid carbon atoms in the raw material, converting them into a gaseous form of carbon.

The scope of the order covers all forms of activated carbon that are activated by steam or CO_2, regardless of the raw material, grade, mixture, additives, further washing or post-activation chemical treatment (chemical or water washing, chemical impregnation or other treatment), or product form. Unless specifically excluded, the scope of the order covers all physical forms of certain activated carbon, including powdered activated carbon (''PAC''), granular activated carbon (''GAC''), and pelletized activated carbon.

Excluded from the scope of the order are chemically activated carbons. The carbon-based raw material used in the chemical activation process is treated with a strong chemical agent, including but not limited to phosphoric acid, zinc chloride, sulfuric acid or potassium hydroxide, that dehydrates molecules in the raw material, and results in the formation of water that is removed from the raw material by moderate heat treatment. The activated carbon created by chemical activation has internal porosity developed primarily due to the action of the chemical dehydration agent. Chemically activated carbons are typically used to activate raw materials with a lignocellulosic component such as cellulose, including wood, sawdust, paper mill waste and peat.

To the extent that an imported activated carbon product is a blend of steam and chemically activated carbons, products containing 50 percent or more steam (or CO_2 gas) activated carbons are within the scope, and those containing more than 50 percent chemically activated carbons are outside the scope. This exclusion language regarding blended material applies only to mixtures of steam and chemically activated carbons.

Also excluded from the scope are reactivated carbons. Reactivated carbons are previously used activated carbons that have had adsorbed materials removed from their pore structure after use through the application of heat, steam and/or chemicals.

Also excluded from the scope is activated carbon cloth. Activated carbon cloth is a woven textile fabric made of or containing activated carbon fibers. It is used in masks and filters and clothing of various types where a woven format is required.

Any activated carbon meeting the physical description of subject merchandise provided above that is not expressly excluded from the scope is included within the scope. The products subject to the order are currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 3802.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the ''Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China'' (''Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with and hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order was to be revoked. Parties may find a complete discussion of all issues raised in the review and the corresponding recommendations in this public memorandum which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit room 7046 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be access directly on the Web at *http://ia.ita.doc.gov/frn*. The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Exporter	Weight-averaged dumping margins (%)
Beijing Pacific Activated Carbon Products Co., Ltd	67.14
Calgon Carbon Tianjin Co., Ltd	69.54
Datong Juqiang Activated Carbon Co., Ltd	67.14
Datong Locomotive Coal & Chemicals Co., Ltd	67.14
Datong Municipal Yunguang Activated Carbon Co., Ltd	67.14
Datong Yunguang Chemicals Plant	67.14
Hebei Foreign Trade and Advertising Corporation	67.14
Jacobi Carbons AB	61.95
Jilin Bright Future Chemicals Company, Ltd	228.11
Jilin Province Bright Future Industry and Commerce Co., Ltd	228.11
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd	67.14
Ningxia Huahui Activated Carbon Co., Ltd	67.14
Ningxia Mineral & Chemical Limited	67.14
Shanxi DMD Corporation	67.14
Shanxi Industry Technology Trading Co., Ltd	67.14
Shanxi Newtime Co., Ltd	67.14
Shanxi Qixian Foreign Trade Corporation	67.14
Shanxi Sincere Industrial Co., Ltd	67.14
Shanxi Xuanzhong Chemical Industry Co., Ltd	67.14
Tangshan Solid Carbon Co., Ltd	67.14
Tianjin Maijin Industries Co., Ltd	67.14
United Manufacturing International (Beijing) Ltd	67.14

Exporter	Weight-averaged dumping margins (%)
Xi'an Shuntong International Trade & Industrials Co., Ltd	67.14
PRC–Wide Rate	228.11

Notice Regarding Administrative Protective Order (''APO'')

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return of 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 sunset review and notice are in accordance with sections 751(c), 752(c), and 771(i)(1) of the Act.

Dated: May 25, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–13379 Filed 6–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

The Regents of the University of California, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscope

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 12–013. Applicant: Washington University in St. Louis, Saint Louis, MO 63130. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 77 FR 26507, May 4, 2012.

Docket Number: 12–018. Applicant: The Regents of the University of California, Berkeley, CA 94720. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 77 FR 26507, May 4, 2012.

Docket Number: 12–019. Applicant: Schepens Eye Research Institute, Boston, MA 02114. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 77 FR 26507, May 4, 2012.

Docket Number: 12–020. Applicant: Howard Hughes Medical Institute, Chevy Chase, MD 20815. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 77 FR 26507, May 4, 2012.

Docket Number: 12–021. Applicant: Rice University, Houston, TX 77005. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 77 FR 26507, May 4, 2012.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States at the time the instrument was ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: May 29, 2012.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2012–13577 Filed 6–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–982]

Utility Scale Wind Towers From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers and exporters of utility scale wind towers from the People's Republic of China. For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* June 6, 2012.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Patricia Tran, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–4793 and 202–482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On December 29, 2011, the Department of Commerce (the Department) received a countervailing duty (CVD) petition concerning imports of utility scale wind towers (wind towers) from the People's Republic of China (PRC) filed in proper form by the Wind Tower Trade Coalition (the Petitioner).[1] *See* Petition for the Imposition of Antidumping and Countervailing Duties Against Utility Scale Wind Towers from the People's Republic of China and the Socialist Republic of Vietnam (December 29, 2011) (Petition).[2] This investigation was initiated on January 18, 2012.[3]

In the *Initiation Notice,* the Department stated that it intended to rely on data from U.S. Customs and Border Protection (CBP) for purposes of selecting the mandatory respondents. *See Initiation Notice,* 77 FR 3449–50. On January 18, 2012, the Department released the results of a query performed on the CBP's database for calendar year 2011. *See* Memorandum

[1] The following companies compose the Wind Tower Trade Coalition: Broadwind Towers, Inc., DMI Industries, Katana Summit LLC, and Trinity Structural Towers, Inc. *See* Petition at Volume I, Exhibit I–1.

[2] The public version of the Petition and all other public versions and public documents generated in the course of this proceeding by the Department and interested parties are available to the public through Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS), located in Room 7046 of the main Commerce building.

[3] *See Utility Scale Wind Towers From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 77 FR 3447 (January 24, 2012) (*Initiation Notice*), and accompanying Initiation Checklist.

to the File from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, regarding ''Release of Query Results of Customs and Border Patrol Database'' (January 18, 2012). Due to the large number of producers and exporters of wind towers in the PRC, we determined that it was not practicable to individually investigate each producer and/or exporter. We, therefore, selected the following two producers and/or exporters of wind towers to be mandatory respondents: CS Wind China Co., Ltd. and CS Wind Corporation (collectively, CS Wind) and Titan Wind Energy (Suzhou) Co., Ltd. and its affiliates (collectively, Titan Companies), the largest publicly identifiable producers and/or exporters of the subject merchandise.[4] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, and Patricia M. Tran, International Trade Analyst, AD/CVD Operations, Office 3, through Melissa G. Skinner, Director, AD/CVD Operations, Office 3, regarding ''Countervailing Duty Investigation: Utility Scale Wind Towers from the People's Republic of China: Respondent Selection'' (February 17, 2012).

On February 17, 2012, we issued the initial CVD questionnaire to the Government of the People's Republic of China (the GOC) and selected mandatory respondents. We also issued a confirmation of shipment questionnaire on the same date to CS Wind and Titan Companies.

On February 24, 2012, we received CS Wind's and Titan Companies' response to the shipment questionnaire in which each company certified that it exported subject merchandise to the United States during the period of investigation (POI). On March 1, 2012, we received comments from Chengxi Shipyard Co., Ltd. (CXS) regarding respondent selection. On March 5, 2012, we responded to CXS explaining that respondent selection had already been decided in this investigation and that the Department would not be considering the company's comments.

On March 9, 2012, the Department postponed the deadline for the preliminary determination by 65 days to no later than May 29, 2012.[5]

On April 3, 2012, we received initial questionnaire responses from CS Wind, Titan Companies, and the GOC. On April 4, 2012, we issued a deficiency questionnaire to the GOC regarding the provision of electricity for less than adequate remuneration (LTAR) and policy lending to the renewable energy industry and received the GOC's response on April 18, 2012. On April 6, 2012, we issued a supplemental questionnaire to CS Wind and received the company's response on April 30, 2012. On April 9, 2012, we received the GOC's response to the appendix for the provision hot-rolled steel (HRS) for LTAR program. On April 11, 2012, we issued to the GOC a second supplemental questionnaire and received the government's response on May 2, 2012. On April 11, 2012, we also issued a supplemental questionnaire to Titan Companies and received their responses on April 27 and May 3, 2012.

On April 19, 2012, Petitioner filed deficiency comments with regard to the questionnaire responses filed by the GOC, CS Wind, and Titan Companies. On April 20, 2012, Petitioner filed a new factual information submission regarding HRS pricing data for the POI, and a new subsidy allegations submission alleging the provision of aluminum shapes for LTAR and the provision of steel flanges for LTAR. Subsequently, on April 27, 2012, the GOC filed a submission responding to the Petitioner's new subsidy allegations.

On May 3, 2012, CS Wind filed a rebuttal new factual information submission regarding HRS plate pricing data for the POI. Also, on May 3, 2012, we issued a second supplemental question to CS Wind and received the company's response on May 18, 2012.

On May 8, 2012, we rejected the Petitioner's new subsidy allegations submission because the allegations were untimely filed with the Department. *See* Memorandum to Melissa G. Skinner, Director, AD/CVD Operations, Office 3, from Patricia M. Tran, International Trade Analyst, AD/CVD Operations, Office 3, through Robert Copyak, Acting Program Manager, AD/CVD Operations, Office 3, regarding ''Decision Memorandum Regarding Petitioner's New Subsidy Allegations'' (May 8, 2012). On May 8, 2012, we also rejected the GOC's April 27, 2012, rebuttal submission regarding the Petitioner's new subsidy allegations. Additionally on May 8, 2012, the GOC submitted clarification information for a HRS producer. On May 9, 2012, we issued a second supplemental questionnaire to Titan Companies and received the company's response on May 18, 2012. Titan Companies submitted comments on May 9, 2012, with regards to Petitioner's April 20, 2012, HRS plate benchmark submission.

On May 10, 2012, Petitioners filed comments on CS Wind's May 3, 2012, HRS plate benchmark pricing data submission. On May 11, 2012, CS Wind filed a second factual submission regarding a HRS producer/supplier and ocean freight rates, and submitted pre-preliminary determination comments. On May 16, 2012, the Department issued a third supplemental questionnaire to the GOC.

On May 17, 2012, Department officials met with counsel representing Petitioner regarding the HRS benchmark pricing data that they submitted on the record of the investigation.[6] Additionally, on May 17, 2012, CS Wind filed a third factual submission with regard to HRS benchmark data.

On May 18, 2012, the Department received the following submissions: Titan Companies submitted ownership information for a HRS producer/supplier; CS Wind submitted a correction to a chart that was included in Attachment 3 of the company's May 17, 2012, submission on HRS benchmark data; and Petitioner filed pre-preliminary comments regarding the provision of HRS for LTAR program.

On May 22, 2012, Petitioner filed rebuttal comments on the benchmark data submitted by CS Wind on May 17, 2012. On May 23, 2012, we received the GOC's response to the Department's third supplemental questionnaire, in part. Specifically, the Department received the GOC's response to the electricity questions, but granted an extension to the GOC to respond to the questions regarding the tax offsets for research and development program; the GOC's response to those questions are due to the Department on May 30, 2012.

As noted, CS Wind and Titan submitted ownership information for HRS suppliers/producers on May 11 and May 18, 2012, 18 and 11 days, respectively, before the preliminary determination. Due to the proximity to the preliminary determination, the Department intends to address CS Wind's and Titan's submissions, including the question of whether or not these submissions were timely, after the issuance of the preliminary determination. All parties will be informed of the Department's decision with regard to CS Wind's and Titan's submissions and provided the opportunity to comment on it.

[4] The companies are listed in alphabetical order and not listed based on export value/volume.

[5] *See Utility Scale Wind Towers From the People's Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 77 FR 14342 (March 9, 2012).

[6] *See* Memorandum to the File from Patricia M. Tran, International Trade Analyst, AD/CVD Operations, Office 3, regarding ''Countervailing Duty Investigation of Utility Scale Wind Towers from the People's Republic of China: Meeting with Counsel representing Wind Tower Trade Coalition (Petitioner)'' (May 21, 2012).

Scope of Investigation

The merchandise covered by this investigation are certain wind towers, whether or not tapered, and sections thereof. Certain wind towers are designed to support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof.

Merchandise covered by the investigation is currently classified in the Harmonized Tariff System of the United States (HTSUS) under subheadings 7308.20.0020[7] or 8502.31.0000.[8] Prior to 2011, merchandise covered by this investigation was classified in the HTSUS under subheading 7308.20.0000 and may continue to be to some degree. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Scope Comments

In accordance with the *Preamble* to the Department's regulations (*see Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997)), in the *Initiation Notice,* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice.* On February 7, 2012, we received scope comments from the Petitioner.

The Department is evaluating the comments submitted by the Petitioner and will issue its decision regarding the scope of the antidumping (AD) and CVD investigations in the preliminary determination of the companion AD investigation, which is due for signature on July 26, 2012.[9] Scope decisions made in the AD investigation will be incorporated into the scope of the CVD investigation.

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On February 17, 2012, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of wind towers. *See Utility Scale Wind Towers from China and Vietnam,* Investigation Nos. 701–TA–486 and 731–TA–1195–1196 (Preliminary), 77 FR 9700 (February 17, 2012).

Application of the CVD Law to Imports From the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007) (*Coated Paper from the PRC*), and the accompanying Issues and Decision Memorandum (Coated Paper Decision Memorandum). In *Coated Paper from the PRC,* the Department found that

> given the substantial difference between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as {a} bar to proceeding with a CVD investigation involving products from China.

See Coated Paper Decision Memorandum at Comment 6. The Department has affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.[10] Furthermore, on March 13, 2012, HR 4105 was enacted which makes clear that the Department has the authority to apply the CVD law to non-market economies (NMEs) such as the PRC. The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.[11]

Additionally, for the reasons stated in the CWP Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC. *See* CWP Decision Memorandum at Comment 2.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if, inter alia, necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA), information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

[7] Wind towers are classified under HTSUS 7308.20.0020 when imported as a tower or tower section(s) alone.

[8] Wind towers may also be classified under HTSUS 8502.31.0000 when imported as part of a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades).

[9] *See Utility Scale Wind Towers From the People's Republic of China and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 77 FR 29315 (May 17, 2012).

[10] *See, e.g., Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances,* 73 FR 31966 (June 5, 2008) (*CWP from the PRC*), and accompanying Issues and Decision Memorandum (CWP Decision Memorandum) at Comment 1.

[11] *See* HR 4105, 112th Cong. § 1(b) (2012) (enacted).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse ''as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' [12] The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' [13]

Application of AFA: HRS Producers Are ''Authorities''

As discussed below under the section ''Programs Preliminarily Determined To Be Countervailable,'' the Department is investigating the provision of HRS for LTAR by the GOC. We requested information from the GOC regarding the specific companies that produced the HRS that CS Wind and Titan Companies purchased during the POI. Specifically, we sought information from the GOC that would allow us to determine whether the producers are ''authorities'' within the meaning of section 771(5)(B) of the Act. In our original and supplemental questionnaires, we requested detailed information from the GOC that would be needed for this analysis.

For each producer in which the GOC was a majority owner, we stated that the GOC needed to provide the following information that is relevant to our analysis of whether that producer is an ''authority.''

- Translated copies of source documents that demonstrate the producer's ownership during the POI, such as capital verification reports, articles of association, share transfer agreements, or financial statements.
- The names of the ten largest shareholders and the total number of shareholders.
- The identification of any government ownership or other affiliations between the ten largest shareholders and the government.
- Total level of state ownership of the company's shares and the names of all government entities that own shares in the producer.
- Any other relevant evidence the GOC believes demonstrates that the company is not controlled by the government.

For each producer that the GOC claimed was privately owned by individuals or companies during the POI, we requested the following.

- Translated copies of source documents that demonstrate the producer's ownership during the POI, such as capital verification reports, articles of association, share transfer agreements, or financial statements.
- Identification of the owners, members of the board of directors, or managers of the producers who were also government or Chinese Communist Party (CCP) officials or representatives during the POI.
- A statement regarding whether the producer had ever been a state-owned enterprise (SOE), and, if so, whether any of the current owners, directors, or senior managers had been involved in the operations of the company prior to its privatization.
- A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.

Finally, for producers owned by other corporations (whether in whole or in part) or with less-than-majority state ownership during the POI, we requested information tracing the ownership of the producer back to the ultimate individual or state owners. For such producers, we requested the following information.

- The identification of any state ownership of the producer's shares; the names of all government entities that own shares, either directly or indirectly, in the producer; the identification of all owners considered SOEs by the GOC; and the amount of shares held by each government owner.
- For each level of ownership, identification of the owners, directors, or senior managers of the producer who were also government or CCP officials during the POI.
- A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.
- A statement regarding whether any of the shares held by government entities have any special rights, priorities, or privileges with regard to voting rights or other management or decision-making powers of the company; a statement regarding whether there are restrictions on conducting, or acting through, extraordinary meetings of shareholders; a statement regarding whether there are any restrictions on the shares held by private shareholders; and a discussion of the nature of the private shareholders' interests in the company (*e.g.,* operational, strategic, or investment-related).

In its questionnaire response on April 9, 2012, the GOC provided incomplete ownership information for all of the companies that produced HRS purchased by CS Wind and Titan Companies. The GOC provided the business registration for all of CW Wind and Titan Companies' input suppliers, but did not provide additional documentation, (*e.g.,* capital verification reports, articles of association, or any other documents demonstrating the producers' ownership. For one producer only, it provided the articles of association, but this was still not enough information to trace ownership back to the ultimate individual owners, as the questionnaire requested.[14] Further, the GOC provided no information at all regarding the identification of owners, directors, or senior managers who were also GOC or CCP officials or representatives. The GOC stated that ''it was unable to trace all ownership back to the ultimate individual or state owners for each and every input producer with some direct corporate ownership or less-than-majority state ownership, and for each level of ownership of these input producers during the POI in the limited time allowed for this questionnaire response.'' [15] For all of these producers, it provided none of the information requested in the standard ''input producers'' appendix, which the Department issues to determine the individual owners of producers and to determine the extent of GOC control, if any, over the producers.[16] On April 11, 2012, we issued a supplemental questionnaire to the GOC requesting that it provide the requested ownership information for the HRS producers. We also requested that the GOC respond to the questions regarding the role, if any, that GOC and CCP officials and representatives had as owners, directors, or senior managers of the producers.[17]

In its May 2, 2012, response, the GOC did not provide any information regarding the role of GOC and CCP officials and representatives, nor did the GOC explain what efforts it undertook to obtain the requested information.

In addition to not providing all of the requested information regarding government and CCP officials and representatives, the GOC also declined to answer questions about the CCP's

[12] *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998).

[13] *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994).

[14] *See* GOC's Provision of HRS Questionnaire Response (April 9, 2012) (GOC HRS Response) at Attachment 1 to 11.

[15] *See* GOC HRS Response at 3.

[16] *Id.*

[17] *See* Department's Second Supplemental Questionnaire to the GOC (April 11, 2012).

structure and functions that are relevant to our determination of whether the producers of HRS are ''authorities'' within the meaning of section 771(5)(B) of the Act. In its initial questionnaire response, the GOC asserted that HRS sheet and plate producers are not ''authorities'' within the meaning of applicable U.S. law or ''public bodies'' with the meaning of the WTO Agreement on Subsidies and Countervailing Measures. Additionally, the GOC stated that it does not ''play a role in the ordinary business operations, including pricing and marketing decisions, of the domestic Chinese hot-rolled industry, including those in which the state holds an ownership interest.'' [18] The GOC argues that Chinese law prohibits GOC officials from taking positions in private companies.[19]

We have explained our understanding of the CCP's involvement in the PRC's economic and political structure in a past proceeding.[20] Public information suggests that the CCP exerts significant control over activities in the PRC.[21] This conclusion is supported by, among other documents, a publicly available background report from the U.S. Department of State.[22] With regard to the GOC's claim that Chinese law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP officials.[23]

Thus, the Department finds, as it has in past investigations, that the information requested regarding the role of CCP officials in the management and operations of the HRS producers, and in the management and operations of the producers' owners, is necessary to our determination of whether these producers are authorities within the meaning of section 771(5)(B) of the Act. In addition, the GOC did not promptly notify the Department, in accordance with section 782(c) of the Act, that it was unable to submit the required information in the requested form and manner, nor did it suggest any alternative forms for submitting this information. In fact, in its initial questionnaire response to the ''Information Regarding Input Producers in the PRC Appendix,'' the GOC stated that it ''does not intend to respond to all aspects of the Department's extremely burdensome LTAR Appendix.'' [24] Further, the GOC did not provide any information regarding the attempts it undertook to obtain the requested information for the HRS suppliers/producers, despite the fact that we provided the GOC with a second opportunity to provide the information and additional time for responding to both the original and supplemental questionnaires.[25]

Therefore, we preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on ''facts otherwise available'' in making our preliminary determination. *See* sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we determine that the GOC has withheld information and impeded the investigation, and that an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act. As AFA, we are finding that all of the producers of HRS purchased by the respondents during the POI are ''authorities'' within the meaning of section 771(5)(B) of the Act.

In addition, for those instances in which the GOC provided the requested ownership documents (*e.g.,* capital verification reports, business registration forms, and articles of association) but failed to provide information on whether individual owners of the input producers were officials of the CCP, and the extent to which CCP officials influenced the manner in which they conducted their firms' operations, we are assuming, adversely, that the firms were government authorities that provided a financial contribution. Our approach in this regard is consistent with the Department's practice.[26]

Application of AFA: Provision of HRS Is Specific to Wind Tower Producers

The Department asked the GOC to provide a list of industries in the PRC that purchase HRS directly and to provide the amounts (volume and value) purchased by each of the industries, including the wind tower industry.[27] The Department requests such information for purposes of its *de facto* specificity analysis.

The GOC stated that it did ''not impose any limitations on the consumption of hot-rolled steel'' and that ''the type of consumers that may purchase hot-rolled steel sheet and plate is highly varied within the economy.'' [28] The Department again asked the GOC to provide a list of industries that purchased HRS with the associated value and volume data in a supplemental questionnaire. To that request, the GOC provided a list of various industries and sectors that may use hot-rolled steel, which was produced based on the industrial classification scheme of China and that of the United Nations, *i.e.,* ISIC Scheme. That information submitted by the GOC, however, is insufficient because it does not report the actual PRC industries that purchased HRS and the volume and value of each industry's respective purchase for the POI and the prior two years.[29]

Therefore, we preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on ''facts available'' in making our

[18] *See* GOC's Initial Questionnaire Response (April 3, 2012) (GOC's IQR) at 27.

[19] *Id.* at 32 and GOC's HRS Response at 7.

[20] *See* Memorandum to the File from Patricia Tran, International Trade Analyst, AD/CVD Operations, Office 3, regarding ''Additional Documents for Preliminary Determination,'' May 29, 2012 (Additional Documents Memorandum) at Attachments II and III (which include the post-preliminary analysis memorandum from certain seamless carbon and alloy steel standard, line, and pressure pipe and a State Department report, both recognizing the significant role the CCP has in the GOC).

[21] *Id.* at Attachment III.

[22] *Id.; see also Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 75 FR 57444 (September 21, 2010) (*Seamless Pipe from the PRC*), and accompanying Issues and Decision Memorandum (Seamless Pipe Decision Memorandum) at Comment 7.

[23] *See* Seamless Pipe Decision Memorandum at 16.

[24] *See* GOC HRS Response at 1.

[25] The Department provided a 7-day extension to the GOC to submit is initial questionnaire response (*see* Department's March 21, 2012, letter to the GOC). The Department subsequently provided to the GOC an additional four days to submit its response to the HRS ''Information Regarding Input Producers in the PRC Appendix'' (*see* Department's March 28, 2012, letter to the GOC). The Department also extended by seven days the due date for the GOC's response to the second supplemental questionnaire, which contained HRS producer questions (*see* Department's April 23, 2012, letter to the GOC).

[26] *See, e.g., Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination,* 75 FR 10774, 10778 (March 9, 2010); unchanged in Certain *Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 59212 (September 27, 2010) (Certain Coated Paper from the PRC), and accompanying Issues and Decision Memorandum *(Certain Coated Paper Decision Memorandum).*

[27] *See* Department's Initial Questionnaire to the GOC (February 17, 2012) at II–6.

[28] *See* GOC's IQR at 22 and 24.

[29] *See* GOC's Second Supplemental Questionnaire Response (May 2, 2012) (GOC's Second SQR) at 4 and Exhibit S2–7.

preliminary determination. *See* sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of HRS to wind tower producers is specific within the meaning of section 771(5A) of the Act. The Department's preliminary determination that the benefits under this program are specific is supported by the Department's determinations regarding the GOC's provision of HRS for LTAR in *Cylinders from the PRC*[30] and *Steel Wheels from the PRC.*[31]

For details regarding the remaining elements of our analysis, *see* the ''Provision of Hot-Rolled Steel for LTAR'' section below.

Application of AFA: Provision of Electricity for LTAR

The Department is also investigating the provision of electricity for LTAR to the respondents by the GOC. The GOC, however, did not provide a complete response to the Department's request for information regarding this program. In the February 17, 2012, initial questionnaire, we requested that the GOC provide the provincial price proposals for each province in which a mandatory respondent and any reported cross-owned company is located for the applicable tariff schedules that were in effect during the POI, and to explain how those price proposals were created.[32] We also asked the GOC to explain how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the price proposals, and how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories.[33] In its April 3, 2012, initial questionnaire response, the GOC responded that it was unable to provide the price proposals because they are working documents for the National Development and Reform Commission's (NDRC) review.[34] To the questions regarding how electricity cost increases are reflected in retail price increases, the GOC's response explained theoretically how price increase should be formulated and did not explain the actual process that led to the price increases.[35]

As such, on April 4, 2012, the Department issued a deficiency questionnaire to the GOC reiterating its request for this information.[36] In its April 18, 2012, questionnaire response, to the Electricity Appendix questions, the GOC reiterated its response contained in its initial questionnaire response.[37]

After reviewing the GOC's responses to the Department's electricity questions, we preliminarily determine that the GOC's answers are inadequate and did not provide the necessary information required by the Department to analyze the provision of electricity in the PRC because the GOC did not provide the requested price proposal documents or explain how price increases were formulated. As a result, the Department must rely on the facts otherwise available in its analysis for this preliminary determination. *See* sections 776(a)(1) and 776(a)(2)(A) of the Act.

Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. In this regard, the GOC stated it couldn't provide the NDRC documents because they were ''working documents.'' However, the GOC did not explain why such documents could not be submitted on the record of this proceeding, particularly as the Department permits parties to submit information for limited disclosure if it is business proprietary. *See, e.g.,* 19 CFR 351.306. Therefore, an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act. Drawing an adverse inference, we preliminarily determine that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We are also relying on an adverse inference by selecting the highest electricity rates that were in effect during the POI as our benchmarks for determining the existence and amount of any benefit under this program. *See* section 776(b)(4) of the Act.

The GOC provided the provincial rates schedules that were effect during the POI.[38] We have used those schedules as a benchmark rate source and identified the highest provincial electricity rates in effect during POI to serve as the benchmark rates applied in the benefit calculations for this program. For details on the preliminary calculated subsidy rates for the respondents, *see* below at ''Provision of Electricity for LTAR.''

Application of AFA: Grants Discovered During the Investigation

The Department will investigate potential subsidies it discovers during the course of an investigation, even if those subsidies were not alleged in the countervailing duty petition. *See* section 775 of the Act.

In supplemental questionnaires issued to CS Wind, Titan Companies, and the GOC, we identified a number of grants that the companies appeared to have received based on information in the financial statements that the companies placed on the record. Respondents had not reported these grants nor did they complete the appropriate appendices, despite the Department's request in the initial questionnaire that the respondents should report all subsidies used during the POI, not merely those related to allegations under investigation. In the supplemental questionnaires, we requested that CS Wind and Titan Companies provide more information about these grants by responding to the relevant appendices.[39] We also instructed the companies to share with the GOC the grant information so that the Chinese government could also submit information on the programs under which these grants were provided.[40] In the April 11, 2012, supplemental questionnaire issued to the GOC, we asked the Chinese government to coordinate with the respondents to ensure receipt of the information regarding the assistance

[30] *See High Pressure Steel Cylinders From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 77 FR 26738 (May 7, 2012) (*Cylinders from the PRC*), and accompanying Issues and Decision Memorandum (Cylinders Decision Memorandum) at 17–18, where the Department states: ''Further, the GOC has reported that hot-rolled steel is used by a 'wide variety of steel consuming industries.' Because hot-rolled steel is only provided to steel consuming industries, we determine that the subsidy is being provided to a limited number of industries and is, therefore, specific.''.

[31] *Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 77 FR 17017 (March 23, 2012) (*Steel Wheels from the PRC*), and accompanying Issues and Decision Memorandum (Steel Wheels Decision Memorandum) at 8–10 and Comment 18.

[32] *See* Department's Initial Questionnaire to the GOC at Electricity Appendix.

[33] *Id.*

[34] *See* GOC's IQR at 44.

[35] *Id.* at 46–49.

[36] *See* Department's Deficiency Questionnaire to the GOC (April 4, 2012) at 3–4.

[37] *See* GOC's First Supplemental Questionnaire Response (April 18, 2012) (GOC's First SQR) at 2–5.

[38] *See* GOC's First SQR at Exhibits S1–1 and S1–2.

[39] *See* Department's First Supplemental Questionnaire to CS Wind (April 6, 2012) and Titan Companies (April 11, 2012).

[40] *Id.*

that the companies received and to provide a complete response to the Department's appendices.[41] In response to the GOC's April 23, 2012, extension request in which it stated that the PRC government needed more time ''to coordinate with the respondents on the overlapping issues raised in the questionnaire,'' we provided to the GOC an additional week to respond to the Department's request for information.[42]

Both CS Wind and Titan Companies provided responses for the grants, which they respectively received.[43] The GOC, however, only confirmed that the respondents received the grants and in a few instances provided a limited program description. The GOC did not provide a response to any of the required appendices (*i.e.,* Standard Questions Appendix, Allocation Appendix, and Grant Appendix) and, as such, did not provide any specificity information on the programs.[44] The GOC stated that it was unable to respond to the request for information with regard to the programs during the timeframe given for the supplemental questionnaire[45] despite the Department granting to the GOC additional time to respond to the questionnaire.

The Department normally relies on information from the government to assess program specificity. However, in their respective responses, CS Wind and Titan Companies did provide some information originally generated by the GOC (*i.e.,* approval documents) which the Department could use in its specificity analysis. Therefore, where the respondents submitted such information about the specificity of a program, we relied upon that information to make our preliminary determination. Where neither a respondent company nor the GOC provided information that would allow us to determine the specificity of a program, we relied upon AFA to make our preliminary determination. For those particular programs, we preliminarily find that the GOC withheld necessary information that was requested of it and, thus, has impeded the investigation. Further, the GOC has not cooperated to the best of its ability in responding to the Department's request for information. Consequently, an adverse inference is warranted in the applicable of facts available. *See* section 776(b) of the Act.

We analyzed the grants and preliminarily found that a number of them provided benefits to the respondents during the POI. For those grants, *see* ''Programs Preliminarily Determined To Be Countervailable'' below. As we discuss in the section ''Programs Preliminarily Determined Not To Provide Countervailable Benefits During the POI,'' those grants found to be used but the benefit from the program results in a net subsidy rate that is less than 0.005 percent *ad valorem* as well as grants provided prior to the POI that did not pass the ''0.5 percent test'' do not give rise to a benefit during the POI.

Subsidies Valuation Information

Period of Investigation

The POI for which we are measuring subsidies is January 1, 2011, through December 31, 2011, which corresponds to the most recently completed fiscal year. *See* 19 CFR 351.204(b)(2).

Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 12 years, for assets used in the manufacture of fabricated metal products. No interested party has claimed that the AUL of 12 years is unreasonable.

Further, for non-recurring subsidies, we have applied the ''0.5 percent expense test'' described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to the sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)–(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the subject merchandise; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

Cross-Ownership

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting interest between two corporations, or through common ownership of two (or more) corporations. The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.[46] Based on information on the record, we preliminarily determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), among the following companies.

CS Wind[47]

As discussed above, the Department selected CS Wind (consisting of CS Wind China Co., Ltd. and CS Wind Corporation) as a mandatory respondent. The companies that responded to the Department's questionnaires are CS Wind China Co., Ltd. (CSWC)[48] and its cross-owned affiliate, CS Wind Tech (Shanghai) Co., Ltd. (CSWS). CSWC and CSWS are affiliated with other companies. CS Wind provided information on those affiliates to demonstrate that none of them are required to provide questionnaire responses under the Department's attribution and cross-ownership regulations.

[41] *See* Department's Second Supplemental Questionnaire to the GOC (April 11, 2012).

[42] *See* GOC's Extension Request to Respond to the Second Supplemental Questionnaire (April 23, 2012) and the Department's Response to the GOC's Extension Request (April 23, 2012).

[43] *See* CS Wind's First SQR (April 30, 2012) and Titan Companies' First Supplemental Questionnaire Response Part 1 (April 30, 2012) (Titan's First SQR Part 1).

[44] *See* GOC Second SQR at 7–12.

[45] *Id.* at 10 and 12.

[46] *See Fabrique de Fer de Charleroi v. United States,* 166 F. Supp 2d 593, 600–604 (CIT 2001).

[47] For the company information, *see* CS Wind's Initial Questionnaire Response (April 3, 2012) (CS Wind's IQR) at 2–6 and Exhibit CVD–4.

[48] Company was previously known as ''CS Wind Tech Co., Ltd.'' During the POI, the company changed its English name to ''CS Wind China Co., Ltd.'' *See* CS Wind's IQR at 2.

CSWC, the Chinese producer of subject merchandise, was established on September 8, 2006, as a foreign invested enterprise (FIE) in the Lianyungang Economic and Technological Development Zone, Lianyungang City, Jiangsu Province. CSWC is wholly-owned by CS Wind Corporation (CS Wind Korea).[49] In 2006, CS Wind Korea was established in Korea and has no Chinese based ownership.[50] CS Wind Korea is the entity that sells the PRC-origin wind towers and related equipment produced by CSWC to foreign markets, including the United States.[51]

Established on November 23, 2009, in Shanghai, CSWS is the wholly-owned subsidiary of CSWC.[52] CSWS is a domestically-owned trading company that sells minor inputs (*e.g.,* paint) to CSWC for the production of subject merchandise.[53]

Pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that CSWC and CSWS are cross-owned because of common ownership. Regarding CSWS, we are attributing any subsidy received by the company as directed under 19 CFR 351.525(b)(6)(iv). As such, for this preliminary determination, we are attributing any subsidy received by either CSWC or CSWS to the combined sales of both companies, excluding inter-company sales. Hereinafter, we refer to CSWC and CSWS collectively as CS Wind, unless otherwise indicated.

Titan Companies[54]

Titan Wind responded to the Department's original and supplemental questionnaires on behalf of itself and five cross-owned affiliates: Titan Lianyungang Metal Products Co. Ltd. (Titan Lianyungang), Baotou Titan Wind Energy Equipment Co., Ltd. (Titan Baotou), Shenyang Titan Metal Co., Ltd. (Titan Shenyang), Titan (Suzhou) Wind Power Equipment Co., Ltd. (Titan Suzhou), and Shanghai Tianshen Investment Management Co., Ltd. (Shanghai Tianshen).

Titan Wind was established on January 18, 2005, as an FIE in Taicang Economic Development Zone.[55] Its original name was Titan (Suzhou) Metal Product Co., Ltd. (Titan Metal) and changed to Titan Wind Energy (Suzhou) Co. Ltd. in December 8, 2009.[56] Its original legal organization also transformed from a limited liability company to a joint stock limited company at that time.[57] Shanghai Tianshen is a holding company with majority (*i.e.,* wholly owns or owns more than 50 percent) ownership in Titan Wind. Titan Wind reported that it, in turn, owns the majority of the shares of Titan Lianyungang, Titan Baotou, Titan Shenyang and Titan Suzhou.[58] As all of these companies have common ownership through Titan Wind, we preliminarily determine that Shanghai Tianshen, Titan Wind, Titan Lianyungang, Titan Baotou, Titan Shenyang and Titan Suzhou are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). Titan Wind, Titan Lianyungang, Titan Baotou, and Titan Shenyang are producers of subject merchandise; Titan Suzhou provides inputs for the production of subject merchandise; and Shanghai Tianshen is a holding company and does not produce any merchandise. Consequently, the subsidies received by these companies are being attributed according to the rules established in 19 CFR 351.525(b)(6)(ii) and (b)(6)(iv). Regarding the holding company, Shanghai Tianshen, normally the Department would attribute subsidies received by the firm over its total consolidated sales, as described under 19 CFR 351.525(b)(6)(iii). However, we preliminarily determine that the information supplied by the Titan Companies does not allow the derivation of a consolidated sales figure.[59] As a result, we have attributed subsidies to Shanghai Tianshen in the manner described below. Hereinafter, we refer to Titan Wind, Titan Lianyungang, Titan Baotou, Titan Shenyang and Titan Suzhou, collectively as Titan Companies, unless otherwise indicated.

We preliminarily determine that multiple sales denominators are appropriate for use in the attribution of subsidies to Titan Companies. To attribute a subsidy received by Titan Wind, Titan Lianyungang, Titan Baotou, or Titan Shenyang, we used as the denominator the total consolidated sales of Titan Wind, Titan Lianyungang, Titan Baotou, and Titan Shenyang, exclusive of sales among affiliated companies, for 2011. To attribute a subsidy received by Titan Suzhou, we used as the denominator the total consolidated sales of Titan Wind, Titan Lianyungang, Titan Baotou, Titan Shenyang, and Titan Suzhou, exclusive of sales among affiliated companies, for 2011. As explained above, we find we are unable to derive a consolidated sales figure for Shanghai Tianshen. Therefore, to attribute a subsidy received by Shanghai Tianshen, we used as the denominator the total consolidated sales of Shanghai Tianshen, Titan Wind, Titan Lianyungang, Titan Baotou, Titan Shenyang, and Titan Suzhou, exclusive of sales among affiliated companies, for 2011.[60] Lastly, to attribute an export subsidy received by a company, we used as the denominator the 2011 export sales of Titan Wind because it is the only cross-owned company with export sales.

Benchmarks and Discount Rates

The Department is investigating loans received by the respondents from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies (*see* 19 CFR 351.524(b)(1)). The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

Short-Term RMB-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' Normally, the Department uses comparable commercial loans reported by the company as a benchmark.[61] If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we ''may use a national average interest rate for comparable commercial loans.''[62]

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the

[49] *See* CS Wind's IQR at 2–6 and Exhibit CVD–4.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] For company information, *see* Titan Companies' Initial Questionnaire Response (April 3, 2012) (IQR) at 5–12 and Exhibit 1.

[55] *See* Titan Companies' IQR at 5.

[56] *Id.* at 6–8.

[57] *Id.* at 8.

[58] *Id.* at 10–12.

[59] As stated above, Titan Companies reported Shanghai Taishen is the parent company of Titan Wind. Shanghai Tainshen's 2009, 2010, and 2011 financial statement does not appear to be on a consolidated basis (incorporating its own financial information and its affiliates). *See* Titan Companies' IQR at Exhibit 15, 16, 17 and its April 27, 2012, supplemental questionnaire response at Exhibit SCVD–27 and SCVD–28. Therefore, the Department will continue to review this information.

[60] *See* Department's methodology and treatment of RZBC Co. Ltd. and its affiliates in *Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative* Review, 76 FR 33219 (June 8, 2011) and unchanged in the final results, *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review,* 76 FR 77206 (December 12, 2011).

[61] *See* 19 CFR 351.505(a)(3)(i).

[62] *See* 19 CFR 351.505(a)(3)(ii).

reasons first explained in *Coated Paper from the PRC,*[63] loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber from Canada,* the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.[64]

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in *Coated Paper from the PRC*[65] and more recently updated in *Thermal Paper from the PRC.*[66] Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *Coated Paper from the PRC,* this pool of countries captures the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.[67] Beginning in 2010, however, the PRC is in the upper-middle income category.[68] Accordingly, as explained further below, we are using the interest rates of upper-middle income countries to construct the benchmark.

The Department's methodology relies on data published by the World Bank and International Monetary Fund. For the year 2011 (the POI), the World Bank, however, has not yet published all the necessary data relied on by the Department to compute a short-term benchmark interest rate for the PRC. Specifically, the World Governance Indicators are not yet available. Therefore, for purposes of this preliminary determination, where the use of a short-term benchmark rate for 2011 is required, we have applied the 2010 short-term benchmark rate for the PRC, as calculated by the Department and discussed below. The Department notes that the current 2010 loan benchmark may be updated, pending the release of all the necessary 2011 data, by the final determination.

After the Department identifies the appropriate interest rates, the next step in constructing the benchmark has been to incorporate an important factor in interest rate formation, the strength of governance as reflected in the quality of the countries' institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators. In each of the years from 2001–2009, the results of the regression analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.[69] For 2010, however, the regression does not yield that outcome for the PRC's income group.[70]

This contrary result for a single year in ten does not lead us to reject the strength of governance as a determinant of interest rates. As confirmed by the Federal Reserve, ''there is a significant negative correlation between institutional quality and the real interest rate, such that higher quality institutions are associated with lower real interest rates.'' [71] However, for 2010, incorporating the governance indicators in our analysis does not make for a better benchmark. Therefore, while we have continued to rely on the regression-based analysis used since *Coated Paper from the PRC* to compute the benchmarks for loans taken out prior to the POI, for the 2010 benchmark we are using an average of the interest rates of the upper-middle income countries. Based on our experience for the 2001–2009 period, in which the average interest rate of the lower-middle income group did not differ significantly from the benchmark rate resulting from the regression for that group, use of the average interest rate for 2010 does not introduce a distortion into our calculations.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as ''upper middle income'' by the World Bank for 2010 and ''lower middle income'' for 2001–2009. First, we did not include those economies that the Department considered to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.[72]

The resulting inflation-adjusted benchmark lending rates are included in the respondents' preliminarily calculations memoranda. Because these rates are net of inflation, we adjusted the benchmark to include an inflation component. [73]

Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate

[63] *See* Coated Paper Decision Memorandum at Comment 10; *see also* Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''Placement of Banking Memoranda on Record of the Instant Investigation'' (May 29, 2012).

[64] *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada,* 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum (Softwood Lumber Decision Memorandum) at ''Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.''

[65] *See* Coated Paper Decision Memorandum at Comment 10.

[66] *See Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*), and accompanying Issues and Decision Memorandum (Thermal Paper Decision Memorandum) at 8–10.

[67] *See* World Bank Country Classification, *http://econ.worldbank.org/. See also* Memorandum to the File from Patricia M. Tran, International Trade Analyst, AD/CVD Operations, Office 3, regarding ''Interest Rate Benchmarks'' (Interest Rate Benchmarks Memorandum) (May 29, 2012).

[68] *Id.*

[69] *See* Additional Documents Memorandum at Attachment I for Federal Reserve Consultation Memorandum.

[70] *See* Interest Rate Benchmarks Memorandum.

[71] *Id.*

[72] *See* Interest Rate Benchmarks Memorandum.

[73] *Id.*

data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.[74]

In *Citric Acid from the PRC,* this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question.[75] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.[76]

Foreign Currency-Denominated Loans

To calculate benchmark interest rates for foreign currency-denominated loans, the Department is again following the methodology developed over a number of successive PRC investigations. For US dollar short-term loans, the Department used as a benchmark the one-year dollar London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. Likewise, for any loans denominated in other foreign currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where ''n'' equals or approximates the number of years of the term of the loan in question.[77]

Discount Rate Benchmarks

Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.[78]

The resulting interest rate benchmarks that we used in the preliminary calculations are provided in the respondents' preliminarily calculations memoranda.

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. Policy Lending to the Renewable Energy Industry

Petitioner alleged that the GOC subsidizes wind tower producers through the provision of policy loans. According to Petitioner, the GOC provides for preferential policy lending to wind tower producers through the ''Renewable Energy Law,'' the ''Medium and Long-Term Development Plan for Renewable Energy in China,'' the ''Interim Measures for the Administration of Financial Subsidy Fund for Renewable and Energy Saving-Building Materials,'' and other Chinese central government programs and measures, including the GOC's five-year plans.[79]

Both respondents reported having loans outstanding during the POI. The Department finds that the loans to the respondents are countervailable. The information on the record indicates the GOC has placed great emphasis on targeting the renewable energy industry, including wind towers, for development in recent years. For example, the ''Renewable Energy Law,'' in Article 25, calls specifically for the use of loans in implementing the GOC's plans for renewable energy: ''Financial institutions may offer preferential loans with financial interest subsidy to projects for exploitation of renewable energy that are listed in the national development guidance catalogue of the renewable energy industry and meet the requirements for granting loans.''[80]

The GOC's ''Guidelines of the Eleventh Five-Year Plan for National Economic and Social Development'' (2006–2010) contains the section ''All Out Develop Renewable Energy Resources'' with the instruction to ''carry out preferential finance and taxation and investment policies and mandatory market share policies, encourage the production and consumption of renewable energy resources * * *''[81] At Article 5 of the ''Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation'' (December 2, 2005) (Decision 40), the GOC announced that: ''We shall actively support and develop new energy and renewable energy industries, encourage the development and utilization of substitute resources for petroleum, and clean energy, as well, actively propel the industrialization of clean coal technology, and speed up the development of wind power, solar energy, and biomass energy, etc.''[82] Decision 40 states that renewable energy is an encouraged category that is ''to be encouraged and supported with policies and measures.''[83]

Renewable energy is among the projects listed in the NDRC's ''Directory Catalogue on Readjustment of Industrial Structure'' (December 2, 2005) (the Catalogue), which contains a list of encouraged projects the GOC develops through loans and other forms of assistance, and which the Department has relied upon in prior specificity determinations.[84] Specifically, the Catalogue includes the encouraged power project IV(5) for: ''wind power and the development and utilization of such renewable energy as solar energy, geothermal energy, ocean power, and biomass power'' and the encouraged machinery project XII(12) for: ''manufacturing of clean energy power generation equipment (nuclear power, wind power, solar energy and tide, etc.)''[85]

Additionally, the GOC provided source documents concerning the largest loans that the respondents had outstanding during the POI. Information in these business proprietary documents further supports our preliminary determination that the GOC has a policy in place to encourage the development and production of wind towers through policy lending. *See* Memorandum to the File from Patricia M. Tran, International Trade Analyst, AD/CVD Operations, Office 3, regarding ''Excerpt of Internal Loan Documents'' (May 29, 2012).

[74] *See, e.g., Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination,* 73 FR 35642 (June 24, 2008) (*Rectangular Pipe from the PRC*), and accompanying Issues and Decision Memorandum (Rectangular Pipe Decision Memorandum) at 8.

[75] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying Issues and Decision Memorandum (Citric Acid Decision Memorandum) at Comment 14.

[76] *See* Interest Rate Benchmarks Memorandum.

[77] *Id.*

[78] *Id.,* and Respondents' preliminary calculations memoranda.

[79] *See* Department's Initiation Checklist for this investigation (January 18, 2012) at ''Policy Lending to the Renewable Energy Industry'' (page 19–20).

[80] *See* Petition at Volume III, Exhibit III–7.

[81] *See* GOC's IQR at D–7.1, Chapter 12 ''Optimize the Development of Energy Industry,'' Section 4 ''All Out Develop Renewable Energy Resources.''

[82] *Id.* at D–10.

[83] *Id.* at D–10, Article 14.

[84] *See, e.g., Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances,* 73 FR 40480 (July 15, 2008) (*Tires from the PRC*), and accompanying Issues and Decision Memorandum (Tires Decision Memorandum) at ''Government Policy Lending.''

[85] *See* GOC's IQR at Exhibit D–11.

Therefore, given the evidence demonstrating the GOC's objective of developing the renewable energy sector, and wind power in particular, through loans and other financial incentives, we preliminarily determine there is a program of preferential policy lending specific to wind tower producers, within the meaning of section 771(5A)(D)(i) of the Act. Additionally, because CSWC reported that it applied for bank loans in the form of export invoice financing,[86] we preliminarily determine that the loans received by CSWC are specific under section 771(5A)(A) of the Act because receipt of the financing is contingent upon exporting and that these export loans confer a benefit within the meaning of section 771(5)(E)(ii) of the Act.

We also preliminarily find that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are ''authorities'' [87] The loans provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans. *See* section 771(5)(E)(ii) of the Act. To calculate the benefit from this program, we used the benchmarks discussed above under the ''Subsidy Valuation Information'' section and applied, for CS Wind, an export sales denominator.[88] To calculate the net subsidy rate attributable to the Titan Companies, we divided the benefit by total sales in the manner described in the ''Cross-Ownership'' section. To calculate the net subsidy rate attributable to CS Wind, we divided the benefit by total export sales, as described in the ''Cross-Ownership'' section. On this basis, we preliminarily determine countervailable subsidy rates of 0.03 percent *ad valorem* for CS Wind and 0.30 percent *ad valorem* for Titan Companies.[89]

B. Two Free, Three Half Program for FIEs

Under Article 8 of the ''Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises'' (FIE Tax Law), an FIE that is ''productive'' and scheduled to operate for more than ten years is exempt from income tax in the first two years of profitability and pays income taxes at half the standard rate for the next three years.[90] According to the GOC, the program was terminated effective January 1, 2008, by the ''Enterprise Income Tax Law'' (EITL), but companies already enjoying the preference were permitted to continue paying taxes at reduced rates.[91] CSWC benefited from tax savings provided under this program during the POI.[92]

The Department has previously found the ''Two Free, Three Half'' program to confer a countervailable subsidy.[93] Consistent with the earlier cases, we preliminarily determine that the ''Two Free, Three Half'' income tax exemption/reduction confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the exemption/reduction afforded by the program is limited as a matter of law to certain enterprises, *i.e.,* productive FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income savings by CSWC as a recurring benefit, consistent with 19 CFR 351.524(c)(1). We compared the income tax rate that the company should have paid (22 percent) with the reduced income tax rate of (11 percent), which CSWC paid during the POI, to calculate the tax savings. To calculate the net subsidy rate attributable to CS Wind, we divided the benefit by total sales, as described in the ''Cross-Ownership'' section. On this basis, we preliminarily determine a countervailable subsidy rate of 0.32 percent *ad valorem* for CS Wind.[94]

To calculate the benefit, we treated the income savings by Titan Wind as a recurring benefit, consistent with 19 CFR 351.524(c)(1). We compared the income tax rate that the company should have paid (25 percent) with the reduced income tax rate of (12.5 percent), which Titan Wind paid during the POI, to calculate the tax savings. To calculate the net subsidy rate attributable to Titan Companies, we divided the benefit by total sales, as described in the ''Cross-Ownership'' section.[95] On this basis, we preliminarily determine a countervailable subsidy rate of 1.50 percent *ad valorem* for Titan Companies.

C. Income Tax Benefits for FIEs Based on Geographic Location

Pursuant to Article 7 of the FIE Tax Law, productive FIEs established in a coastal economic development zone, special economic zone, or economic technology development zone pay a reduced corporate income tax rate of either 15 or 24 percent, depending on the zone.[96] CSWC reported that it is entitled to a reduced tax rate because of its location in the Lianyungang Economic and Technological Development Zone.[97]

The GOC reported that after the EITL became effective January 1, 2008, all enterprises in China are subject to the unified tax rate of 25 percent regardless of whether they are located in a special economic zone.[98] However, the GOC added that as stipulated in Article 57 of the new tax law, enterprises approved and incorporated prior to the promulgation of the law and were already subject to the preferential tax rates under previous tax laws, were given a grace period of five years from the implementation of the new tax law.[99] Specifically, the GOC explained that enterprises that enjoyed preferential policies of reduced tax rates are gradually transitioned to the statutory, uniform tax rate of 25 percent over a 5-year period after the implementation of the new income tax law.[100] For tax year 2010, enterprises enjoyed a tax rate of 22 percent.[101]

We preliminarily determine that the reduced income tax rate paid by FIEs under this program confers a countervailable subsidy. The reduced rate is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. *See*

[86] *See* CS Wind's IQR at 21.

[87] *See, e.g.,*Tires Decision Memorandum at Comment E2, where the Department discusses that a complete analysis of the facts and circumstances of the Chinese banking system that have led us to find that Chinese policy banks and SOCBs constitute a government authority as outlined in Coated Paper Decision Memorandum at Comment 8. Parties in the instant case have not demonstrated that conditions within the Chinese banking sector have changed significantly since that previous decision such that a reconsideration of that decision is warranted.

[88] *See also* 19 CFR 351.505(c).

[89] *See* Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''CS Wind's Preliminary Calculations'' (CS Wind's Preliminary Calculations) (May 29, 2012) and Memorandum to the File from Patricia M. Tran, International Trade Analyst, AD/CVD Operations, Office 3 regarding ''Titan Companies Preliminary Calculations'' (Titan Companies' Preliminary Calculations) (May 29, 2012).

[90] *See* GOC IQR at 60–70.

[91] *Id.* at 70.

[92] *See* CS Wind's IQR at 23–25.

[93] *See* Coated Paper Decision Memorandum at 11–12; *see also* Seamless Pipe Decision Memorandum at 25.

[94] *See* CS Wind's Preliminary Calculations.

[95] *See* Titan Companies' Preliminary Calculations.

[96] *See* GOC's IQR at 73.

[97] *See* CS Wind's IQR at 26.

[98] *See* GOC's IQR at 80.

[99] *Id.*

[100] *Id.*

[101] *Id.* at 81.

section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the reduction afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act. The Department has previously found this program to be countervailable.[102] Consistent with those prior PRC proceedings, we treated the income tax savings enjoyed by CSWC as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To calculate the benefit, we compared the income tax rate that the company should have paid (25 percent) with the reduced income tax rate (22 percent), which the company paid during the POI. To calculate the net subsidy rate attributable to CS Wind, we divided the benefit by total sales, as described in the ''Cross-Ownership'' section. On this basis, we preliminarily determine that CS Wind received a countervailable subsidy of 0.09 percent *ad valorem* under this program.[103]

D. Import Tariff and Value Added Tax Exemptions for Use of Imported Equipment

Enacted in 1997, the ''Circular of the State Council on Adjusting Tax Policies on Imported Equipment'' (GUOFA No. 37), exempts both FIEs and certain domestic enterprises from VAT and tariffs on imported equipment provided the equipment is not included in the catalogs on non-duty exemptible article of importation for either FIEs or domestic enterprises.[104] The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.[105] The NDRC, or its provincial branch, provides a certificate to enterprises, which receive the exemption.[106] Those enterprises then present the certificates along with other application documentation to their local customs authorities to receive the tariff and VAT exemptions on eligible equipment imports. CSWC received VAT and tariff exemptions under this program.[107] The Department has previously found VAT and tariff exemptions under this program to confer countervailable subsidies.[108]

Consistent with the prior PRC proceedings, we preliminarily determine that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipient in the amount of VAT and tariff savings.[109] We also preliminarily determine that the VAT and tariff exemptions afforded by the program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises, *i.e.,* FIEs and domestic enterprises involved in ''encouraged'' projects.[110]

Normally, we treat exemptions from indirect taxes and import charges, such as VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate the benefits to the year in which they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department normally treats it as a non-recurring benefit and allocates the benefit to the firm over the AUL.[111] CSWC provided a list of VAT and tariff exemptions that the company received for imported capital equipment.[112] Based on that information, we preliminarily determine that the VAT and tariff exemptions are tied to the capital structure or capital assets of the company, and, as such, should be allocated over time.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[113] CSWC reported importing the equipment in 2007 and 2008.[114] For 2007, the benefits received by CSWC under this program exceeded 0.5 percent of relevant sales for that year. We, thus, allocated the benefits received in 2007 over the AUL of 12 years, pursuant to 19 CFR 351.524(b)(1). For 2008, the benefits received by CSWC under this program did not exceed 0.5 percent of relevant sales for that year. As such, we expensed those benefits to the year in which they were received, *i.e.,* 2008, pursuant to 19 CFR 351.524(b)(2).[115]

To allocate the 2007 benefits, we used the discount rates described above in the section ''Subsidies Valuation Information'' to calculate the amount of the benefit allocable to the POI. To calculate the net subsidy rate attributable to CS Wind, we divided the benefit by total sales, as described in the ''Cross-Ownership'' section. On this basis, we preliminarily determine a countervailable subsidy rate of 0.14 percent *ad valorem* for CS Wind.[116]

Additionally, the GOC reported that, pursuant to the ''Announcement of Ministry of Finance, China Customs, and State Administration of Taxation,'' No. 43 (2008), the VAT exemption was terminated.[117] Under 19 CFR 351.526(a)(1) and (2), the Department may take a program-wide change to a subsidy program into account in establishing the cash deposit rate if it determines that subsequent to the POI, but before the preliminary determination, a program-wide change occurred and the Department is able to measure the change in the amount of countervailable subsidies provided under the program in question. With regard to this program, we preliminarily determine that a program-wide change has not occurred. Under 351.526(d)(1), the Department will only adjust the cash deposit rate of a possibly terminated program if there are no residual benefits. However, this program still provides for residual benefits because import tariff and VAT exemptions were provided for the importation of capital equipment and, thus, those exemptions are treated as non-recurring subsidies pursuant to 19 CFR 351.524(c)(2)(iii). This decision is consistent with the Department's approach to this program in prior PRC proceedings.[118]

E. Provision of Hot-Rolled Steel for LTAR

The Department is investigating whether GOC authorities provided HRS to producers of wind towers for LTAR. As instructed in the Department's questionnaires, the respondent companies identified the suppliers and producers from whom they purchased

[102] *See e.g.,* Coated Paper Decision Memorandum at ''Reduced Income Tax Rates for FIEs Based on Location'' and Thermal Paper Decision Memorandum at ''Reduced Income Tax Rates for FIEs Based on Location.''

[103] *See* CS Wind's Preliminary Calculations.

[104] *See* GOC's IQR at 90–100.

[105] *Id.*

[106] *Id.*

[107] *Id.*

[108] *See* Coated Paper Decision Memorandum at 13–14; *see also* Seamless Pipe Decision Memorandum at 23–25.

[109] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

[110] *See* Coated Paper Decision Memorandum at Comment 16.

[111] *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

[112] *See* CS Wind's First SQR at Exhibit S1–21.

[113] *See* 19 CFR 351.524(b).

[114] *Id.*

[115] *See* CS Wind's Preliminary Calculations.

[116] *Id.*

[117] *See* GOC's IQR at 90–91.

[118] *See, e.g., Drill Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 76 FR 1971 (January 11, 2011) (*Drill Pipe from the PRC*), and accompanying Issues and Decision Memorandum (Drill Pipe Decision Memorandum) at ''Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries.''

HRS during the POI. In addition, they reported the date of payment, quantity, unit of measure, and purchase price for the HRS purchased during the POI.

As discussed above under ''Use of Facts Otherwise Available and Adverse Inferences,'' we are finding, as AFA, that all of the producers of HRS purchased by the respondents during the POI are ''authorities'' within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily determine that the HRS producers which are majority-owned by the government are ''authorities'' under section 771(5) of the Act. As a result, we preliminarily determine that HRS supplied by companies deemed to be government authorities constitute a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act and that the respondents received a benefit to the extent that the price they paid for HRS produced by these suppliers was for LTAR. *See* sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

As explained above in ''Use of Facts Otherwise Available and Adverse Inferences,'' we preliminarily determine that the GOC has failed to act to the best of its ability in terms of providing the Department with the information it requested concerning the ownership of the firms that produced the HRS purchased by respondents during the POI. Specifically, in many instances, the GOC failed to provide any of the requested ownership information. In one instance, the GOC provided basic ownership information (*e.g.,* business registration license and articles of association) but failed to respond to questions concerning the extent to which the owners of the HRS producer were CCP officials and the extent to which CCP officials rendered the HRS producer a government authority. Thus, pursuant to section 776(b) of the Act, we are assuming that all of the HRS producers were government authorities that provided a financial contribution in the form of a provision of a good and that the respondents received a benefit to the extent that the price they paid for HRS produced by government authorities was for LTAR. *See* sections 771(5)(D)(iii) and 771(5)(E)(iv) of the Act.

Under 19 CFR 351.511(a)(2), the Department sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) Market prices from actual transactions within the country under investigation (*e.g.,* actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.[119] This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on the hierarchy established above, we must first determine whether there are market prices from actual sales transactions involving Chinese buyers and sellers that can be used to determine whether the GOC authorities sold HRS to the respondents for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.[120]

In its initial questionnaire response, the GOC provided information on the amount of total HRS production; and amount of HRS produced by SOEs in the PRC.[121] Using this data, we derived the ratio of HRS produced by SOEs during the POI (68.34 percent). Consequently, because of the government's overwhelming involvement in the HRS market, the use of private producer prices in the PRC would be akin to comparing the benchmark to itself (*i.e.,* such a benchmark would reflect the distortions of the government presence).[122] As we explained in *Softwood Lumber from Canada:*

> Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.[123]

For these reasons, prices stemming from private transactions within the PRC cannot give rise to a price that is sufficiently free from the effects of the GOC's actions and, therefore, cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration.

Given that we have preliminarily determined that no tier one benchmark prices are available, we next evaluated information on the record to determine whether there is a tier two world market price available to producers of subject merchandise in the PRC. Turning to tier two benchmarks, *i.e.,* world market prices available to purchasers in the PRC, Petitioner and CS Wind submitted prices that they suggest are appropriate bases for constructing a benchmark. Based on our review of the proposed benchmarks, we are preliminarily relying on prices from MEPS International (MEPS), SteelBenchmarker, and Steel Orbis for hot-rolled plate/sheet.[124] Pursuant to 19 CFR 351.511(a)(2)(ii), we are averaging the selected prices. Since ocean freight to the PRC is to be added into the benchmark price (see below), we did not rely on any SteelBenchmarker or MEPS prices price that included ocean freight, thereby ensuring that ocean freight would not be counted twice.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we have added ocean freight to the monthly benchmark prices. With regard to inland freight charges that would be incurred

[119] *See also* Softwood Lumber Decision Memorandum at ''Market-Based Benchmark.''

[120] *See Countervailing Duties; Final Rule,* 63 FR 65348, 65377 (November 25, 1998).

[121] *See* GOC's IQR at page 11.

[122] *See* Softwood Lumber Decision Memorandum at ''There are no market-based internal Canadian benchmarks'' section.

[123] *Id.* at 38–39.

[124] *See* Petitioner's April 20, 2012, benchmark data and CS Wind's May 11 and 17, 2012, pre-preliminary determination comments. Petitioner submitted additional benchmark data on May 10, 2012 advocating the Department utilize pricing information from Global Trade Information Services (GTIS). CS Wind's May 11, 2012, submission provided convincing evidence to show that the MEP—World Price data included import prices into the PRC. For the same reasons stated in the Department's tier one discussion, we determine that import prices into the PRC cannot serve as a benchmark. Therefore the Department is excluding Petitioner's April 20, 2012, MEP—World Price data and May 10, 2012, GTIS data from the benchmark. We continue to use as part of the HRS benchmark: MEPS—Nordic, MEPS—EU, MEPS—North America, and MEPS—CIS data submitted in Petitioner's April 20, 2012, benchmark data and CS Wind's May 3, 2011, benchmark submission.

to deliver HRS from the port to the company's facility, we added a freight cost to the benchmark prices used for Titan Companies' benefit calculations. We, however, did not add an inland freight cost to the benchmark prices used for CS Wind's benefit calculations because the company is unable to provide information on the cost to transport either HRS from the port to the facility or the cost to transport wind towers from the facility to the port. For more information on this topic, *see* Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''CS Wind's Preliminary Calculations'' (May 29, 2012).

Concerning VAT and import duties, in its pre-preliminary comments, CS Wind states that it is exempt from paying VAT and import duties on imported inputs that are used in exported products.[125] Therefore, to determine the price that the company would pay if it imported HRS plate, CS Wind argues that the Department must not add VAT and import duties to the base price, *i.e.,* the ''delivered price'' that CS Wind would pay for imported steel would only include freight. This issue was recently addressed in *Cylinders from the PRC,* where the Department found that section 351.511(a)(2)(iv) of the regulations is clear in its requirement to use delivered prices which includes all delivery charges and import duties.[126] In that final determination, the Department discusses that domestic inputs purchased by a firm are delivered prices which include all delivery charges and VAT. Therefore, in order to ensure an ''apples-to-apples'' comparison between domestic input purchases and the world-market benchmark, the regulations require the use of delivered prices, which include import duties and VAT. CS Wind did not present any arguments in its pre-preliminary comments that warrant the Department to reconsider its position on this issue as outlined in *Cylinders from the PRC.* As such, for the preliminary calculations in this investigation, we have added to the benchmark prices the applicable duties and VAT for imports of HRS plate, as reported by the GOC.

For a full explanation of how we derived the monthly hot-rolled steel benchmark prices, *see* CS Wind's and Titan Companies' Preliminary Calculations Memoranda. We then compared the monthly benchmark prices to CS Wind's and Titan Companies' actual purchase prices, including taxes and delivery charges.

To calculate the benefit, we then compared the benchmark unit prices to the unit prices the respondents paid to domestic suppliers of HRS during the POI that the Department has preliminarily determined constitute government authorities. In instances in which the benchmark unit price was greater than the price paid to GOC authorities, we multiplied the difference by the quantity of HRS purchased from the GOC authorities to arrive at the benefit.

As discussed under ''Use of Facts Otherwise Available and Adverse Inferences,'' above, the Department is relying on AFA to preliminarily determine that the GOC's provision of HRS for LTAR is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the details of the government assistance.

We preliminarily find that the GOC's provision of HRS for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). To calculate the net subsidy rate attributable to the Titan Companies, we divided the benefit by total sales in the manner described in the ''Cross-Ownership'' section. To calculate the net subsidy rate attributable to CS Wind, we divided the benefit by total sales, as described in the ''Cross-Ownership'' section. On this basis, we preliminarily determine countervailable subsidy rates of 12.63 percent *ad valorem* for CS Wind and 23.55 percent *ad valorem* for Titan Companies.[127]

F. Provision of Electricity for LTAR

For the reasons explained in the ''Use of Facts Otherwise Available and Adverse Inferences'' section above, we are basing our preliminary determination regarding the government's provision of electricity in part on AFA.

In a countervailing duty case, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters.[128] When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific because without the requested information from the government the Department typically cannot determine whether the program was specific within the meaning of section 771(5A) of the Act (*e.g.,* whether the program was contingent on export performance or limited to certain enterprises as a matter of law or in fact).[129] With regards to benefit, the Department will normally rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable.[130] On the record of this investigation, the respondents provided data on the electricity consumed and the rates paid during the POI.

We preliminarily determine that the GOC's provision of electricity confers a financial contribution as a provision of a good under section 771(5)(D)(iii) of the Act, and is specific, under section 771(5A)(D)(iii) of the Act because, as discussed in the AFA section above, the GOC failed to provide the requested information so that the Department could make a *de facto* specificity determination. To determine the existence and amount of any benefit from this program, we used the information provided by the respondents regarding the amounts of electricity that they purchased and the rates they paid for that electricity during the POI.

For determining the existence and amount of any benefit under this program, we have relied on an adverse inference by selecting the highest electricity rates that were in effect during the POI as our benchmarks because of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation. *See* section 776(b)(4) of the Act. To determine the benchmark, we selected the highest non-seasonal provincial rates in the PRC, as provided by the GOC for each electricity category (*e.g.,* ''large industry,'' ''general industry and commerce,'' and ''base charge'' (either maximum demand or transformer capacity) used by the respondents. Additionally, where applicable, we identified and applied the peak, normal, and valley rates within a category. For more information on how the Department selected provincial electricity rates used as benchmark rates in the benefit calculations, *see* Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''PRC

[125] *See* CS Wind's Pre-Preliminary Comments (May 11, 2012) at 3–6.

[126] *See* Cylinders Decision Memorandum at Comment 9.

[127] *See* CS Wind's and Titan Companies' Preliminary Calculations Memoranda.

[128] *See* Cylinders Decision Memorandum at ''Provision of Electricity for LTAR.''

[129] *Id.*

[130] *Id.*

Electricity Benchmark Rates'' (May 29, 2012).

Consistent with our approach in *Drill Pipe from the PRC,*[131] to measure whether the respondents received a benefit under this program, we first calculated the variable electricity costs they paid by multiplying the monthly kilowatt (kWh) consumed at each price category (*e.g.,* peak, normal, and valley, where appropriate) by the corresponding electricity rates charged at each price category by the respective province. Next, we calculated the benchmark variable electricity cost by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at each price category. To calculate the benefit for each month, we subtracted the variable electricity cost paid by each respondent during the POI from the monthly benchmark variable electricity cost.[132]

To measure whether the respondents received a benefit with regard to their base rate (*i.e.,* either maximum demand or transformer capacity charge), we first multiplied the monthly base rate charged to the companies by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying the companies' consumption quantities by the highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the maximum demand or transformer capacity costs paid by the companies during the POI from the benchmark base rate costs. We then calculated the total benefit received during the POI under this program by summing the benefits stemming from the respondents' variable electricity payments and base rate payments.[133]

CS Wind and Titan Companies also reported efficiency adjustment fees and other discount and charges that were part of their electricity payments during the POI. Consistent with the Department's approach in *Steel Wire from the PRC,* we have included the adjustment fees, discounts, and other charges into the preliminary benefit calculations for this program.[134] For a more detailed explanation of the adjustment fees, discounts, and other charges and how they are incorporated into preliminary benefits calculations, *see* CS Wind's and Titan Companies' Preliminarily Calculations Memoranda.

To calculate the net subsidy rate attributable to the Titan Companies, we divided the benefit by total sales in the manner described in the ''Cross-Ownership'' section. To calculate the net subsidy rate attributable to CS Wind, we divided the benefit by total sales, as described in the ''Cross-Ownership'' section. On this basis, we preliminarily determine countervailable subsidy rates of 0.29 percent *ad valorem* for CS Wind and 0.53 percent *ad valorem* for Titan Companies.[135]

G. Land Development Program Grant

In response to the Department's inquiry about an item in the company's financial statements, CSWC reported that it received a one-time grant from the Lianyungang Economic and Technological Development Zone (LETDZ) Administration Committee in 2009.[136] CSWC stated that it received the grant because it established its wind tower and flange plate construction facility in the LETDZ.[137] CSWC reported that it signed a contract with the LETDZ Administration Committee on December 26, 2007, which was in conjunction with CSWC's purchase of land and investment within the zone.[138]

The GOC did not respond to the Department's request for information regarding this program. *See* ''Use of Facts Otherwise Available and Adverse Inferences'' section above.

We preliminarily determine that the grant issued under this program constitutes a financial contribution under section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds, and a benefit under section 771(5)(E) of the Act. As discussed under ''Use of Facts Otherwise Available and Adverse Inferences,'' the Department is relying on AFA to preliminarily determine that this grant program is specific because the GOC failed to submit the requested information regarding the assistance provided under this program so that the Department could determine whether the program was specific under section 771(5A) of the Act.

To calculate the benefit from the grant, we first applied the ''0.5 percent expense test'' described in 19 CFR 351.524(b)(2). We preliminarily find that the grant amount approved in 2007 is greater than 0.5 percent of the company's total sales for 2007. Because the 2007 grant is a non-recurring benefit consistent with 19 CFR 351.524(c)(2)(iii), we are allocating the benefit over the 12-year AUL in the year in which it was received, *i.e.,* 2009, and applied a discount rate discussed in the ''Benchmarks and Discount Rates'' section above. To calculate the net subsidy rate attributable to CS Wind, we divided the benefit, allocated to the POI, by total sales, as described in the ''Cross-Ownership'' section. On this basis, we preliminarily determine that CS Wind received a countervailable subsidy of 0.22 percent *ad valorem.*[139]

H. Award for Good Performance in Paying Taxes

After the Department inquired about an item in the company's 2011 financial statement, CSWC reported that it received a grant during the POI from the LETDZ Administration Committee for its good performance in paying taxes for fiscal year 2010.[140] CSWC stated that the grant was award by the LETDZ Administration Committee to the top 20 income taxpayers in the zone for fiscal year 2010 taxes. CSWC added that there is no application process for the receipt of the award; the receipt of the award is determined by a review of the tax records retained at the local state tax bureau.

The GOC did not respond to the Department's request for information regarding this program. *See* ''Use of Facts Otherwise Available and Adverse Inferences'' section above.

We preliminarily determine that the grant issued under this program constitutes a financial contribution under section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds, and a benefit under section 771(5)(E) of the Act. Based on CSWC's response, the grant is limited to the top 20 income taxpayers located in the LETDZ. As such, we preliminarily determine that this grant program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

To calculate the benefit from the grant, we first applied the ''0.5 percent expense test'' and found that the grant amount approved in 2011 is less than 0.5 percent of CS Wind's total sales, as described in the ''Cross-Ownership'' section. As such, we are expensing the grant to the year of receipt, the POI. On this basis, we preliminarily determine that CS Wind received a countervailable subsidy of 0.02 percent *ad valorem.*[141]

[131] *See* Drill Pipe Decision Memorandum at ''Provision of Electricity for LTAR.''

[132] See CS Wind's and Titan Companies' Preliminary Calculations Memoranda.

[133] *Id.*

[134] *See Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 77 FR 17418 (March 26, 2012) (*Steel Wire from the PRC*), and accompanying Issues and Decision Memorandum (Steel Wire Decision Memorandum) at Comment 10.

[135] *See* CS Wind's and Titan Companies' Preliminary Calculations Memoranda.

[136] *See* CS Wind's First SQR at 2–6.

[137] *Id.*

[138] *Id.*

[139] *See* CS Wind's Preliminary Calculations.

[140] *See* CS Wind's First SQR at 6–9.

[141] *See* CS Wind's Preliminary Calculations.

I. Award for Taicang City To Support Public Listing of Enterprises

Titan Companies reported that the Taicang City government awarded bonus payments to Titan Wind in recognition of the company's successful listing on the Shenzhen Stock Exchange.[142] The Titan Companies report that the local governments approved and issued the grants to Titan Wind some time after the application was submitted.

We preliminarily determine that the grants received by Titan Wind constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grants were expressly limited to firms undertaking an IPO, we find the grants to be specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from the grant, we first applied the ''0.5 percent expense test'' described in 19 CFR 351.524(b)(2). We preliminarily find that the total grant amount approved in 2010 is greater than 0.5 percent of the company's total sales for 2010. Because the 2010 grant is a non-recurring benefit consistent with 19 CFR 351.524(c)(2)(iii), we are allocating the benefit over the 12-year AUL in the years in which it was received, 2010 and 2011, and applied a discount rate discussed in the ''Benchmarks and Discount Rates'' section above. We then divided the benefit amount attributed to the POI by Titan Companies' total consolidated sales for 2011 (less inter-company sales). On this basis, we preliminarily determine that Titan Companies received a net countervailable subsidy of 0.07 percent *ad valorem*.[143]

J. Awards for Taicang City To Promote Development of Industrial Economy for the Three-Year Period of 2010 to 2012

After the Department inquired about an item in the company's financial statements, Titan Companies reported that Titan Wind received a bonus for doubling output in three years. The Titan Companies stated Titan Wind applied for and the local government approved the amount for the program some time after the application.[144]

We preliminarily determine that the grants received by Titan Wind constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under ''Use of Facts Otherwise Available and Adverse Inferences,'' above, the Department is relying on AFA to preliminarily determine that the grant program is specific because the GOC failed to submit the requested information regarding grants provided under the program so that the Department could determine whether the program was specific under section 771(5A) of the Act.

The grant that Titan Wind received during the POI was less than 0.5 percent of Titan Companies' total sales in the manner described in the ''Cross-Ownership'' section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI. On this basis, we preliminarily determine that Titan Companies received a countervailable subsidy of 0.02 percent *ad valorem*.[145]

K. Special Funds for Development of Science and Technology

After the Department inquired about an item in the company's financial statements, Titan Companies reported that Titan Wind received a benefit from the government's science and technology development fund.[146]

We preliminarily determine that the grants received by Titan Wind constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under ''Use of Facts Otherwise Available and Adverse Inferences,'' above, the Department is relying on AFA to preliminarily determine that the grant program is specific because the GOC failed to submit the requested information regarding grants provided under the program so that the Department could determine whether the program was specific under section 771(5A) of the Act.

The grant that Titan Wind received during the POI was less than 0.5 percent of Titan Companies' total sales in the manner described in the ''Cross-Ownership'' section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI. On this basis, we preliminarily determine that Titan Companies received a countervailable subsidy of 0.01 percent *ad valorem*.[147]

L. Award for Baotou Rare Earth High and New Technology Industrial Development Zone for Excellent Construction Projects

After the Department inquired about an item in the company's financial statements, Titan Companies reported that Titan Baotou received a reward for ''excellent construction projects.'' [148] We preliminarily determine that the grants received by Titan Wind constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under ''Use of Facts Otherwise Available and Adverse Inferences,'' above, the Department is relying on AFA to preliminarily determine that the grant program is specific because the GOC failed to submit the requested information regarding grants provided under the program so that the Department could determine whether the program was specific under section 771(5A) of the Act.

The grant that Titan Baotou received during the POI was less than 0.5 percent of Titan Companies' total sales in the manner described in the ''Cross-Ownership'' section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI. On this basis, we preliminarily determine that Titan Companies received a countervailable subsidy of 0.02 percent *ad valorem*.[149]

II. Program for Which More Information Is Necessary

1. Tax Offsets for Research and Development

According to Titan Companies' April 3, 2012, initial questionnaire response, Titan Wind received a similar benefit to ''Tax Offsets for Research and Development by FIEs,'' under the EITL during the POI. Because we lack complete information on this program, we have requested additional information from the GOC and the current due date for the information is May 30, 2012, after the preliminary determination.[150] We requested information on the program's purpose, the laws/regulations related to the program, government agencies that administer the program, the application process, eligibility criteria, and specificity data.[151]

[142] *See* Titan Companies' SQR (April 27, 2012) at 7.

[143] *See* Titan Companies' Preliminary Calculations.

[144] *See* Titan Companies' SQR at 47–48.

[145] *See* Titan Companies' Preliminary Calculations.

[146] *See* Titan Companies' SQR at 47–48.

[147] *See* Titan Companies' Preliminary Calculations.

[148] *See* Titan Companies' SQR at 47–48.

[149] *See* Titan Companies' Preliminary Calculations.

[150] *See* Department's Extension Letter to the GOC (May 22, 2012).

[151] *See* Department's Third Supplemental Questionnaire to the GOC (May 16, 2012).

III. Programs Preliminarily Determined Not To Provide Countervailable Benefits During the POI

1. Production Expansion and Stable Employment Award

In response to the Department's inquiry about an item in the company's financial statement, CSWC reported that it was approved for and received a grant from the financial bureau of the LETDZ Administration Committee in 2009.[152] CSWC stated that the grant was related to the company's production and export expansion in 2009 compared to its operations in 2008.

We preliminarily find that the award represents less than 0.5 percent of the company's total export sales 2009. As such, this grant is expensed in 2009, the year of receipt, under 19 CFR 351.524(b)(2), and not allocable to the POI.

Consistent with our past practice, we therefore have not included this program in our preliminary net countervailing duty rate calculations. *See, e.g.,* Coated Paper Decision Memorandum at ''Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE,'' and *Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France,* 70 FR 39998 (July 12, 2005) (*Uranium from France*), and accompanying Issues and Decision Memorandum (Uranium Decision Memorandum) at ''Purchases at Prices that Constitute More than Adequate Remuneration,'' (citing *Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products From Canada,* 69 FR 75917 (December 20, 2004), and accompanying Issues and Decision Memorandum at ''Other Programs Determined to Confer Subsidies'').

2. Titan Companies' Other Subsidies Discovered During the Investigation

After the Department inquired about several items in each company's financial statement, Titan Companies reported that it received a total of 18 grants from various governmental entities. Titan Companies reported that Titan Suzhou received a grant in 2009; Titan Wind received 15 grants in 2009, 2010, and 2011; Titan Baotou received a grant in 2011; and Shanghai Tianshen received a grant in 2010 and 2011. Those grants for which we preliminarily find a countervailable benefit are described above. Those grants for which we preliminarily find that the award represents less than 0.5 percent of Titan Companies' total sales, as described in the ''Cross-Ownership'' section, for the year of approval are expensed to the year of receipt, under 19 CFR 351.524(b)(2), and not allocable to the POI, are listed below:

(a) Bonus for quality system authentication (Award of Taicang City for Cell Projects of Eco-City Construction (Environmental System Certification Award))
(b) Encouragement for expanding domestic market Awards of Expanding Domestic Demands and Encouraging Consumption
(c) Bonus for foreign trade promotion (Awards of Taicang City to Promote Foreign Trade Development)
(d) Support fund for small- and medium-sized enterprises (Support and Development Funds of Taicang City for Small- and Medium-Sized Enterprises (SMEs)
(e) Bonus for significant increase in tax payment (Awards of Taicang City to Encourage Enterprise Development and Tax Payment)
(f) Bonus for environment-friendly production (Green Production Awards)
(g) Support fund (Industry Support Funds of Huangpu District)
(h) Energy saving fund (Special Funds for Energy Conservation)
(i) Patent promotion fund (Patent Special Funds of Taicang City)
(j) Science and technology development fund (Special Funds of Jiangsu Province for Science and Technology Support Program)
(k) Support fund for industrial upgrading (Special Funds of Jiangsu Province for Industry Transformation and Upgrading)
(l) Bonus for Obtaining Patent

IV. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that the respondents did not apply for or receive benefits during the POI under the programs listed below:

1. Export Product Research and Development Fund
2. Subsidies for Development of ''Famous Brands'' and ''China World Top Brands''
3. Sub-Central Government Subsidies for Development of ''Famous Brands'' and ''China World Top Brands''
4. Special Energy Fund of Shandong Province
5. National Defense Science and Technology Industry Grants for the Wind Power Equipment Industry
6. Funds for Outward Expansion of Industries in Guangdong Province
7. Renewable Energy Development Fund
8. Special Fund for Wind Power Manufacturing Grants
9. Government Provision of Aluminum for LTAR
10. Government Provision of Land-Use Rights to State-Owned Enterprises for LTAR
11. Government Provision of Land-Use Rights by the Hunan Province Government for LTAR
12. Income Tax Reductions for Export-Oriented FIEs
13. Local Income Tax Exemption and Reduction Programs for ''Productive'' FIEs
14. Tax Reductions for FIEs Purchasing Chinese-Made Equipment
15. Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises
16. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises
17. Tax Offsets for Research and Development for FIEs
18. City Tax and Surcharge Exemptions for FIEs
19. Tax Reductions for High and New-Technology Enterprises Involved in Designated Projects
20. Preferential Income Tax Policy for Enterprises in the Northeast Region
21. Foregiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
22. Hunan Province Special Fund for Renewable Energy Development
23. VAT Rebates on FIE Purchases of Chinese-Made Equipment
24. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund Program
25. Tax Benefits for Imported Large Power Wind Turbine System Key Components and Raw Materials
26. Export Credit Subsidy Programs
27. Export Guarantees and Insurance for Green Technology

Verification

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by CS Wind and Titan Companies as well as information submitted by the GOC prior to making our final determination.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual countervailable subsidy rate for each respondent. Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an all others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates based entirely on AFA under section 776 of the Act.

Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the ''all others'' rate by weight averaging the rates of CS Wind and Titan Companies, because doing so risks disclosure of proprietary information. Therefore, for the all others rate, we have calculated a simple average of the two responding firms' rates.

[152] *See* CS Wind's First SQR at 11–14.

We preliminarily determine the total countervailable subsidy rates to be as follows.

Company	Subsidy rate
CS Wind China Co., Ltd., CS Wind Tech (Shanghai) Co., Ltd., and CS Wind Corporation (collectively, CS Wind) ...	13.74 percent *ad valorem.*
Titan Wind Energy (Suzhou) Co., Ltd. (Titan Wind), Titan Lianyungang Metal Products Co. Ltd. (Titan Lianyungang), Baotou Titan Wind Energy Equipment Co., Ltd. (Titan Baotou), and Shenyang Titan Metal Co., Ltd. (Titan Shenyang)(collectively, Titan Companies).	26.00 percent *ad valorem.*
All Others Rate	19.87 percent *ad valorem.*

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of the subject merchandise from the PRC that are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register,** and to require a cash deposit for such entries of the merchandise in the amounts indicated above.[153]

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. We will notify parties of the schedule for submitting case briefs and rebuttal briefs, in accordance with 19 CFR 351.309(c) and 19 CFR 351.309(d)(1), respectively. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made in this investigation, we intend to hold the hearing two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d). Any such hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. Parties should confirm by telephone, the date, time, and place of the hearing 48 hours before the scheduled time.

This determination is issued and published pursuant to sections 703(f) and 771(i) of the Act.

Dated: May 29, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–13502 Filed 6–5–12; 8:45 am]

BILLING CODE 3510–DS–P

[153] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

Trade Mission to Egypt and Kuwait

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The U.S. Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is organizing a Trade Mission to explore opportunities in the energy, renewable energy, infrastructure and safety and security technology sectors in Cairo, Egypt and Kuwait City, Kuwait, March 10–14, 2013. Led by a senior executive of the Department of Commerce or other U.S. Government agency, the trade mission will include one-on-one business appointments with pre-screened potential buyers, agents, distributors and joint venture partners; meetings with government officials, chambers of commerce, and business groups; and networking receptions for companies interested in expansion into the North African and Middle Eastern markets. Meetings will be offered with government authorities that can address questions about policies, tariff rates, incentives, grid interconnection, regulation, etc.

The mission will help participating firms gain market insights, make industry contacts, solidify business strategies, and advance specific projects, with the goal of increasing U.S. exports to Egypt and Kuwait. The mission will include one-on-one business appointments with pre-screened potential buyers, agents, distributors and joint venture partners; meeting with national and regional government officials; and networking events. Participating in an official U.S. industry delegation, rather than traveling to Egypt and Kuwait on their own, will enhance the companies' ability to secure meetings in these countries.

Commercial Setting

Egypt

Egypt is strategically located at the gateway of trade for Africa and the Middle East. It is a prime location for the transit of goods, as well as a key destination for American companies seeking to do business in the region.

Egypt has experienced profound political changes over the past year. On February 11, 2011, President Hosni

Mubarak's 30-year rule came to an end. In January 2012, Egypt seated its first freely and fairly elected parliament, and has held a Presidential election. Successful conclusion of Egypt's 2012 Presidential election has removed uncertainties about Egypt's political future and may help pave the road forward to achieve macroeconomic stability. In the meantime, the United States remains committed to a strong partnership with Egypt.

As the largest Arab country with a population of 90 million, Egypt is the fourth largest export market for U.S. products and services in the Middle East. The United States is Egypt's largest bilateral trading partner, and the second largest investor. In 2011, bilateral trade reached $8.2 billion. The gross domestic product (GDP) grew over five percent from 2009 to 2010. According to Business Monitor International's forecasts, Egypt's real GDP is expanding 2.1% in FY2011/12 and projected to grow 4.9% in FY2012/13 (Egypt's fiscal year is July through June).

Egyptian law requires that foreign companies retain Egyptian commercial agents, for public tenders, but they may work directly with private companies. Most foreign companies have found it beneficial, however, to engage a local agent for private sector transactions as well because of their familiarity of the language, law and general business practices. Based on geographical location or product basis, a firm can appoint multiple agents in Egypt to further enhance its success.

Kuwait

Kuwait is situated in the northwestern corner of the Arabian Peninsula, a strategic position in this vital region. The economy is dominated by the oil industry and government sector, and the country has benefited from the sharp rise of oil prices in recent years. In 2010, Kuwait's parliament passed a five-year $104 billion plan to update Kuwait's infrastructure and diversify the economy away from oil. The plan comprises 1,100 projects, including the creation of ''Silk City,'' a financial and commercial hub and free trade zone with 700,000 residents; construction of major roadways; a new container terminal and infrastructure to support northward bound transportation.

Kuwait imports most of its capital equipment, processed foods, manufacturing equipment and consumer goods. Many Kuwaitis travel to or study in the United States, and as a result, American products are well known and highly regarded in Kuwait.

Kuwait is a wealthy country with a savvy business community. Many Kuwaiti companies have activities outside of Kuwait. Some are building ports and airports in Egypt and Africa, own facilities in Europe and Asia, and represent U.S. franchises throughout the Middle East and as far away as Russia. Historically traders, Kuwait's business community is very entrepreneurial.

Best Sector Prospects

Energy/Renewable Energy

Egypt

Egypt is one of the largest electrical energy producing countries in the Middle East. Over the next ten years, Egypt plans to expand its electricity capacity to 60,000 megawatts through a combination of traditional, renewable, and nuclear energy production to diversify energy resources and preserve the country's limited oil and gas reserves. The Government of Egypt's (GOE) goal is to generate 20% of power from renewables, including about 12% representing 7200 MW, subject to increase, from wind, and 3200 MW from solar by 2020. Renewable energy in Egypt represents a huge opportunity for U.S. firms particularly with their competitive technology, quality, and pricing. Egyptian policy makers know that renewable energy is a global energy trend and are seriously looking into attracting private sector investors. Therefore, the Supreme Council of Energy has approved a number of incentives such as exempting all renewable energy equipment and spare parts from customs' duties and sales taxes. Solar joins wind as another renewable resource being exploited. Egypt's first hybrid solar power plant, Kuraymat, is a project combining natural gas and solar absorption through 130,000 square meters of parabolic mirrors. The plant will have the capacity to produce 150 MW and is expected to provide electricity to 550,000 households. Opportunities exist for U.S. providers of gas turbines, steam turbines, wind turbines, blades, and other equipment, as well as development and project management. Best prospects in the energy sector include circuit breakers of more than 66kv, power transformers of more than 25MVA–66kva, power transmission lines, turbine generator units with associated equipment, and vibration dampers.

The US&FCS will organize meetings for the mission delegates with the Ministry of Electricity and Energy, and the New and Renewable Energy Authority government officials who can address questions about policies, tariff rates, incentives, grid interconnection, price subsidy, and regulations.

Kuwait

In October 2011, Kuwait's Ministry of Electricity and Water announced its 2012/2013 budget valued at $5.8 billion. Kuwait produces 12,000 MW with seven power plants, and plans to boost its power generation by nearly half to 17,700 MW in four years to meet the rising demand for energy. The country is looking to build its first independent water and power plant (IWPP) at Azour North. Phase one of this project will produce 1500 MW and 100 million g/d of water and will cost $3 billion, while the entire project ultimately will produce 4800 MW and 280 million g/d at a cost of $8–10 billion. Additionally, Kuwait is planning to build two new power plants, and one of these plants, Khairan, is expected to generate at least 2500 MW and 125 million g/d of water. Kuwait has new water projects under development in various parts of the country. Its current power sector plans are not limited to building new power plants but also focus on boosting the efficiency of existing power plants and enhancing the current distribution network using new technologies.

US&FCS Kuwait will include meetings with the government authorities that can address questions about electric power policies, tariff rates, incentives, grid interconnection, regulation, etc.

Infrastructure Projects—Design and Construction, Building Products

Egypt

The Government of Egypt (GOE) directed $1.9 billion to Egypt's infrastructure in 2010. With over 50 percent of the population under the age of 25 and a strong tourism market, there has been increased pressure on Egypt's roads, bridges, railroads, power stations, water and sewage, hospitals, and schools. According to the GOE, growth in the construction sector reached 4.25% in 2010 and will rise to 5.63% in 2014. It is expected to grow by a robust 4.91% year-on-year from 2010 to 2014, reaching a total value of $15.8 billion. Such growth is expected to attract investments of around $7.3 billion by 2015. Demand in the sector is on the rise mainly because of rapid demographic growth and housing shortages, particularly in the low- and middle-income segments. Construction accounts for around 8% of total employment, with a workforce of 1.2 million people in the sector.

As an active importing and exporting country with a trade volume reaching $19.5 billion in 2011, there is an ongoing need for state-of-the-art logistics centers, intermodal connecting

systems, cold storage, and river transportation. Logistics centers are considered critical to the global supply chain and will affect logistics decisions ranging from shipping routes to warehouse locations.

In 2012, the Egyptian government's General Authority for Investment announced the following major plans for infrastructure development:

- The 6th of October Wastewater Treatment Plant: Design, construction, operation, and maintenance of a new 150,000 m^3/day plant, valued at $15–29 million.
- Abu Rawash Wastewater Treatment Plant: Upgrading of the plant, valued at $990 million.
- East Port Said Port: Includes a duty free zone area, road and rail networks, a power station, communication center, value-added services, valued at $1.5 billion.
- Alexandria Medical City: A medical center project for which the Egyptian government seeks private investment for financing, designing, constructing, equipping, furnishing, maintenance, operating, and provision of non-clinical facility services for two University Hospitals and a blood bank, valued at $1.45 billion.

Some projects will be awarded based on the Egyptian government's ''Public Private Partnership'' (PPP) program, a multi-faceted initiative to attract private sector investment for infrastructure projects.

Kuwait

Kuwait's construction sector grew 2.5% to $2.4 billion in 2011, and is expected to reach $3.2 billion by 2015. The Government of Kuwait (GOK) is planning the construction of numerous public hospitals and new towers for existing hospitals at a cost of over US$5.5 billion by 2016. The multi-billion dollar Boubyan Harbor Project aims to turn Buobyan Island into the country's shipping center with a multi-media transport network. Upon its completion in 20 years, the port will have a total handling capacity of 2.5 million containers per year.

Kuwait's robust commercial and residential construction expansion offers opportunities for the full range of U.S. building products and construction equipment. Local construction companies apply U.S. building techniques and technologies and use American building materials and equipment for private development projects, ranging from resorts to hospitals. The U.S. continues to lead as a supplier of building materials and equipment.

Safety/Security

Egypt

The safety and security industry is booming throughout Egypt as the country deals with increased security issues ranging from private citizen safety to transaction fraud. Safety and security imports to Egypt have increased 10–15% annually for the past few years and U.S. brands are well received. This is primarily a government market, dominated by the Ministry of Interior and Ministry of Defense.

As the country works to increase tourism over the next few years (a government priority post-revolution), airports and seaports will need upgraded security systems. Police and customs authorities will also have an increased need for such systems. Egypt has eight major ports and three cross-country borders that require significant security measures. In its fight against drug smuggling and counterfeit products, Egypt requires container scanning and shipment tracking devices. Egypt is also looking at container scanning upgrades and seafarer identification cards for more secure identification and synchronizing systems to coordinate security measures and responses. Accordingly, opportunities exist for U.S firms providing short-range radar systems, surveillance cameras, infrared and radiological detectors, vessel tracking MIS, biometric scanners, personnel databases, computer peripherals, and systems integration equipment. Companies that can provide proven, cutting-edge technologies will have an advantage in these export opportunities.

Kuwait

Kuwait plans to invest considerable sums in safety and security equipment over the next nine years. Kuwait defense and security forces will be looking to purchase surveillance equipment, perimeter control systems, security check point equipment (fences, crash barriers, cameras, access points), explosives, and contraband detection systems including scanning systems and consulting services in security planning. There will also be oil and oil-related infrastructure security upgrades and airport security upgrades.

Several projects currently under consideration include the second phase of 30,000 camera surveillance systems to be installed in and near most transportation infrastructure points, geospatial intelligence connectivity, maritime netting, and sensors to minimize security threats to vessels, facilities security of oil refineries, production facilities and loading platforms, and the hardware and software infrastructure needed to support a fully integrated C4ISR system.

Potential opportunities for U.S. companies include: C4ISR system integration for multiple tie-ins to surveillance systems (cameras, gamma sensors, magnetometers, command and control communications), border fencing and intruder sensing, industrial access controls, maritime surveillance and protection, long-range detection, and airborne systems.

Mission Goals

The goal of the trade mission is to provide U.S. participants with first-hand market information, access to government decision makers as appropriate and one-on-one meetings with business contacts, including potential agents, distributors and partners, so they can position themselves to enter or expand their presence in the Egyptian and Kuwaiti markets.

Mission Scenario

The Trade Mission will include two stops: Cairo, Egypt and Kuwait City, Kuwait.

Cairo is the capital of Egypt and the largest city in Africa. A majority of the nation's commerce is generated in Cairo and regional headquarters of numerous businesses and organizations are located in the city. The business week runs from Sunday through Thursday.

Kuwait City is the capital of Kuwait. The business week runs from Sunday through Thursday.

In each city, participants will meet with new business contacts, learn about the markets by participating in Embassy briefings, and explore additional opportunities at networking receptions. Activities will include one-on-one business appointments with pre-screened business prospects.

PROPOSED TIMETABLE

Saturday	9 March	Arrival in Cairo.
Sunday	10 March	Orientation and market briefings, business luncheon with American Chamber of Commerce and U.S. Ambassador's networking reception.
Monday	11 March	One-on-one business appointments; business lunch—GAFI presentation on major PPP projects; group dinner on Nile Maxim Cruise boat.
Tuesday	12 March	One-on-one business appointments, evening departure for Kuwait.
Wednesday	13 March	Orientation and market briefings, Kuwait Chamber of Commerce one-on-one business appointments and KCCI luncheon, reception at U.S. Ambassador's residence.
Thursday	14 March	Meeting at Kuwait Oil Company, American Business Council of Kuwait luncheon, and one-on-one business appointments. Depart Kuwait on evening flight or depart following day.

End of Mission

Participation Requirements

All parties interested in participating in the Trade Mission to Egypt and Kuwait must complete and submit an application package for consideration by the U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 15 and a maximum of 20 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business in the target markets as well as U.S. companies seeking to enter these markets for the first time are encouraged to apply.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the U.S. Department of Commerce in the form of a participation fee is required. The participation fee will be $3,350 for a small or medium-sized enterprise (SME)* and $4,230 for large firms. The fee for each additional company representative (SME or large firm) is $700. Expenses for travel, lodging, most meals, interpreters, and incidentals will be the responsibility of each mission participant. Delegation members will be able to take advantage of Embassy rates for hotel rooms.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content.

Selection Criteria for Participation

Selection will be based on the following criteria:

- Suitability of the company's products or services to the targeted markets
- Applicant's potential for business in the target markets, including likelihood of exports resulting from the mission
- Consistency of the applicant's goals and objectives with the stated scope of the mission

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including posting Export.gov—and other Internet Web sites; publication in trade publications and association newsletters; direct outreach to the Department's clients; posting in the **Federal Register**; and announcements at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin June 6, 2012 and conclude no later than December 14, 2012. Applications received after December 14, 2012 will be considered only if space and scheduling constraints permit. We will inform applicants of selection decisions as soon as possible after December 14, 2012. Applications received after that date will be considered only if space and scheduling constraints permit.

U.S. Commercial Service International Contacts

Egypt

Dennis Simmons, Deputy Senior Commercial Officer, U.S. Commercial Service-Egypt, Embassy of the United States of America, Tel: 2 (02) 2797–2610, *Dennis.Simmons@trade.gov.*

Kuwait

Isabella Cascarano, Senior Commercial Officer, U.S. Commercial Service-Kuwait, Embassy of the United States of America, Tel: (965) 2259–1354, *Isabella.Cascarano@trade.gov.*

U.S. Commercial Service Washington, DC Contacts:

Anne Novak, Domestic Operations, *Anne.Novak@trade.gov,* Tel: (202) 482–8178.

Salahuddin Tauhidi, U.S. Commercial Service—Washington, DC, Africa, Near East and South Asia, *Salahuddin.Tauhidi@trade.gov,* Tel: (202) 482–1322.

Elnora Moye,

Trade Programs Assistant.

[FR Doc. 2012–13629 Filed 6–5–12; 8:45 am]

BILLING CODE 3510–FP–P

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (for additional information see *http://www.export.gov/newsletter/march2008/initiatives.html*).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

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

ACTION: Notice of public meeting.

SUMMARY: Meeting of the Mid-Atlantic Fishery Management Council's (Council) Summer Flounder, Scup, Black Sea Bass, and Bluefish Advisory Panels (APs).

DATES: The meeting will be held on June 27, 2012 at 8 a.m. until 5 p.m.

ADDRESSES: The meeting will be at the DoubleTree by Hilton Baltimore—BWI Airport, 890 Elkridge Landing Road, Linthicum, MD 21090; telephone: (1–410) 859–8400.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review fishery performance and create an AP Fishery Performance Report for Summer Flounder, Scup, Black Sea Bass, and Bluefish.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: June 1, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–13696 Filed 6–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The panel to review assessment methods for data-moderate stocks will hold a work session that is open to the public.

DATES: The Review of Assessment Methods for Data-Moderate Stocks will be held beginning at 8:30 a.m., Tuesday, June 26, 2012 and end at 5 p.m. or as necessary to complete business for the day. The Panel will reconvene on Wednesday, June 27 and will continue through Friday, June 29, 2012 beginning at 8:30 a.m. and ending at 5 p.m. each day, or as necessary to complete business. The Panel will adjourn on Friday, June 29, 2012.

ADDRESSES: The Review of Assessment Methods for Data-Moderate Stocks will be held at the National Marine Fisheries Service's Alaska Fisheries Science Center, 7600 Sand Point Way NE., Building 4, Traynor Seminar Room, Seattle, WA 98115; telephone: (206) 526–4000.

Council address: Pacific Fishery Management Council (Pacific Council), 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey Miller, NMFS Northwest Fisheries Science Center; telephone: (541) 961–8475; or Mr. John DeVore, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The objectives of the assessment methods for data-moderate stocks review meeting are (1) evaluate inclusion of trend information into simple assessment methodologies and validate model performance by providing examples for assessed stocks or operating models for which the assumptions of the simpler models are not met; and (2) provide a list of endorsed methods for use on data-moderate stocks in Pacific Fishery Management Council's Groundfish Fishery Management Plan. This workshop will also provide an opportunity to refine methods used for category 3 stocks, and review progress on evaluating methods for determining uncertainty (σ) for each of three categories of stock assessment uncertainty used by the Council. It is anticipated that reviewers will provide endorsement of specific data-moderate methodologies so that a number of candidate category 2 stock assessments using simple assessment models can be conducted and reviewed during the 2013 stock assessment cycle for use in the 2015–16 management cycle.

No management actions will be decided by the Panel. The Panel's role will be development of recommendations and reports for consideration by the Pacific Council at its September meeting in Boise, ID.

Although non-emergency issues not contained in the meeting agenda may come before the Panel participants for discussion, those issues may not be the subject of formal Review Panel action during this meeting. Panel action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Panel participants' intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: June 1, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–13695 Filed 6–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA861

Marine Mammals; File No. 16473

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to D. Ann Pabst, Ph.D., University of North Carolina Wilmington, to conduct research on marine mammals.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Kristy Beard or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On December 9, 2011, notice was published in the **Federal Register** (76 FR 76950) that a request for a permit to conduct research on humpback (*Megaptera novaeangliae*), fin (*Balaenoptera physalus*), sperm (*Physeter macrocephalus*), North Atlantic right (*Eubalaena glacialis*), sei (*B. borealis*), minke (*B. acutorostrata*), dwarf and pygmy sperm (*Kogia spp.*), unidentified beaked, killer (*Orcinus orca*), pilot (*Globicephala spp.*), false killer (*Pseudorca crassidens*), pygmy killer (*Feresa attenuata*), and melon-headed (*Peponocephala electra*) whales, bottlenose (*Tursiops truncatus*), Atlantic spotted (*Stenella frontalis*), Risso's (*Grampus griseus*), Fraser's (*Lagenodelphis hosei*), rough-toothed (*Steno bredanensis*), pantropical spotted (*S. attenuata*), striped (*S. coeruleoalba*), clymene (*S. clymene*), spinner (*S. longirostris*), and short-beaked common dolphins (*Delphinus delphis*), and harbor porpoise (*Phocoena phocoena*) had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit authorizes takes of the species listed above during aerial and vessel surveys to conduct counts, photo-identification, and behavioral observations and is valid for five years from the date of issuance.

An environmental assessment (EA) was prepared analyzing the effects of the permitted activities on the human environment in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on May 30, 2012.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 1, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–13734 Filed 6–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB159

Marine Mammals; File No. 17217

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Saint Louis Zoo, 1 Government Drive, St. Louis, MO 63110, has been issued a permit to import four harbor seals (*Phoca vitulina*) for public display.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On April 16, 2012, notice was published in the **Federal Register** (77 FR 22563) that a request for a public display permit, had been submitted by the above-named organization to import four harbor seals from Storybrook Gardens in Ontario, Canada for purposes of public display at the St. Louis Zoo. The requested permit has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: May 30, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–13726 Filed 6–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

AGENCY: Department of Defense (DoD).

ACTION: Notice of closed meetings.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meeting of the Department of Defense Wage Committee will be held.

DATES: Tuesday, June 26, 2012, at 10:00 a.m.

ADDRESSES: 4800 Mark Center Drive, Room 06G13, Alexandria, VA 22350–1100.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be

considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Dated: May 31, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–13596 Filed 6–5–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

AGENCY: Department of Defense (DoD).

ACTION: Notice of closed meetings.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a closed meeting of the Department of Defense Wage Committee will be held.

DATES: Tuesday, July 10, 2012, at 10:00 a.m.

ADDRESSES: 4800 Mark Center Drive, Room 06G13, Alexandria, VA 22350–1100.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Dated: June 1, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–13647 Filed 6–5–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

AGENCY: Department of Defense (DoD).

ACTION: Notice of closed meetings.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a closed meeting of the Department of Defense Wage Committee will be held.

DATES: Tuesday, July 24, 2012, at 10:00 a.m.

ADDRESSES: 4800 Mark Center Drive, Room 06G13, Alexandria, VA 22350–1100.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Dated: June 1, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–13648 Filed 6–5–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of 10 U.S.C. 2166(e), the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(a), the Department of Defense gives notice that it is renewing the charter for the United States Strategic Command Strategic Advisory Group (hereafter referred to as ''the Group'').

The Group shall provide independent advice and recommendations related to U.S. Strategic Command and its operations.

The Group shall report to the Secretary of Defense, through the Chairman, Joint Chiefs of Staff and the Commander of the U.S. Strategic Command. The Chairman of the Joint Chiefs of Staff may act upon the Group's advice and recommendations. The Group shall be composed of not more than 50 members who are eminent authorities in the fields of strategic policy formulation, nuclear weapon design and national command, control, communications, intelligence and information operations, or other important aspects of the Nation's strategic forces.

All Group members shall be appointed by the Secretary of Defense and all member appointments require annual renewal by the Secretary of Defense. The Secretary of Defense may approve the appointments of Group members for four year terms of service; however, no member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service. This same term of service limitation also applies to any DoD authorized subcommittees. Group members appointed by the Secretary of Defense, who are not full-time or permanent part-time federal officers or employees, shall be appointed under the authority of 5 U.S.C. 3109, and serve as special government employees. In addition, all Group members, with the exception of travel and per diem for official travel, shall serve without compensation. Each Group member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Commander of the U.S. Strategic Command shall select the Group's chairperson from the total membership. In addition, the Chairman of the Joint Chiefs of Staff or designated representative may invite other distinguished Government officers to serve as non-voting observers of the Group, and the Chairman of the Joint Chiefs of Staff may appoint consultants with special expertise to assist the Group on an intermittent basis. These consultants and non-voting observers are recommended from the Group

membership and a search is conducted for recognized experts with different perspectives pertaining to the specific issue under consideration by the Group. The consultants and non-voting observers are selected by the Commander of the U.S. Strategic Command, and if not full-time or part-time government employees, shall be appointed under the authority of 5 U.S.C. 3109, shall serve as special government employees, and participate in Group deliberations, but have no voting rights whatsoever on the Group or any of its subcommittees, and shall not count toward the Group's total membership.

The Department, when necessary, and consistent with the Group's mission and DoD policies and procedures, may establish subcommittees deemed necessary to support the Group. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the Group's sponsor. Such subcommittees shall not work independently of the chartered Group, and shall report all their recommendations and advice to the Group for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Group; nor can any subcommittee or its members update or report directly to the Department of Defense or any Federal officers or employees.

All subcommittee members shall be appointed in the same manner as the Group members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Group member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of four years subject to annual renewals; however, no member shall serve more than two consecutive terms of service on the subcommittee.

Subcommittee members, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis. With the exception of travel and per diem for official Group related travel, subcommittee members shall serve without compensation.

All subcommittees operate under the provisions of FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), governing Federal statutes and regulations, and governing DoD policies/procedures.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Group shall meet at the call of the Designated Federal Officer, in consultation with the Group's Chairperson. The estimated number of Group meetings is two per year.

In addition, the Designated Federal Officer is required to be in attendance at all Group and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the entire duration of the Group or subcommittee meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Group membership about the Group's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Group.

All written statements shall be submitted to the Designated Federal Officer, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Group's Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Group. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: June 1, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–13660 Filed 6–5–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

[FE Docket No. 12–32–LNG]

Jordan Cove Energy Project, L.P.; Application for Long-Term Authorization to Export Liquefied Natural Gas Produced From Domestic and Canadian Natural Gas Resources to Non-Free Trade Agreement Countries for a 25-Year Period

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on March 23, 2012, by Jordan Cove Energy Project, L.P. (Jordan Cove), requesting long-term, multi-contract authorization to export as liquefied natural gas (LNG) both natural gas produced domestically in the United States and natural gas produced in Canada and imported into the United States, in an amount up to the equivalent of 292 billion cubic feet (Bcf) of natural gas per year, 0.8 Bcf per day (Bcf/d), over a 25-year period, commencing on the earlier of the date of first export or seven years from the date the requested authorization is granted. The LNG would be exported from the proposed LNG terminal to be located on the North Spit of Coos Bay in Coos County, Oregon, to any country (1) with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, (2) which has developed or in the future develops the capacity to import LNG via ocean-going carrier, and (3) with which trade is not prohibited by U.S. law or policy. Jordan Cove is requesting this authorization to export LNG both on its own behalf and as agent for other parties who hold title to the LNG at the point of export. The Application was filed under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., eastern time, August 6, 2012.

ADDRESSES:

Electronic Filing on the Federal eRulemaking Portal under FE Docket No. 12–32–LNG: http://www.regulations.gov.

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Marc Talbert, U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–7991.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–256, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

Jordan Cove is a Delaware limited partnership with its principal place of business in Coos Bay, Oregon. The general partner of Jordan Cove is Jordan Cove Energy Project L.L.C., a Delaware limited liability company. Both Jordan Cove and its general partner are owned by the two limited partners in Jordan Cove. The first, Fort Chicago LNG II U.S.L.P., a Delaware limited partnership owns seventy-five percent. It is wholly owned and controlled, through a number of intermediate wholly owned and controlled companies, by Veresen, Inc., a Canadian corporation based in Calgary, Alberta, which, prior to its organization as a corporation, was Fort Chicago Energy Partners L.P., a Canadian limited partnership (although the name of the parent changed, the name of the subsidiary owning Jordan Cove did not). The second, Energy Projects Development L.L.C., a Colorado limited liability company, owns twenty-five percent. It is owned by various private individuals, all of whom are U.S. citizens.

Jordan Cove states that its construction and operation of an LNG terminal in Coos Bay, Oregon has already been authorized by the Federal Energy Regulatory Commission (FERC) as an import facility.[1] Jordan Cove states that it has developed modified plans for the terminal to operate as an export facility. The terminal facilities authorized by the FERC Order that will be used for exports include two 160 cubic meter LNG full-containment storage tanks, a single marine berth, and on-site utilities and services. The modified plans include large diameter LNG piping configured for exports and electrically driven liquefaction equipment. On February 29, 2012, Jordan Cove filed a request for FERC's Office of Energy Projects to commence the mandatory National Environmental Policy Act (NEPA) pre-filing review process for an application to amend its FERC authorization to add export facilities, which was docketed in FERC Docket No. PF12–7–000 and approved by letter dated March 6, 2012. Jordan Cove anticipates completing the pre-filing review process and filing its application to amend in October, 2012.

Jordan Cove states that provided that FERC authorizes the export facilities by the end of 2013, Jordan Cove would be able to complete construction and commence export service in the fourth quarter of 2017. Jordan Cove further states that this service would offer benefits unique to the Jordan Cove terminal, because it is the only currently proposed liquefaction and export project that will provide customers the opportunity to export LNG from the U.S. West Coast with natural gas likely to be sources from Canadian and the U.S. Rocky Mountain supply basins.

Current Application

In the instant application, Jordan Cove seeks long-term, multi-contract authorization to export as LNG both natural gas produced domestically in the United States and natural gas produced in Canada and imported into the United States, up to the equivalent of 292 Bcf of natural gas per year, 0.8 Bcf/d, for a period of 25 years beginning on the earlier of the date of first export or seven years from the date the authorization is granted by DOE/FE. Jordan Cove requests that such long-term authorization provide for export from its LNG terminal to be located on the North Spit of Coos Bay in Coos County, Oregon to any country with which the United States does not have an FTA requiring national treatment for trade in natural gas, which has developed or in the future develops the capacity to import LNG via ocean-going carrier, and with which trade is not prohibited by U.S. law or policy.

Jordan Cove states that rather than enter into long-term natural gas supply or LNG export contracts, it contemplates that its business model will be based primarily on Liquefaction Tolling Agreements (LTA), under which individual customers who hold title to natural gas will have the right to deliver that gas to the Jordan Cove terminal for liquefaction services and to receive LNG in exchange for a processing fee paid to Jordan Cove.[2]

Jordan Cove requests long-term, multi-contract authorization to engage in exports of LNG on behalf of or as agent for others, as well as on its own behalf. Jordan Cove states that the title holder at the point of export, if not Jordan Cove, may be an LTA customer or a party that purchases LNG from an LTA customer pursuant to a long-term contract. Jordan Cove will file, or cause others to file, under seal, executed contracts associated with the long-term supply of natural gas to, or the long-term export of LNG from, the Jordan Cove terminal, including LTAs, within 30 days of their execution.[3] Jordan Cove states that Jordan Cove's terminal, via the Pacific Connector Gas Pipeline (PCGP),[4] will be connected to the Northwest United States market hub at Malin, Oregon, providing access to abundant and diverse gas supplies in both the United States and Canada. At the Malin hub, PCGP will interconnect with Gas Transmission Northwest Pipeline, delivering gas from western Canada, and via its Stanfield interconnection with Northwest Pipeline, delivering gas from the U.S. Rockies; Ruby Pipeline, delivering gas from western Wyoming, northwestern Colorado and northern Utah; and, PG&E Redwood Path, serving northern California.

Public Interest Considerations

In support of its Application, Jordan Cove states that in DOE/FE Order No. 2961 *(Sabine Pass Liquefaction, LLC)*[5] authorizing LNG exports to non-FTA nations, DOE/FE acknowledged its longstanding position that "Section 3(a) creates a rebuttable presumption that a proposed export of natural gas is in the

[1] Pacific Connector Gas Pipeline, LP; Jordan Cove, 129 FERC ¶ 61,234 (December 17, 2009) (FERC Order). Rehearing requests of the FERC Order was pending before FERC at the time of the Application submission to DOE/FE.

[2] Jordan Cove states that under the LTA business model, the decision whether to utilize liquefaction capacity will be made by the LTA customer: If the marginal cost of producing or purchasing natural gas, liquefying it, and transporting the resulting LNG to a destination market is higher than other competing source of supply in any month, the LTA customer may forego its nomination rights for that month.

[3] Jordan Cove states that when any such agreement is executed, and the transaction specific information required under 10 CFR 590.202(b) becomes available, Jordan Cove will comply with that provision.

[4] Jordan Cove states that PCGP is a new interstate natural gas pipeline also certificated by the FERC Order (PCGP, together with the Jordan Cove terminal, the Jordan Cove Project).

[5] *Sabine Pass Liquefaction, LLC,* DOE/FE Order No. 2961, FE Docket No. 10–111–LNG (May 20, 2011).

public interest, and DOE must grant such an application unless those who oppose the application overcome that presumption ''by making an affirmative showing of inconsistency with the public interest.'' [6]

Jordan Cove states that the LNG export authorization will serve the public interest in multiple ways. It will permit exports when competitive and otherwise promote healthy domestic and international natural gas markets. Jordan Cove states that the exports will not pose any threat to the security of domestic natural gas supplies, but to the contrary, they will result in significant economic benefits. Jordan Cove states that the demand created by the exports will stimulate increased revenues and jobs in upstream industries, which in turn will benefit the overall U.S. economy. Jordan Cove states that the construction and operation of the Jordan Cove Project will also create jobs and produce revenues to the benefit of the local and regional economies. Jordan Cove states that exports will have positive international trade impacts for the United States. In sum, Jordan Cove states that the Jordan Cove Project's economic benefits advance the Administration's efforts to expand exports, create jobs, and otherwise stimulate the beleaguered U.S. economy.

Jordan Cove commissioned independent experts to conduct studies and prepare the following reports that Jordan Cove claims demonstrate these public interest impacts:

1. *Jordan Cove LNG Export Project Market Analysis Study,* January 2012 by Navigant Consulting, Inc. (Navigant) analyzing gas supply and demand outlooks and modeling potential price effects of the proposed exports for the North American natural gas market to 2045 (Navigant Study).

2. *Whitepaper: Analysis of the EIA Export Report 'Effect of Increased Natural Gas Exports on Domestic Energy Markets' Dated January 19, 2012,* February 2012 by Navigant commenting on the EIA Report [7] (Navigant Whitepaper).

3. *An Economic Impact Analysis of the Construction of an LNG Terminal and Natural Gas Pipeline in Oregon,* March 6, 2012 by ECONorthwest examining impacts on the states of Oregon and Washington of the construction of the Jordan Cove Project (Construction Study).

4. *An Economic Impact Analysis of Jordan Cove LNG Terminal and Pacific Connector Gas Pipeline Operations,* March 23, 2012 by ECONorthwest examining impacts on the local communities of the operations of the Jordan Cove Project (Operations Study).

5. *Upstream Economic Contributions of the Jordan Cove Energy Project,* February 29, 2012 by ECONorthwest quantifying direct and indirect contributions of the Jordan Cove Project to the United States economy (Upstream Contributions Study).

6. *Effect of the Jordan Cove Energy Project's LNG Exports on United States Balance of Trade,* March 20, 2012 by ECONorthwest analyzing the impact of the Jordan Cove Project on the nation's balance of trade (Balance of Trade Study).

Copies of the complete reports are appended to Jordan Cove's application. Jordan Cove provides further discussion on their views that the proposed export authorization is in the public interest, discussed briefly below.

(1) Jordan Cove Exports Will Benefit Natural Gas Markets—Jordan Cove claims: (a) That natural gas supply is more than adequate to serve the projected domestic demand and proposed LNG exports; (b) that the effect of Jordan Cove exports on natural gas prices is minimal; and (c) that LNG exports will strengthen the U.S. natural gas market.

(2) Jordan Cove Exports Will Cause Economic Benefits—Jordan Cove claims: (a) That construction of the Jordan Cove Project will benefit the regional economy; (b) that operation of the Jordan Cove Project will benefit the local economy; (c) that exports from Jordan Cove will foster upstream industry growth and stimulate the U.S. economy; (d) that Jordan Cove exports will provide trade benefits; and (e) that Jordan Cove exports will provide additional international benefits.

(3) Jordan Cove claims that exports will offer unique advantages due to its location.

A more complete discussion of the above public benefits claimed by Jordan Cove is highlighted in Jordan Cove's application. Based on the reasoning provided in the Application, Jordan Cove requests that the DOE/FE determine that Jordan Cove's request for long-term, multi-contract authorization to export LNG to non-FTA countries would be consistent with the goal of the *DOE Policy Guidelines* to ''minimize regulatory impediments to a freely operating market.'' [8]

Environmental Impact

Jordan Cove states that FERC has found that the proposed Jordan Cove LNG import terminal is environmentally acceptable if constructed and operated in accordance with the environmental mitigation measures set forth in the FERC Order. Jordan Cove also states that the potential environmental impacts of the terminal as modified to permit exports of LNG will be reviewed by FERC under NEPA when Jordan Cove's application to amend its certificate to authorize liquefaction and export is filed. Jordan Cove requests that DOE/FE issue an order authorizing exports of LNG conditioned upon satisfactory completion of the environmental review process by FERC.

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00L (April 29, 2011) and DOE Redelegation Order No. 00–002.04E (April 29, 2011). In reviewing this LNG export Application, DOE will consider any issues required by law or policy. To the extent determined to be relevant or appropriate, these issues will include the impact of LNG exports associated with this Application, and the cumulative impact of any other application(s) previously approved, on domestic need for the gas proposed for export, adequacy of domestic natural gas supply, U.S. energy security, and any other issues, including the impact on the U.S. economy (GDP), consumers, and industry, job creation, U.S. balance of trade, international considerations, and whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this Application should comment in their responses on these issues, as well as any other issues deemed relevant to the Application.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Due to the complexity of the issues raised by the Applicants, interested persons will be provided 60 days from the date of publication of this Notice in which to submit comments, protests,

[6] Id. at 28 and n. 38, citing Phillips Alaska Natural Gas Corporation and Marathon Oil Company, 2 FE ¶ 70,317 (1999) (Phillips Order).

[7] In January 2012, the U.S. Energy Information Administration (EIA) released *Effect of Increased Natural Gas Exports on Domestic Energy Markets* (EIA Report), a case study, prepared at the request of DOE/FE, evaluating the impact of increased natural gas demand reflecting exports of LNG on domestic energy consumption, production and demand under four scenarios. The EIA Report is addressed *infra* at 16–18.

[8] *DOE Policy Guidelines* at 6685.

motions to intervene, notices of intervention, or motions for additional procedures.

Public Comment Procedures

In response to this notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Submitting comments in electronic form on the Federal eRulemaking Portal at *http://www.regulations.gov,* by following the on-line instructions and submitting such comments under FE Docket No. 12–32–LNG. DOE/FE suggests that electronic filers carefully review information provided in their submissions and include only information that is intended to be publicly disclosed; (2) emailing the filing to *fergas@hq.doe.gov* with FE Docket No. 12–32–LNG in the title line; (3) mailing an original and three paper copies of the filing to the Office Natural Gas Regulatory Activities at the address listed in **ADDRESSES**; or (4) hand delivering an original and three paper copies of the filing to the Office of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application filed by Jordan Cove is available for inspection and copying in the Office of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.* In addition, any electronic comments filed will also be available at: *http://www.regulations.gov.*

Issued in Washington, DC, on May 29, 2012.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. 2012–13679 Filed 6–5–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

DOE/NSF High Energy Physics Advisory Panel

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF High Energy Physics Advisory Panel (HEPAP). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Monday, August 27, 2012; 9:00 a.m.–6:00 p.m. and Tuesday, August 28, 2012; 9:00 a.m. to 1:00 p.m.

ADDRESSES: Hilton Hotel, 1750 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: John Kogut, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; SC–25/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585–1290; Telephone: 301–903–1298.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of high energy physics research.

Tentative Agenda: Agenda will include discussions of the following:

Monday, August 27, 2012 and Tuesday, August 28, 2012

- Discussion of Department of Energy High Energy Physics Program.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Reports on and Discussions of Topics of General Interest in High Energy Physics.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut by telephone: 301–903–1298 or email at: *John.Kogut@science.doe.gov.* You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the High Energy Physics Advisory Panel's Web site at: *http://science.energy.gov/hep/hepap/.*

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–13674 Filed 6–5–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. DW–008]

Notice of Petition for Waiver of BSH Corporation From the Department of Energy Residential Dishwasher Test Procedure, and Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes the BSH Corporation (BSH) petition for waiver (hereafter, ''petition'') from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of dishwashers. Today's notice also grants an interim waiver of the dishwasher test procedure. Through this notice, DOE also solicits comments with respect to the BSH petition.

DATES: DOE will accept comments, data, and information with respect to the BSH petition until July 6, 2012.

ADDRESSES: You may submit comments, identified by case number DW–008, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include ''Case No. DW–008'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Petition for Waiver Case No. DW–008, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE waivers and rulemakings regarding similar dishwasher products. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes dishwashers.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for dishwashers is contained in 10 CFR part 430, subpart B, appendix C.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(a)(2) An interim waiver must be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. (10 CFR 430.27(g)) An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h)

II. Application for Interim Waiver and Petition for Waiver

On March 27, 2012, BSH submitted the instant petition for waiver and interim waiver from the test procedure applicable to dishwashers set forth in 10 CFR part 430, subpart B, appendix C. In every respect except the introduction of new model numbers, the instant petition is identical to petitions submitted by BSH on February 4, 2011 and December 7, 2011. DOE granted the February 4th petition on June 29, 2011 (76 FR 38144). DOE granted an interim waiver to BSH for the model numbers specified in the December 7th petition and published that petition for comment on April 2, 2012 (77 FR 19650).

BSH states that ''hard'' water can reduce customer satisfaction with dishwasher performance resulting in increased pre-rinsing and/or hand washing as well as increased detergent and rinse agent usage. According to BSH, a dishwasher equipped with a water softener will minimize pre-rinsing and rewashing, and consumers will have less reason to periodically run their dishwasher through a clean-up cycle. BSH also states that the amount

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

of water consumed by the regeneration operation of a water softener in a dishwasher is very small, but that it varies significantly depending on the adjustment of the softener. The regeneration operation takes place infrequently, and the frequency is related to the level of water hardness.

For the reasons discussed in previous waivers granted to Whirlpool and BSH, DOE has determined that constant values should be used to estimate the energy and water use due to softener regeneration. In its petition, BSH requests that constant values of 47.6 gallons per year for water consumption and 8.0 kWh per year for energy consumption be used. BSH included calculations showing this water and energy use, which was derived using the same method as that used by Whirlpool in its petition for waiver, which was granted by DOE. (75 FR 62127, Oct. 7, 2010).

DOE has determined that BSH's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship BSH might experience absent a favorable determination on its application for interim waiver. DOE has also determined, however, that it is likely BSH's petition will be granted, and that it is desirable for public policy reasons to grant BSH relief pending a determination on the petition. Based on the information provided by BSH and Whirlpool, use of the DOE test procedure may provide materially inaccurate comparative data. In addition, the constant values submitted by BSH provide a reasonable estimate of the energy and water used during water softener regeneration for the basic model set forth in this petition and BSH's previous petition.

Based on these considerations, and the waivers granted to BSH and Whirlpool for similar models, it appears likely that the petition for waiver will be granted. DOE also believes that the energy efficiency of similar products should be tested and rated in the same manner. As a result, DOE grants BSH's application for interim waiver for the basic models of dishwashers specified in its petition for waiver, pursuant to 10 CFR 430.27(g). Therefore, *it is ordered that:*

The application for interim waiver filed by BSH is hereby granted for the specified BSH dishwasher basic models, subject to the specifications and conditions below.

BSH shall be required to test and rate the specified dishwasher products according to the alternate test procedure as set forth in section III, ''Alternate Test Procedure.''

The interim waiver applies to the following basic model groups:

Bosch brand:

- Basic Model—SHX5ER##

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. BSH may submit a subsequent petition for waiver and request for grant of interim waiver, as appropriate, for additional models of clothes washers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by the statute. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 430.27, DOE will consider setting an alternate test procedure for BSH in a subsequent Decision and Order.

During the period of the interim waiver granted in this notice, BSH shall test its dishwasher basic models according to the existing DOE test procedure at 10 CFR part 430, subpart B, appendix C with the modification set forth below.

Under appendix C, the water energy consumption, W or Wg, is calculated based on the water consumption as set forth in Sect. 4.3:

§ 4.3 *Water consumption.* Measure the water consumption, V, expressed as the number of gallons of water delivered to the machine during the entire test cycle, using a water meter as specified in section 3.3 of this Appendix.

Where the regeneration of the water softener depends on demand and water hardness, and does not take place on every cycle, BSH shall measure the water consumption of dishwashers having water softeners without including the water consumed by the dishwasher during softener regeneration. If a regeneration operation takes place within the test, the water consumed by the regeneration operation shall be disregarded when declaring water and energy consumption. Constant values of 47.6 gallons/year of water and 8 kWh/year of energy shall be added to the values measured by appendix C.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of BSH's petition for waiver from certain parts of the test procedure that apply to dishwashers and grants an interim waiver. DOE is publishing BSH's petition for waiver in its entirety. The petition contains no confidential information. The petition includes a suggested alternate test procedure which is to measure the water consumption of dishwashers having water softeners without including the water consumed by the dishwasher during softener regeneration.

DOE solicits comments from interested parties on all aspects of the petition. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is Mike Edwards, Senior Engineer, Performance and Consumption, BSH Home Appliances Corporation (FNbG), 100 Bosch Blvd., Building 102, New Bern, NC 28562–6924. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Issued in Washington, DC, on May 24, 2012.

Timothy Unruh,

Acting Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

March 27, 2012

The Honorable Dr. Henry C. Kelly, Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Station EE–10, 1000 Independence Avenue SW., Washington, DC 20585, Via email (*henry.kelly@ee.doe.gov*) and overnight mail

Re: Petition for Waiver and Application for Interim Waiver concerning the

measurement of water and energy used in the water softening regeneration process of Dishwashers having an Integrated Water Softener

Dear Assistant Secretary Kelly: BSH Home Appliance Corporation (''BSH'') hereby submits this Petition for Waiver and Application for Interim Waiver pursuant to 10 CFR 430.27, concerning the test procedure for measuring energy consumption of Dishwashers.

BSH is the manufacturer of household appliances bearing the brand names of Bosch, Thermador, and Gaggenau. Its appliances include dishwashers, washing machines, clothes dryers, refrigerator-freezers, ovens, and microwave ovens, and are sold worldwide, including in the United States. BSH's United States operations are headquartered in Irvine, California. BSH's appliances are produced in the United States and Germany.

10 CFR 430.27(a)(1) provides that any interested person may submit a petition to waive for a particular basic model any requirement of Section 430.23, or of any appendix to this subpart, upon grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics, or water consumption characteristics as to provide materially inaccurate comparative data. Additionally, 10 CFR 430.27(b)(2) allows any applicant of a Petition of Waiver to also request an Interim Waiver if it can be demonstrated the likely success of the Petition for Waiver, while addressing the economic hardship and/or competitive disadvantage that is likely to result absent a favorable determination on the Application for Interim Waiver.

This request for Waiver is directed to Dishwashers containing a built-in or integrated water softener, specifically addressing the energy and water used in the regeneration process of the integrated water softener. This request is identical to Waiver Case Number DW–005 (and a pending waiver) previously granted to BSH Home Appliance Corporation with the only modification being to add additional model numbers. Further, the water softening technology used in these models is identical to the models that were previously approved.

Based on the reasoning indicated herein, BSH submits that the testing of Dishwashers equipped with a water softener under the current DOE test procedure may lead to information that could be considered misleading to consumers.

1. Identification of Basic Models.

The Dishwasher models manufactured by BSH which contain an integrated water softener and were not included in previous Waiver applications is as follows:

Bosch brand:

- Basic Model—SHX5ER##

2. Background

The design characteristic that is unique among the above listed models is an integrated water softener. The primary function of a water softener is to reduce the high mineral content of ''hard'' water. Hard water reduces the effectiveness of detergents leading to additional detergent usage. Hard water also causes increased water spots on dishware, resulting in the need to use more rinse aid to counterbalance this effect. ''Hard'' water can reduce customer satisfaction with Dishwasher performance resulting in increased pre-rinsing and/or hand washing as well as increased detergent and rinse agent usage.

The water softening process requires water usage for both the regeneration process and to flush the system. For purposes of this Waiver request, the term ''regeneration'' will include the water and energy used in both the flushing and regeneration process of the water softener. The water used in the regeneration process is in addition to the water used in the dish washing process. The water used in the regeneration process does not occur with each use of the Dishwasher. The frequency of the regeneration process is dependent upon an adjustable water softener setting that is controlled by the end user, and based on the home water hardness. Regeneration frequency will vary greatly depending upon the customer setting of the water softener. Data from the U.S. Geological Survey shows considerable variation in the water hardness within the U.S. and for many locations the use of a water softener is not necessary. Water hardness varies throughout the U.S. with the mean hardness of 217 mg/liter or 12.6 grains/gallon (based on information provided by the U.S. Geological Survey located at *http://water.usgs.gov/owq/hardness-alkalinity.html*).

Calculations

Water Use

- Based on the DOE Energy Test for Dishwashers, the BSH Dishwashers listed in this waiver with an internal water softener use an average of 6.65 liters of water per dish cleaning cycle.
- Based on an average U.S. water hardness of 12.6 grains/gallon, the internal BSH Dishwasher water softener system would be set on ''4''.
- Based on a BSH Dishwasher internal water softening system setting of ''4'' and the dishwasher using 6.65 liters of water per run, the water regeneration process would occur every 6th cycle.
- When using the Dishwasher 215 times per year (per DOE test procedure), the regeneration process would occur 35.8 times (36).
- The internal BSH water softening system uses 4.97 liters (5.0) per regeneration cycle.
- Water usage calculation based on above data.
  - $36 \times 5 = 180$ liters per year (47.6 gallons) or .84 liters (.22 gallons) each time the dishwasher is used.

Energy Used in kWh

- Formula $W = V \times T \times K$
  - V = Weighted Average Water Usage per DOE
  - T = Nominal water heater temperature rise of 39° C
  - K = Specific heat of water 0.00115
- Calculated Energy use—$180 \times 39 \times .00115 = 8.0$ kWh/yr

Summary

- A Dishwasher built by BSH with an integrated water softener in a home with a 12.6 grain per gallon water hardness would be cycled through the water softening regeneration process approximately every 6 dish cleaning cycles. When the water used in the water softener regeneration process is apportioned evenly over all dishwasher runs, the amount of energy and water usage per cycle is very low. Based on the assumptions provided, BSH estimates the typical water used in the internal Dishwasher water softener regeneration process at .84 liters (.22 gallons) per use; furthermore, using about 8.0 kWh per year to heat this water in the home hot water heater.

Note: Contrary to current DOE direction, in BSH's opinion the water used in the Water Softening regeneration process has the separate and distinct purpose of softening water and we do not feel that this water and energy should be included in the energy usage figures for washing dishes. EN 50242 does not include the water or energy used in the water softening process in the dishwasher energy consumption calculation and BSH would suggest adopting a similar approach as used in EN50242 when the test procedure is updated.

3. Requirements sought to be waived

Dishwashers are subjected to test methods outlined in 10 CFR Part 430,

Subpart B, App. C, Section 4.3, which specifies the method for the water energy calculation.

• To stay consistent with the recently approved Dishwasher waivers for units with a water softener, BSH is requesting approval to estimate the water and energy used in the water softening process based on the design of the BSH Dishwasher and the calculations and assumptions outlined above.

4. Grounds for Waiver and Interim Waiver

10 CFR 430.27(a)(1) provides that a Petition to waive a requirement of 430.23 may be submitted upon grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

If a water softener regeneration process was to occur while running an energy test, the water usage would be overstated. In this case, the water energy usage would be unrepresentative of the product providing inaccurate data resulting in a competitive disadvantage to BSH.

Granting of an Interim Waiver in this case is justified since the prescribed test procedures would potentially evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. In addition, a similar Interim Waiver and Waiver have previously been granted to BSH.

5. Manufacturers of Similar Products and Affected Manufacturers

Web based research shows that at least two other manufacturers are currently selling dishwashers with an integrated water softener, Miele Inc. and Whirlpool Corporation (Waiver Granted).

Manufacturers selling dishwashers in the United States include AGA Marvel, Arcelik A.S., ASKO Appliances, Inc., Electrolux North America, Inc., Fagor America, Inc., Fisher & Paykel Appliances, GE Appliances and Lighting, Haier America, Indesit Company Sa, Kuppersbusch USA, LG Electronics USA, Miele, Inc., Samsung Electronics Co., Viking Range Corporation and Whirlpool Corporation.

BSH will notify all companies listed above (as well as AHAM), as required by the Department's rules, providing them with a copy of this Petition for Waiver and Interim Waiver.

6. Conclusion

BSH Home Appliances Corporation hereby requests approval of the Waiver petition and Interim Waiver. By granting said Waivers the Department of Energy will further ensure that water energy is measured in the same way by all Dishwasher Manufacturer's that have a integrated water softener. Further, BSH would request that these Waivers be in good standing until such time that the test procedure can be formally modified to account for integrated water softeners.

BSH Home Appliances certifies that all manufacturers of domestic Dishwashers as listed above have been notified by letter. Copies of these notifications are attached.

With Best Regards,

Mike Edwards
Senior Engineer, Performance and Consumption, BSH Home Appliances Corporation (FNbG), 100 Bosch Blvd., Building 102, New Bern, NC 28562–6924, mike.edwards@bshg.com, www.boschappliances.com, Phone (252) 636 4334, Fax (252) 636 4450

[FR Doc. 2012–13618 Filed 6–5–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

U.S. Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy.

ACTION: Notice and Request for Comments.

SUMMARY: The EIA invites public comment on the proposed collection of information involving a three-year extension of the following Oil and Gas Reserves System Survey Forms that EIA is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995: Form EIA–23L *Annual Survey of Domestic Oil and Gas Reserves, Field Level Report;* Form EIA–23S *Annual Survey of Domestic Oil and Gas Reserves, Summary Level Report;* and Form EIA–64A *Annual Report of the Origin of Natural Gas Liquids.*

Comments are invited on: (a) Whether the proposed extended 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 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.

DATES: Comments must be filed by August 6, 2012. If you anticipate difficulty in submitting comments within that period, contact the person listed in the below **ADDRESSES** Section as soon as possible.

ADDRESSES: Written comments may be sent to Mr. Steven Grape, EI–24 U. S. Department of Energy, 1000 Independence Avenue SW., Washington DC 20585, or by fax at (202) 586–4420, or by email at *steven.grape@eia.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mr. Grape, as listed above.

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) OMB No. 1905–0057;

(2) *Information Collection Request Title:* Oil and Gas Reserves System;

(3) *Type of Request:* Extension, without change, of the currently approved Form EIA–23L, Form EIA–23S, and Form EIA–64A;

(4) *Purpose:* In response to Section 657 of the Department of Energy Organization Act of 1977, Public Law 95–91, estimates of U.S. oil and gas reserves are to be reported annually. Many U. S. government agencies have an interest in the definitions of proved oil and gas reserves and the quality, reliability, and usefulness of estimates of reserves. The U.S. Energy Information Administration (EIA), Department of Energy has a congressional mandate to provide accurate annual estimates of U.S. proved crude oil, natural gas, and natural gas liquids reserves, and EIA presents annual reserves data in EIA Web reports to meet this requirement.

The Government also uses the resulting information to develop national and regional estimates of proved reserves of domestic crude oil, natural gas, and natural gas liquids to facilitate national energy policy decisions. These estimates are essential to the development, implementation, and evaluation of energy policy and legislation. Data are used directly in EIA Web reports concerning U.S. crude oil, natural gas, and natural gas liquids reserves and are incorporated into a number of other Web reports and analyses. Secondary reports that use the data include EIA's *Annual Energy Review, Annual Energy Outlook,*

Petroleum Supply Annual, and *Natural Gas Annual;*

(5) *Annual Estimated Number of Total Responses:*

Forms EIA–23L/23S/64A: 1,701;

(6) *Annual Estimated Number of Burden Hours:*

Form EIA–23L *Annual Survey of Domestic Oil and Gas Reserves, Field Level Report:* 32 hours (intermediate-size operators); 160 hours (large operators);

Form EIA–23S *Annual Survey of Domestic Oil and Gas Reserves, Summary Level Report:* 4 hours (small operators);

Form EIA–64A *Annual Report of the Origin of Natural Gas Liquids Production:* 6 hours (natural gas plant operators);

(7) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Forms EIA–23L/23S/64A: Zero.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Public Law 93–275, codified at 15 U.S.C. 772(b) and Section 657 of the Department of Energy Organization Act, Public Law 95–91.

Issued in Washington, DC, May 30, 2012.

Renee Miller,

Acting Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2012–13668 Filed 6–5–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2507–001; ER98–2157–022.

Applicants: Westar Energy, Inc., Kansas Gas and Electric Company.

Description: Notice of Change in Status of Westar Energy, Inc., *et al.*

Filed Date: 5/29/12.

Accession Number: 20120529–5225.

Comments Due: 5 p.m. ET 6/19/12.

Docket Numbers: ER12–761–003.

Applicants: MATL LLP.

Description: Compliance Filing to be effective 9/30/2010.

Filed Date: 5/29/12.

Accession Number: 20120529–5198.

Comments Due: 5 p.m. ET 6/19/12.

Docket Numbers: ER12–1524–000.

Applicants: Kleantricity, Inc.

Description: Additional Information of Kleantricity, Inc.

Filed Date: 5/29/12.

Accession Number: 20120529–5171.

Comments Due: 5 p.m. ET 6/19/12.

Docket Numbers: ER12–1769–001.

Applicants: Viridian Energy NG, LLC.

Description: Market-Based Rate Tariff to be effective 7/1/2012.

Filed Date: 5/29/12.

Accession Number: 20120529–5138.

Comments Due: 5 p.m. ET 6/19/12.

Docket Numbers: ER12–1836–001.

Applicants: Louisville Gas and Electric Company.

Description: EKPC NITSA Errata to be effective 5/25/2012.

Filed Date: 5/29/12.

Accession Number: 20120529–5141.

Comments Due: 5 p.m. ET 6/19/12.

Docket Numbers: ER12–1860–000.

Applicants: PacifiCorp.

Description: UAMPS ARTSOA Revised to be effective 6/2/2012.

Filed Date: 5/29/12.

Accession Number: 20120529–5143.

Comments Due: 5 p.m. ET 6/19/12.

Docket Numbers: ER12–1861–000.

Applicants: PJM Interconnection, LLC.

Description: Original Service Agreement No. 3320; Queue No. X3–043 to be effective 5/2/2012.

Filed Date: 5/29/12.

Accession Number: 20120529–5158.

Comments Due: 5 p.m. ET 6/19/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 30, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–13706 Filed 6–5–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R04–OAR–2010–0017: FRL–9682–6]

Adequacy Status: South Carolina: Reasonable Further Progress Plan Motor Vehicle Emissions Budget for Transportation Conformity for the Portion of York County, South Carolina Within Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina; 1997 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public of its finding that the volatile organic compounds (VOC) motor vehicle emissions budget (MVEB) for the portion of York County, South Carolina that is within the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina Area (hereafter referred to as the ''Charlotte bi-state Area'') Reasonable Further Progress (RFP) plan for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS), submitted on August 31, 2007, and supplemented on April 29, 2010, by the South Carolina Department of Health and Environmental Control (SC DHEC) are adequate for transportation conformity purposes. The South Carolina portion of the Charlotte bi-state Area is comprised of a portion of York County, South Carolina. On March 2, 1999, the District of Columbia Circuit Court ruled that submitted state implementation plans (SIPs) cannot be used for transportation conformity determinations until EPA has affirmatively found them adequate. As a result of EPA's finding, the South Carolina portion of the Charlotte bi-state Area must use the VOC MVEB from the submitted RFP plan supplement for the Area for future conformity determinations.

DATES: This adequacy finding for VOC is effective June 21, 2012.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Air Quality Modeling and Transportation Section, 61 Forsyth Street SW., Atlanta, Georgia 30303. Ms. Sheckler can also be reached by telephone at (404) 562–9222, or via electronic mail at *sheckler.kelly@epa.gov.* The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*

SUPPLEMENTARY INFORMATION: Today's notice is simply an announcement of findings that EPA has already made.

EPA Region 4 sent a letter to SC DHEC on May 25, 2012, stating that the 2008 VOC MVEB in the 1997 8-hour ozone RFP plan for the South Carolina portion of the Charlotte bi-state Area, dated August 31, 2007, and supplemented on April 29, 2010, are adequate. EPA posted the availability of the York County MVEB on EPA's Web site on May 13, 2010, as part of the adequacy process, for the purpose of soliciting comments. The comment period ran from May 13, 2010, through June 14, 2010. EPA's findings have also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/index.htm,* (once there, click ''Transportation Conformity'' text icon, then look for ''Adequacy Review of SIP Submissions''). The adequate VOC MVEB is provided in the following table:

YORK COUNTY, SOUTH CAROLINA 8-HR OZONE VOC MVEB

	2008	2008
York County (partial county) VOC MVEB		
VOC	6.053 tons per day.	5,493 kilograms per day

Transportation conformity is required by section 176(c) of the Clean Air Act, as amended in 1990. EPA's conformity rule, 40 CFR part 93, requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS.

The criteria by which EPA determines whether a SIP's MVEB are adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e) (4). EPA has described the process for determining the adequacy of submitted SIP budgets in a May 14, 1999, memorandum entitled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision.'' EPA has followed this guidance in making this adequacy determination. This guidance is incorporated into EPA's July 1, 2004, final rulemaking entitled ''Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity

Rule Amendments: Response to Court Decision and Additional Rule Changes'' (See 69 FR 40004). Please note that an adequacy review is separate from the EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if EPA finds the MVEB adequate, the Agency may later disapprove the SIP.

Within 24 months from the effective date of this notice, the transportation partners will need to demonstrate conformity to the new MVEB if the demonstration has not already been made, pursuant to 40 CFR 93.104(e). *See* 73 FR 4419 (January 24, 2008).

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

Dated: May 29, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–13697 Filed 6–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0397; FRL–9351–2]

Bacillus mycoides isolate J; Receipt of Application for Emergency Exemption for Use on Potato in Montana, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Montana Department of Agriculture to use the pesticide *Bacillus mycoides isolate J* to treat up to 2,675 acres of potato to control Potato Virus Y (PVY). The applicant proposes the use of a new chemical which has not been registered by the EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before June 11, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0397 by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

Hand Delivery: To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Debra Rate, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 306–0309; fax number: (703) 605–0781; email address: *rate.debra@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked

will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. Montana Department of Agriculture has requested the Administrator to issue a specific exemption for the use of *Bacillus mycoides isolate J* on potato to control PVY. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that *Bacillus mycoides isolate J* is needed to treat first and second generation seed potato to control PVY transmitted by aphids. The mode of action of *Bacillus mycoides isolate J* is to induce the plants systemic acquired resistance (SAR) to disease. In certified seed potato production, the final evaluation on virus levels is determined by conducting a post-harvest test. In Montana, the level of virus must be below 0.5% PVY for planting back for re-certification. The Montana potato industry's ability to plant sufficient seed acreage in 2012 will be compromised, without the use of *Bacillus mycoides isolate J* to control PVY. Expected losses without the use of *Bacillus mycoides isolate J* will approach 30% of the first generation seed potato and 40% of the second generation seed potato.

The Applicant proposes to make no more than five applications per year at a rate of 0.3 ounces of active ingredient per acre per application to a maximum of 2,675 acres of potato during the 2012 growing season in the state of Montana. A total of 4,012.5 ounces of *Bacillus mycoides isolate J* may be used.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by EPA. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Montana Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 22, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012–13348 Filed 6–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9682–4]

Public Water Supply Supervision Program; Program Revision for the State of Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Tentative Approval.

SUMMARY: Notice is hereby given that the State of Washington has revised its approved State Public Water Supply Supervision Primacy Program. Washington has adopted regulations analogous to EPA's Lead and Copper Short-Term Regulatory Revisions and Clarifications Rule. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these State program revisions. By approving these rules, EPA does not intend to affect the rights of federally recognized Indian tribes within ''Indian country'' as defined by 18 U.S.C. 1151, nor does it intend to limit existing rights of the State of Washington.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by July 6, 2012 to the Regional Administrator at the EPA address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by July 6, 2012, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on July 6, 2012. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, at the Washington Department of Health—Office of Drinking Water,

243 Israel Road SE., 2nd floor, Tumwater, Washington 98501 and between the hours of 9:00 a.m.–12:00 p.m. and 1:00–4:00 p.m. at the EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Wendy Marshall, EPA Region 10, Drinking Water Unit, by mail at the Seattle address given above, by telephone at (206) 553–1890, or by email at *marshall.wendy@epa.gov.*

Authority: Section 1420 of the Safe Drinking Water Act, as amended (1996), and 40 CFR Part 142 of the National Primary Drinking Water Regulations.

Dated: May 29, 2012.

Dennis J. McLerran,

Regional Administrator, EPA Region 10.

[FR Doc. 2012–13717 Filed 6–5–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comment on renewal of the information collection described below.

DATES: Comments must be submitted on or before August 6, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently-Approved Collection of Information

Title: External Audits.

OMB Number: 3064–0113.

Frequency of Response: Annually.

Affected Public: All insured financial institutions with total assets of $500 million or more, and other insured financial institutions with total assets of less than $500 million that voluntarily choose to comply.

General Description of Collection: FDIC's regulations at 12 CFR 363 establish annual independent audit and reporting requirements for financial institutions with total assets of $500 million or more. The requirements include the submission of an annual report on their financial statements, recordkeeping about management deliberations regarding external auditing and reports about changes in auditors. The information collected is used to facilitate early identification of problems in financial management at financial institutions.

Explanation of burden estimates: The estimates of annual burden are based on the estimated burden hours for FDIC-supervised institutions within each asset classification ($1 billion or more, $500 million or more but less than $1 billion, and less than $500 million) to comply with the requirements of Part 363 regarding the annual report, audit committee, other reports, and the notice of change in accountants. The number of respondents reflects the number of FDIC-supervised institutions in each asset classification. The number of annual responses reflects the estimated number of submissions for each asset classification. The annual burden hours reflects the estimated number of hours for FDIC-supervised institutions within each asset classification to comply with the requirements of Part 363.

a. FDIC-Supervised Institutions with Assets of $1 Billion or More.

Number of Respondents: 311.

Annual Responses: 1,011.

Annual Burden Hours: 69,751.

b. FDIC-Supervised Institutions with Assets of $500 Million or More but Less than $1 Billion.

Number of Respondents: 416.

Annual Responses: 1,352.

Annual Burden Hours: 11,388.

c. FDIC-Supervised Institutions with Assets Less than $500 Million.

Number of Respondents: 3,850.

Annual Responses: 11,550.

Annual Burden Hours: 2,887.

Total Annual Burden Hours: 84,026.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 1st day of June 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–13711 Filed 6–5–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comment on renewal of the information collection described below.

DATES: Comments must be submitted on or before August 6, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*

• *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.

• *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently-Approved Collection of Information

Title: Temporary Liquidity Guarantee Program.

OMB Number: 3064–0166.

A. Subsequent Reports on Senior Unsecured Debt

Affected Public: FDIC-insured depository institutions, thrift holding companies, bank and financial holding companies.

Estimated Number of Respondents: 5.

Frequency of Response: Monthly.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 120 hours.

B. Guaranteed Debt Holders' Claims for Participating Entities in Default

Affected Public: FDIC-insured depository institutions, thrift holding companies, bank and financial holding companies.

Estimated Number of Respondents: 15.

Frequency of Response: Annually.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 45 hours.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 1st day of June 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–13712 Filed 6–5–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, June 7, 2012 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of the Minutes for the Meeting of May 24, 2012.

Draft Advisory Opinion 2012–17: Red Blue T LLC, Armour Media, Inc., and m-Qube, Inc.

Draft Advisory Opinion 2012–18: National Right to Life Committee, Inc.

Draft Advisory Opinion 2012–19: American Future Fund.

Audit Division Recommendation Memorandum on The Legacy Committee Political Action Committee (A09–22).

Audit Division Recommendation Memorandum on The Democratic Executive Committee of Florida (DECF) (A08–03).

Audit Division Recommendation Memorandum on The Los Angeles County Democratic Central Committee (A09–07).

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2012–13621 Filed 6–5–12; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS12–10]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of Meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: OCC—250 E Street SW., Room 8C, Washington, DC 20219.

Date: June 13, 2012.

Time: 10:30 a.m.

Status: Open.

Matters To Be Considered

Summary Agenda

May 9, 2012 minutes—Open Session.

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

Discussion Agenda

Florida Compliance Review.

ASC Draft Revised Policy Statements.

Revised ASC Delegations of Authority to include monitoring of the appraisal requirements established by the Federal financial institutions regulatory agencies.

ASC Appraisal Foundation Grant Policy.

Selection of ASC Vice Chairperson.

How To Attend and Observe an ASC Meeting

Email your name, organization and contact information to *meetings@asc.gov.* You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street NW., Ste 760, Washington, DC 20005. The fax number is 202–289–4101. Your request

must be received no later than 4:30 p.m., ET, on the Monday prior to the meeting. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: June 1, 2012.

James R. Park,

Executive Director.

[FR Doc. 2012–13659 Filed 6–5–12; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS12–11]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of Meeting.

Description: In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

Location: OCC—250 E Street SW., Room 8C, Washington, DC 20219.

Date: June 13, 2012.

Time: Immediately following the ASC open session.

Status: Closed.

Matters To Be Considered:

May 9, 2012 minutes—Closed Session.

Dated: June 1, 2012.

James R. Park,

Executive Director.

[FR Doc. 2012–13661 Filed 6–5–12; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011275–033.

Title: Australia and New Zealand-United States Discussion Agreement.

Parties: ANL Singapore Pte Ltd.; CMA CGM, S.A.; Hamburg-Süd KG; Hapag-Lloyd AG; and Mediterranean Shipping Company S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor LLP; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment would adjust the minimum service level set forth in the agreement to reflect the resignation of Maersk Line from the agreement.

Agreement No.: 012117–001.

Title: Maersk Line/HLAG West Med Slot Exchange Agreement.

Parties: A.P. Moller-Maersk A/S and Hapag-Lloyd AG.

Filing Parties: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment would add Morocco to the geographic scope of the agreement, adjust the amount of space to be exchanged, and delete obsolete language from the agreement.

Agreement No.: 012128–001.

Title: Southern Africa Agreement.

Parties: A.P. Moller-Maersk A/S trading under the name Maersk Line, Safmarine Container Lines N.V. and Mediterranean Shipping Company S.A.

Filing Party: Wayne R. Rohde, Esquire; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment would add a new Article 5.1(b) authorizing the parties to introduce additional vessels into the services covered by the Agreement and to share the cost of same.

Agreement No.: 012173.

Title: Hyundai/MOL/APL Asia/Latin America/U.S. East Coast Slot Charter Agreement.

Parties: Hyundai Merchant Marine Co., Ltd., Mistsui O.S.K. Lines, Ltd., and APL Co. Pte Ltd. and American President Lines, Ltd.

Filing Party: David F. Smith, Esquire; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The agreement authorizes Hyundai to charter space to MOL and APL in the relevant trade and to authorize the parties to enter into cooperative arrangements with respect to the chartering of such space.

Agreement No.: 012174.

Title: Hoegh/Liberty Middle East Space Charter Agreement.

Parties: Hoegh Autoliners AS and Liberty Global Logistics LLC.

Filing Party: Wayne R. Rohde, Esquire; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The agreement would authorize the parties to charter space to/from one another on an ''as needed, as available'' basis in the trade from ports on the U.S. East and Gulf Coasts to ports in countries bordering the Red Sea and Arabian Gulf.

By Order of the Federal Maritime Commission.

Dated: June 1, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–13742 Filed 6–5–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 21, 2012.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *CIC Bancshares, Inc., through its subsidiary, CIC Merger Sub, Inc.,* both in Denver, Colorado, to acquire voting shares of Millennium Bancorp, Inc., and thereby indirectly acquire voting shares of Millennium Bank, both in Edwards, Colorado.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Neighborhood Bancorp Employee Stock Ownership Plan Trust Agreement,* National City, California; Robert M. McGill; Sally M. Furay and Conny M. Jamison, all of San Diego, California, as co-trustees; to retain voting shares of Neighborhood Bancorp, National City, California, and thereby indirectly retain voting shares of Neighborhood National Bank, San Diego, California.

Board of Governors of the Federal Reserve System, June 1, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–13677 Filed 6–5–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 2, 2012.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Old National Bancorp,* Evansville, Indiana; to merge with Indiana Community Bancorp, and thereby indirectly acquire Indiana Bank and Trust Company, both in Columbus, Indiana.

Board of Governors of the Federal Reserve System, June 1, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–13676 Filed 6–5–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in or to Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 21, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Heartland Financial USA, Inc., Dubuque, Iowa; to engage *de novo* in leasing personal or real property, providing financial and investment advisory activities, and activities related to extending credit, all pursuant to sections 225.28(b)(2)(i), (b)(3), and (b)(6)(iii), respectfully.

Board of Governors of the Federal Reserve System, June 1, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–13678 Filed 6–5–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

SES Performance Review Board

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members to the FTC Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Karen Leydon, Chief Human Capital Officer, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–3633.

SUPPLEMENTARY INFORMATION: Publication of the Performance Review Board (PRB) membership is required by 5 U.S.C. 4314 (c)(4). The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations regarding performance ratings, performance awards, and pay-for-performance pay adjustments to the Chairman.

The following individuals have been designated to serve on the Commission's Performance Review Board: Eileen Harrington, Executive Director, Chair; Willard K. Tom, General Counsel; Pauline M. Ippolito, Deputy Director, Bureau of Economics; Richard A. Feinstein, Director, Bureau of Competition; Mary K. Engle, Associate Director, Bureau of Consumer Protection.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–13619 Filed 6–5–12; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–12MQ]

Proposed Data Collection Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570; send comments to Kimberly S. Lane, 1600 Clifton Road, MS D–74, Atlanta, GA

30333; or send an email to *omb@cdc.gov*.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of the Young Sisters Initiative: A Guide to A Better You! Program—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Despite lower breast cancer incidence rates, African American women in the United States are known to experience disproportionately higher breast cancer mortality rates relative to other racial groups. This may be due to disparities in cancer screening and treatment and/or the higher frequency of aggressive breast cancer types found within this population. It is also known that younger women tend to experience more difficult adaptation and quality of life following breast cancer diagnosis. Factors may include impact of the diagnosis on emotional function, the need to balance work-home responsibilities including child-rearing, and concerns about changes in fertility due to cancer treatment. Many decisions that affect fertility are irreversible once treatment begins, but counseling about these issues may be overlooked during the time-sensitive decision-making process prior to initiating treatment.

In 2010, the Centers for Disease Control and Prevention (CDC) launched the Breast Cancer in Young Women (BCYW) project to raise awareness about these issues among young breast cancer survivors (YBCS) and to provide psychosocial and reproductive health support to women who are diagnosed before age 45. The BCYW project is a three-year project to identify, strengthen, and promote real-world, evidence-based interventions that support young breast cancer survivors (YBCS). A key component of the BCYW program is the design, testing, implementation and evaluation of the Young Sisters Initiative: A Guide to A Better You (YSI) program.

The YSI program is a Web-based intervention designed to provide African American YBCS with culturally tailored psychosocial and reproductive health information to support their needs as cancer survivors. ICF International, CDC, and Sisters Network, Inc. (SNI), a national cancer advocacy organization, are developing the YSI program. A Web site to house the YSI is currently under development. Upon completion, the YSI Web site will provide users with informational materials, videos by African American YBCS, survivor stories, and links to other breast cancer support resources. To recruit women to participate in the YSI program, SNI and its partners will link women to the YSI Web site from the SNI Web site at *www.sistersnetworkinc.org*.

CDC, in conjunction with ICF International, plans to conduct a process evaluation of YSI program implementation. Information will be collected to assess whether the culturally tailored, knowledge- and awareness-building YSI program can be implemented with fidelity; reach its target audience of African American YBCS; and deliver effective psychosocial and reproductive health information and support. The process evaluation will also collect information to improve understanding of facilitators and barriers to YSI program recruitment and implementation, and to assess how the program might be adapted for use with other audiences.

Primary information collection will consist of two Web-based surveys of YSI program users, conducted before and after exposure to YSI program materials. The initial five-minute demographic screener will be conducted when users encounter the YSI Web site. Respondents will be asked to provide demographic and medical information necessary for identifying members of the target YSI program audience, and to indicate their willingness to complete a brief, online post-YSI program use survey one to two weeks after their initial YSI program Web site visit. The post-YSI program use survey will be conducted after YSI Web site users have time to review the site and materials. The estimated burden for the post-YSI program use survey is 20 minutes. Respondents will be asked questions about the usefulness of resources posted on the YSI Web site and satisfaction with the site. No personally identifiable information will be collected. No information will be collected directly from YSI Web site users before, during and after the six-month implementation and evaluation of the YSI program.

Two secondary sources of information will be used to supplement the process evaluation data collection, but will not impose burden on YSI Web site users. First, CDC's evaluation contractor will use information obtained through Google Analytics to assess how visitors (particularly the target audience) navigate and use the YSI Web site. In addition, the evaluation contractor will conduct a limited number of telephone interviews with SNI staff and SNI-identified recruitment partners before and after the YSI implementation to assess fidelity to the YSI program core components and identify any facilitators and/or barriers experienced during program implementation.

CDC will use the results of the process evaluation to inform future efforts to support and educate YBCS in vulnerable/minority populations. OMB approval is requested for one year. Participation in the information collection is voluntary, and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
YSI Web site users	YSI Program Demographic Screener	500	1	5/60	42
	YSI Program Post-Use Survey	300	1	20/60	100
Total					142

Kimberly S. Lane,

Deputy Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–13670 Filed 6–5–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–12LR]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Kimberly Lane, CDC Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Community Transformation Grants: Evaluation of Nutrition, Physical Activity, and Obesity-related Television Media Campaigns—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Chronic diseases such as cancer, heart disease, and diabetes are among the most common and costly health problems, accounting for 70% of all deaths in the U.S. These diseases also cause major limitations in daily living for almost one out of ten Americans or about 25 million people. Adopting healthy behaviors such as eating nutritious foods, being physically active, and avoiding tobacco use have been shown to prevent the devastating effects of these diseases.

Recent legislative developments highlight the importance of chronic disease prevention in efforts to improve the public's health. These developments include the American Recovery and Reinvestment Act (ARRA) of 2009, which provided $650 million to carry out evidence-based prevention and wellness strategies. The Department of Health and Human Services (HHS) has developed an initiative in response to ARRA—the Affordable Care Act (ACA)—that is helping to reorient the U.S. health care system from primarily treating disease to promoting population health and well-being. Between 2009–2011, ARRA and ACA funding was authorized to two CDC programs—Communities Putting Prevention to Work (CPPW), and Community Transformation Grants (CTG)—in support of community-based policy and environmental strategies to reduce the prevalence and burden of chronic diseases.

Through the CPPW program, CDC provided funding to 51 awardees nationwide to implement evidence-based prevention and wellness strategies to increase physical activity, improve nutrition, and reduce tobacco use and exposure to secondhand smoke. A key focus of the CPPW Program is to promote community-wide policies, systems, and environmental changes across five evidence-based MAPPS strategies: Media, Access, Point of decision information, Price and, Social support services. In fiscal year (FY) 2011, CDC also funded 61 CTG cooperative agreements with state, local, and tribal government agencies and nonprofit organizations to support, disseminate, and amplify successful program models and activities as prescribed under statutory authority (Section 4201[c][5] of the ACA). CTG awardees are required to focus on three of five strategic directions: (1) Tobacco-free living, (2) active lifestyles and healthy eating, (3) and high-impact evidence-based clinical and other preventive services.

Several CTG awardees have or are planning to implement community-driven, mass-media campaigns addressing nutrition, physical activity, and obesity (NPAO). Many of these campaigns are currently under development and may include messaging about the importance of regular physical activity, fruit and vegetable consumption, and avoidance of sugar-sweetened beverages in adults and children, in addition to raising awareness about obesity prevalence and associated health outcomes. Primary objectives of the campaigns are to increase public awareness of these messages, shift attitudes and beliefs toward healthy behavior change, and increase public support for proven policies and programs to prevent obesity. The campaigns' primary audiences will be adults aged 18 and older; specific messaging content will vary among awardees.

As part of a multi-component evaluation plan for the CTG Program, CDC is seeking OMB approval to collect the information needed to evaluate the effectiveness of NPAO-targeted local television media campaigns. The items of information to be collected focus on the following areas: Audience awareness and recall of local campaigns; reactions to and perceptions of campaign messages; NPAO-related knowledge, attitudes, and beliefs; support for NPAO-related policy/environmental change; intentions to change NPAO-related behaviors; NPAO-related behaviors; and socio-demographic characteristics. This information will be used to evaluate the impact of these efforts on key NPAO-related outcomes and to examine the extent to which campaign effectiveness varies by characteristics and stylistic features of different campaign advertisements. The information will inform the CTG Program and other NPAO-targeted media campaigns and help to improve the clarity, salience, appeal, and persuasiveness of messages and campaigns supporting CDC's mission.

Information will be collected through a Web-based questionnaire to be completed on personal computers in the home setting. Adult respondents will be recruited from the Knowledge Networks (KN) panel, a large online panel of the U.S. population. CDC estimates that approximately 13,300 respondents must be screened in order to yield the target number of 8,000 completed questionnaires. The estimated burden per response is six minutes for screening and 30 minutes for the main questionnaire. CDC's authority to collect information for public health purposes is provided by the Public Health Service Act (41 U.S.C. 241) Section 301.

Approval for this information collection is requested for one year. Participation is voluntary and there are

no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Adults, ages 18+ in the U.S.	Screening and Consent	13,300	1	6/60	1,330
	NPAO Questionnaire	8,000	1	30/60	4,000
Total					5,330

Kimberly S. Lane,

Deputy Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–13682 Filed 6–5–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–0237]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Kimberly S. Lane, at 1600 Clifton Road, MS D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

The National Health and Nutrition Examination Survey (NHANES)—(0920–0237)— Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability; environmental, social and other health hazards; and determinants of health of the population of the United States.

The National Health and Nutrition Examination Survey (NHANES) has, to date, been authorized as a generic clearance under OMB Number 0920–0237. A change in accounting practice however, requires a shift to a newly-assigned clearance number for future full cycles of the survey. This extension requests generic clearance for activities needed to successfully complete the 2011–2012 NHANES survey cycle, which ends in early 2013. It also covers selected NHANES pilot tests and special studies. A one-year clearance is requested.

The National Health and Nutrition Examination Survey (NHANES) has been conducted periodically between 1970 and 1994, and continuously since 1999 by the National Center for Health Statistics, CDC.

Annually, approximately 15,411 respondents participate in some aspect of the full survey. About 10,000 complete the screener for the survey. About 142 complete the household interview only. About 5,269 complete both the household interview and the Mobile Examination Center (MEC) examination. However, this request seeks approval for only one-quarter year of data collection to complete the 2011–2012 cycle (3,850 respondents). In addition, up to 1,000 additional persons might participate in tests of procedures, special studies, or methodological studies. Participation in NHANES is completely voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States. NHANES monitors the prevalence of chronic conditions and risk factors related to health such as arthritis, asthma, osteoporosis, infectious diseases, diabetes, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, physical activity, environmental exposures, and diet. NHANES data are used to produce national reference data on height, weight, and nutrient levels in the blood. Results from more recent NHANES can be compared to findings reported from previous surveys to monitor changes in the health of the U.S. population over time. NHANES continues to collect genetic material on a national probability sample for future genetic research aimed at understanding disease susceptibility in the U.S. population. NCHS collects personal identification information. Participant level data items will include basic demographic information, name, address, social security number, Medicare number and participant health information to allow for linkages to other data sources such as the National Death Index and data from the Centers for Medicare and Medicaid Services (CMS). There is no cost to respondents other than their time.

NHANES data users include the U.S. Congress; numerous Federal agencies such as other branches of the Centers for Disease Control and Prevention, the National Institutes of Health, and the United States Department of Agriculture; private groups such as the American Heart Association; schools of public health; and private businesses.

TABLE 1—ANNUALIZED BURDEN HOURS

Type of respondent	Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
1. Individuals in households	NHANES Questionnaire	3,850	1	2.4	9,240
2. Individuals in households	Special Studies	1,000	1	3	3,000
Total					12,240

Kimberly S. Lane,

Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–13686 Filed 6–5–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–0824]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Kimberly S. Lane, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

BioSense 2.0 (OMB No. 0920–0824, exp. 10/31/2012)—Revision—Office of Surveillance, Epidemiology, and Laboratory Services (OSELS), Public Health Surveillance and Informatics Program Office (PHSIPO) {Proposed} Centers for Disease Control and Prevention (CDC).

Background and Brief Description: The BioSense Program was created by congressional mandate as part of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, and it was launched by the Centers for Disease Control and Prevention (CDC) in 2003. BioSense is a near real-time surveillance system that receives and processes electronic healthcare encounter data, including, chief complaints, final diagnosis codes, procedure codes, clinical laboratory, pharmacy prescription, and patient demographic data from participating public health jurisdictions' non-federal hospital emergency departments and inpatient facilities in addition to all United States Department of Defense (DoD) and Veterans Affairs (VA) outpatient hospitals and clinics nationwide. The BioSense Program also receives pharmacy data from a private sector health information exchange firm and laboratory data from two national-level private sector clinical laboratories.

The BioSense Program is in the process of transitioning from the original BioSense application to the BioSense 2.0 application that has new governance, a new organizational structure, and a new process for data submission and management. The Association of State and Territorial Health Officials (ASTHO) has been funded through a cooperative agreement with CDC's Division of Notifiable Disease and Healthcare Information (DNDHI) within the Public Health Surveillance and Informatics Program Office (PHSIPO) of the Office of Surveillance, Epidemiology, and Laboratory Services (OSELS) to facilitate the governance of BioSense 2.0, and through a contract with a vendor, ASTHO will offer access and use of BioSense 2.0 on a voluntary basis to state, local, and territorial health jurisdictions.

Unlike the original BioSense application where participating organizations' data were processed and stored at CDC in the CDC owned and operated Information Technology Services Office's Mid-Tier Data Center on secure servers, all data submitted by users in BioSense 2.0 will reside in a cloud-enabled, web-based platform that sits in the secure, private Government Cloud and is in compliance with the Federal Information Security Management Act. The platform will provide users with an exclusive secure space as well as tools for posting, receiving, controlling, analyzing, and sharing their public health surveillance information with other public health jurisdictions, CDC, or other public health partners. The public health jurisdiction will retain ownership of any data it contributes to its exclusive secure space within BioSense 2.0.

The BioSense 2.0 cloud also provides the CDC's BioSense Program its own exclusive secure space to receive, store, and analyze data. CDC has agreements with VA, DoD, two national-level private sector clinical laboratories, and a private sector health information exchange firm to provide healthcare encounter data to CDC's secure space for the purpose of national public health situation awareness and syndromic surveillance. These organizations automatically chose to share with CDC when they were recruited to submit data to the BioSense 2.0 cloud environment. Because they are not required to choose sharing permissions, collecting already existing healthcare encounter data submitted via electronic record transmission from them entails no burden hours.

In addition to providing a secure, exclusive space for use by CDC and secure, exclusive spaces for use by each participating state, local, and territorial public health jurisdiction, BioSense 2.0 provides a second secure space in the cloud for public health jurisdictions to share aggregate data with other participating jurisdictions and CDC. Whenever possible, the BioSense

Program plans to share aggregate-level pharmacy and laboratory data with public health jurisdictions. To participate in the shared space, jurisdiction administrators must simply select from drop-down lists to choose their sharing permissions on the BioSense 2.0 application, and they will have the right at any time to revise the level of sharing permissions regarding the data in their secure space.

As part of access to the shared space, public health jurisdictions will be required to grant CDC access to, at minimum, aggregate level data (city, county, or state) from their jurisdiction that has been placed in the shared space. They must also agree that CDC may review data contributed to the shared space for public health practice and surveillance purposes.

In order to continue meeting the congressional mandate in the BioSense 2.0 application, the BioSense Program maintains 3 different types of information collection: (1) Contact information (name, telephone number, email address, and street address) needed for recruitment of up to 20 participating public health jurisdictions to BioSense 2.0 per year; (2) one-time collection of information (name, email address, title, organizational affiliation, security questions, and password) to provide access to the BioSense 2.0 cloud and its tools for all appropriate users in participating jurisdictions and organizations, and (3) collection of already existing healthcare encounter data submitted to the cloud via electronic record transmission from participating public health jurisdictions' non-federal hospitals, VA, DoD, two national-level private sector clinical laboratories, and a private sector health information exchange firm. Though a large number of electronic records are transmitted from each entity each year, once the automated interfaces are set up for transmission (choosing sharing permissions), there is no human burden for record transmission.

This request is for a 3-year approval. There are no costs to survey respondents other than their time to participate.

ESTIMATES OF ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Recruitment				
State, Local, and Territorial Public Health Jurisdictions	20	1	1	20
Federal Government	2	1	1	2
Private Sector (national clinical laboratory corporations, and a private sector health information exchange company)	3	1	1	3
Access to BioSense 2.0 Application				
State, Local, and Territorial Public Health Jurisdictions	200	1	5/60	17
Federal Government	30	1	5/60	3
Private Sector	50	1	5/60	4
Data Collection: Administrator Sharing Permissions				
State, Local, and Territorial Public Health Jurisdictions	20	1	5/60	2
Federal Government	2	0	0	0
Private Sector (national clinical laboratory corporations, and a private sector health information exchange company)	3	0	0	0
Total				51

Kimberly S. Lane,

Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–13689 Filed 6–5–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–0822]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Kimberly S. Lane, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Intimate Partner and Sexual Violence Surveillance System (OMB No. 0920–0822, exp. 09/30/2012)—Revision—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The health burden of Intimate Partner Violence (IPV), Sexual Violence (SV) and stalking are substantial. To address this important public health problem, in 2010, CDC implemented the National Intimate Partner and Sexual Violence Surveillance System (NISVSS) which produces national and state level estimates of IPV, SV and Stalking on an annual basis.

NIVSS used a dual-frame sampling strategy that includes both landline and cellphone. In 2010, approximately 45.2% of interviews were conducted by landline telephone and 54.8% of interviews were conducted using respondent's cell phone. The overall weighted response for 2010 data collection was 27.5%. The weighted cooperation rate was 81.3%. The cooperation rate reflects the proportion who agreed to participate in the interview among those who were contacted and determined eligible. The cooperation rate obtained for 2010 data collection suggests that, once contact was made and eligibility was determined, the majority of respondents chose to participate in the interview.

In the first year of data collection, the NISVSS data found that approximately 6.9 million women and 5.6 million men experienced rape, physical violence and/or stalking by an intimate partner within the last year. NISVSS data also suggested that 18.3% of women and 1.4% of men in the U.S. experienced rape in their lifetime. In addition, 44.5% of women and 22.2% of men experienced sexual violence other than rape during their lifetime. NISVSS 2010 data also indicates that approximately 5 million women and 1.4 million men in the United States were stalked in the 12 months prior to the survey.

There are also overlaps between stalking and other forms of violence in intimate relationships; approximately 14% of females who were stalked by an intimate partner in their lifetime also experienced physical violence by an intimate partner; while 12% of female victims experienced rape, physical violence and stalking by a current or former intimate partner in their lifetime. Furthermore, 76% of female victims of intimate partner homicides were stalked by their partners before they were killed.

The lifetime impact of these types of violence on victims is extensive. Nearly 1 in 3 women and 1 in 10 men in the United States have experienced rape, physical violence and/or stalking by an intimate partner and reported at least one impact related to experiencing these or other forms of violent behavior within the relationship (e.g., fear, concern for safety, post-traumatic stress disorder (PTSD) symptom, injury, crisis hotline consult, at least one day of work or school missed, and needs for health care, housing, victim advocate, and legal services.

CDC proposes to continue this national surveillance system that will provide more detailed and timely information on intimate partner violence, sexual violence and stalking victimization in the U.S. The proposed changes to the National Intimate Partner and Sexual Violence Surveillance System are two-fold: First, CDC will no longer collect data on special sub-populations (i.e. military, elderly AIAN) and thus, focuses the scope of data collection to the general population. Second, CDC will reduce the number of questions asked in the survey. Currently, NISVSS asks a total of 249 questions which comprise both behavioral gateway questions asked of every respondent and follow-up questions directed towards respondents who report experiencing various forms of intimate partner violence, sexual violence and stalking.

The current proposal aims to reduce the number of questions to 178 questions which will continue to be comprised of a combination of behavioral questions asked of every respondent and a series of follow-up questions that will only be asked of respondents reporting victimization.

Focusing the scope of data collection and reducing the number of questions will result in a decrease in burden to the respondents. Previously, the estimated number of respondents screened was 20,948 and the number of respondents surveyed was 10,000. This resulted in an average burden per individual respondent screened of 3 minutes and average burden per individual surveyed of 25 minutes with a total burden of 5,214 hours.

This proposal seeks to increase the sample size and response rate. The proposed number of respondents screened is 85,000 while the proposed number of respondents surveyed is 22,000. The average burden per screened respondent remains at 3 minutes (total burden in hours equals 4,250) while the average burden per surveyed respondent is 15 minutes (total burden in hours equals 5,500). This proposal reduces the average burden per surveyed respondent by 10 minutes. The increase in the number of individuals screened and individuals surveyed equals a total burden of 9,750 hours.

Shortening the survey and reducing the burden on respondents will allow CDC to conduct more interviews thus increasing the reliability of both national and state estimates. The purpose of the information collected remains the same.

There are no costs to respondents to participate other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of responses	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Individuals	Non-Participating Individuals (Screened).	85,000	1	3/60	4,250
	Eligible Individuals (Surveyed)	22,000	1	15/60	5,500
Total					9,750

Kimberly S. Lane,

Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–13692 Filed 6–5–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–0571]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Kimberly S. Lane, at CDC, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Minimum Data Elements (MDEs) for the National Breast and Cervical Cancer Early Detection Program (NBCCEDP) (OMB No. 0920–0571, exp. 11/30/2012)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Many cancer-related deaths in women could be avoided by increased utilization of appropriate screening and early detection tests for breast and cervical cancer. Mammography is extremely valuable as an early detection tool because it can detect breast cancer well before the woman can feel the lump, when the cancer is still in an early and more treatable stage. Similarly, a substantial proportion of cervical cancer-related deaths could be prevented through the detection and treatment of precancerous lesions. The Papanicolaou (Pap) test is the primary method of detecting both precancerous cervical lesions as well as invasive cervical cancer. Mammography and Pap tests are underused by women who have no source or no regular source of health care and women without health insurance.

Despite the availability and increased use of effective screening and early detection tests for breast and cervical cancers, the American Cancer Society (ACS) estimates that 226,870 new cases of invasive breast cancer will be diagnosed among women in 2012, and 39,510 women will die of this disease. The ACS also estimates that 12,170 new cases of invasive cervical cancer will be diagnosed in 2012, and 4,220 women will die of this disease.

The CDC's National Breast and Cervical Cancer Early Detection Program (NBCCEDP) provides screening services to underserved women through cooperative agreements with 50 States, the District of Columbia, 5 U.S. Territories, and 11 American Indian/Alaska Native tribal programs. The program was established in response to the Breast and Cervical Cancer Mortality Prevention Act of 1990. Screening services include clinical breast examinations, mammograms and Pap tests, as well as timely and adequate diagnostic testing for abnormal results, and referrals to treatment for cancers detected. NBCCEDP awardees collect patient-level screening and tracking data to manage the program and clinical services. A de-identified subset of data on patient demographics, screening tests and outcomes are reported by each awardee to CDC twice per year. Burden to respondents was significantly reduced in 2008 when the annual requirement to report infrastructure information (System for Technical Assistance Reporting, STAR), previously associated with collection of MDE information, was discontinued.

CDC plans to request OMB approval to collect MDE information for an additional three years. CDC anticipates a reduction in the overall burden estimate due to a decrease in the number of awardees from 68 to 67. There are no changes to the currently approved minimum data elements, electronic data collection procedures, or the estimated burden per response. Because NBCCEDP awardees already collect and aggregate data at the state, territory and tribal level, the additional burden of submitting data to CDC will be modest. CDC will use the information to monitor and evaluate NBCCEDP awardees; improve the availability and quality of screening and diagnostic services for underserved women; develop outreach strategies for women who are never or rarely screened for breast and cervical cancer, and report program results to Congress and other legislative authorities.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
NBCCEDP Awardees	Minimum Data Elements	67	2	4	536

Kimberly S. Lane,

Deputy Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–13688 Filed 6–5–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Tribal TANF Data Report, TANF Annual Report, and Reasonable Cause/Corrective Action Documentation Process—Final.

OMB No.: 0970–0215.

Description: 42 U.S.C. 612 (Section 412 of the Social Security Act as amended by Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)), mandates that federally recognized Indian Tribes with an approved Tribal TANF program collect and submit to the Secretary of the Department of Health and Human Services data on the recipients served by the Tribes' programs. This information includes both aggregated and disaggregated data on case characteristics and individual characteristics. In addition, Tribes that are subject to a penalty are allowed to provide reasonable cause justifications as to why a penalty should not be imposed or may develop and implement corrective compliance procedures to eliminate the source of the penalty. Finally, there is an annual report, which requires the Tribes to describe program characteristics. All of the above requirements are currently approved by OMB and the Administration for Children and Families is simply proposing to extend them without any changes.

Respondents: Indian Tribes.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Final Tribal TANF Data Report	66	4	451	119,064
Tribal TANF Annual Report	66	1	40	2,640
Tribal TANF Reasonable Cause/Corrective	66	1	60	3,960

Estimated Total Annual Burden Hours: 125,664.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*. Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–13630 Filed 6–5–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Proposed Projects:

Title: Performance Measures for Community-Centered Healthy Marriage, Pathways to Responsible Fatherhood and Community-Centered Responsible Fatherhood Ex-Prisoner Reentry Grant Programs.

OMB No.: 0970–0365.

Description: The Office of Family Assistance (OFA), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), intends to request approval from the Office of Management and Budget (OMB) to renew OMB Form 0970–0365 for the collection of performance measures from grantees for the Community-Centered Healthy Marriage, Pathways to Responsible Fatherhood and Community-Centered Responsible Fatherhood Ex-Prisoner Reentry discretionary grant programs. The performance measure data obtained from the grantees will be used by OFA to report on the overall performance of these grant programs. Data will be collected from all 61 Community-Centered Healthy Marriage, 53 Pathways to Responsible Fatherhood and 4 Community-Centered Responsible Fatherhood Ex-Prisoner Reentry grantees in the OFA programs. Grantees will report on program and participant outcomes in such areas as participants' improvement in knowledge skills, attitudes, and behaviors related to healthy marriage and responsible fatherhood. Grantees will be asked to input data for selected outcomes for activities funded under the grants. Grantees will extract data from program records and will report the data twice yearly through an on-line data collection tool. Training and assistance will be provided to grantees to support this data collection process.

Respondents: Office of Family Assistance Funded Community-Centered Healthy Marriage, Pathways to Responsible Fatherhood and Community-Centered Responsible Fatherhood Ex-Prisoner Reentry Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Performance measure reporting form (for private sector affected public)	103	2	0.8	165
Performance measure reporting form (for State, local, and tribal government affected public)	15	2	0.8	24
Estimated Total Annual Burden Hours				189

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *Email: OIRA_SUBMISSION@OMB.EOP.GOV*, *Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–13602 Filed 6–5–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0536]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device User Fee Cover Sheet, Form FDA 3601

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, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on Form FDA 3601, entitled ''Medical Device User Fee Cover Sheet,'' which must be submitted along with certain medical device product applications, supplements, and fee payment of those applications.

DATES: Submit either electronic or written comments on the collection of information by August 6, 2012.

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: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@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 extension of an existing 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.

Medical Device User Fee Cover Sheet—Form FDA 3601 (OMB Control Number 0910–0511)—Extension

The Federal Food, Drug, and Cosmetic Act, as amended by the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), and the Medical Device User Fee Amendments of 2007 (Title II of the Food and Drug Administration Amendments Act of 2007), authorizes FDA to collect user fees for certain medical device applications. Under this authority, companies pay a fee for certain new medical device applications or supplements submitted to the Agency for review. Because the submission of user fees concurrently with applications and supplements is required, the review of an application cannot begin until the fee is submitted. Form FDA 3601, the ''Medical Device User Fee Cover Sheet,'' is designed to provide the minimum necessary information to determine whether a fee is required for review of an application, to determine the amount of the fee required, and to account for and track user fees.

The form provides a cross-reference between the fees submitted for an application with the actual submitted application by using a unique number

tracking system. The information collected is used by FDA's Center for Devices and Radiological Health (CDRH) and the Center for Biologics Evaluation and Research (CBER) to initiate the administrative screening of new medical device applications and supplemental applications.

The total number of annual responses is based on the number of cover sheet submissions received by FDA in fiscal years 2009 through 2011. FDA received cover sheets for the following medical device submissions (average annual): 38 premarket approval applications (PMA, PDP, PMR, BLA),[1] 3,561 premarket notifications, 12 panel track supplements, 180 real-time supplements, 127 180-day supplements, 749 30-day notices, 84 513(g) requests, and 463 annual fees for periodic reporting. The number of received annual responses included the cover sheets for applications that were qualified for small businesses and fee waivers or reductions. The estimated hours per response are based on past FDA experience with the various cover sheet submissions, and range from 5 to 30 minutes. The hours per response are based on the average of these estimates (18 minutes).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA Form Number	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
3601	5,214	1	5,214	.30	1,564

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 31, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–13666 Filed 6–5–12; 8:45 am]

BILLING CODE 4160–01–P

[1] PMA means premarket approval application, PDP means product development protocol, PMR means postmarketing requirements, and BLA means biologics license applications.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Reimbursement Rates for Calendar Year 2012

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: Notice is given that the Director of Indian Health Service (IHS), under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248 and 249(b)), Public Law 83–568 (42 U.S.C. 2001(a)), and the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*), has approved the following rates for inpatient and outpatient medical care provided by IHS facilities for Calendar Year 2012 for Medicare and Medicaid beneficiaries and beneficiaries of other Federal programs. The Medicare Part A inpatient rates are excluded from the table below as they are paid based on the prospective payment system. Since the inpatient rates set forth below do not include all physician services and practitioner services, additional payment may be available to the extent that those services meet applicable requirements.

Inpatient Hospital Per Diem Rate (Excludes Physician/Practitioner Services)

Calendar Year 2012

Lower 48 States: $2,169

Alaska: $2,350

Outpatient per Visit Rate (Excluding Medicare)

Calendar Year 2012

Lower 48 States: $317

Alaska: $515

Outpatient per Visit Rate (Medicare)

Calendar Year 2012

Lower 48 States: $273

Alaska: $468

Medicare Part B Inpatient Ancillary Per Diem Rate

Calendar Year 2012

Lower 48 States: $477

Alaska: $811

Outpatient Surgery Rate (Medicare)

Established Medicare rates for freestanding Ambulatory Surgery Centers.

Effective Date for Calendar Year 2012 Rates

Consistent with previous annual rate revisions, the Calendar Year 2012 rates will be effective for services provided on/or after January 1, 2012 to the extent consistent with payment authorities including the applicable Medicaid State plan.

Dated: February 9, 2012.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2012–13627 Filed 6–5–12; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke 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 materials, 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 Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders K.

Date: June 25–26, 2012.

Time: 8:00 a.m. to 9:00 a.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Chicago Hotel, 505 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–435–6033, *rajarams@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Exploratory Clinical Trials SEP.

Date: June 26, 2012.

Time: 9:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Chicago Hotel, 505 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–435–6033, *rajarams@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 31, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13719 Filed 6–5–12; 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 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 General Medical Sciences Special Emphasis Panel MBRS SCORE Grant Applications.

Date: June 27, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Robert Horowits, Ph.D., Scientific Review Officer, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18, Bethesda, MD 20892–6200, 301–594–6904, *horowitr@mail.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: May 31, 2012.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13754 Filed 6–5–12; 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 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 General Medical Sciences Special Emphasis Panel, Review of SCORE Grant Applications.

Date: June 26, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An18, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Horowits, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An18, Bethesda, MD 20892–6200, 301–594–6904, *horowitr@mail.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: May 31, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13753 Filed 6–5–12; 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 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 General Medical Sciences Special Emphasis Panel, Review of Microbial Communities Grant Applications.

Date: June 26, 2012.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Washington, DC Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Arthur L. Zachary, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12, Bethesda, MD 20892–6200, 301–594–2886, *zacharya@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: May 31, 2012.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13752 Filed 6–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health 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 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 Environmental Health Sciences Special Emphasis Panel International Collaborations in Environmental Health.

Date: June 25–26, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Imperial Hotel, 4700 Emperor Boulevard, Durham, NC 27703.

Contact Person: Sally Eckert-Tilotta, Ph.D., Scientific Review Administrator, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233 MD EC–30, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: May 29, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13751 Filed 6–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 materials, 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 on Drug Abuse Special Emphasis Panel Training and Career Development Subcommittee.

Date: June 27, 2012.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eliane Lazar-Wesley, Ph.D., Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4245, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–451–4530, *el6r@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel NIDA R13 Conference Grant Review.

Date: June 28, 2012.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Minna Liang, Ph.D., Scientific Review Officer, Grants Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4226, MSC 9550, Bethesda, MD 20892–9550, 301–435–1432, *liangm@nida.nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Collaborative Clinical Trials in Drug Abuse (Collaborative RO1).

Date: June 29, 2012.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eliane Lazar-Wesley, Ph.D., Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4245, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–451–4530, *el6r@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 31, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13750 Filed 6–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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, Biomarkers: Bridging Pediatric and Adult Therapeutics.

Date: June 19, 2012.

Time: 1:00 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, (Virtual Meeting).

Contact Person: David L Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *williamsdl2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Program Project: Research Resources Site Visit.

Date: June 24–26, 2012.

Time: 7:00 p.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Boston Hotel Buckminster, 645 Beacon Street, Boston, MA 02215.

Contact Person: Lee Rosen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR12–017 Shared Instrumentation MRI.
Date: June 28, 2012.
Time: 1:00 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, (Virtual Meeting).
Contact Person: Malgorzata Klosek, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Biomedical Sensing, Measurement and Instrumentation.
Date: June 29, 2012.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR12–017: Shared Instrumentation: Genomics.
Date: June 29, 2012.
Time: 1:00 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, (Virtual Meeting).
Contact Person: Richard Panniers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *pannierr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR09–260: Optimization of Small Molecule Probes for the Nervous System.
Date: June 29, 2012.
Time: 3:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Washington DC, 1150 22nd Street NW., Washington, DC 20037.
Contact Person: Dan D. Gerendasy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7843, Bethesda, MD 20892, 301–408–9164, *gerendad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Surgical Sciences and Bioengineering.
Date: June 29, 2012.
Time: 12:30 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, (Virtual Meeting).
Contact Person: Behrouz Shabestari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, (301) 435–2409, *shabestb@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: May 31, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13743 Filed 6–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Child Health and Human Development Special Emphasis Panel; ZHD1 DSR–W 90.
Date: June 26, 2012.
Time: 12:00 p.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).
Contact Person: Carla T. Walls, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health And Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, 301–435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 31, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13740 Filed 6–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel HIV Lung Disease and CV Co-Morbidity.
Date: June 25, 2012.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Garden Inn, 7301 Waverly Street, Bethesda, MD 20814.
Contact Person: YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, *lismerin@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, T32 NHLBI Institutional Training.
Date: June 26, 2012.
Time: 12:00 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: Stephanie L. Constant, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892. 301–443–8784, *constantsl@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, K23, K24, K25 Research Career Development Awards.
Date: June 28–29, 2012.
Time: 8:30 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Stephanie J. Webb, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0291, *stephanie.webb@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 31, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13749 Filed 6–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Child Health and Human Development Special Emphasis Panel, Academic-Community Partnership Conference Series.

Date: June 28–29, 2012.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Michele C. Hindi-Alexander, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–8382, *hindialm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 31, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13747 Filed 6–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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; Overflow: Cancer Therapeutics.

Date: June 25, 2012.

Time: 7:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Careen K Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301)435–3504, *tothct@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Nutrition and Metabolic Processes Study Section.

Date: June 25, 2012.

Time: 8:00 a.m. to 5:00 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: Dianne Camp, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, Bethesda, MD 20892, 301–435–1044, *campdm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Muscle Physiology and Musculoskeletal Rehabilitation AREA Panel.

Date: June 25–26, 2012

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chronic Fatigue Syndrome.

Date: June 25–26, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lynn E Luethke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@csr.nih.gov.*

Name of Committee: Oncology 1–Basic Translational Integrated Review Group; Cancer Molecular Pathobiology Study Section.

Date: June 25–26, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Manzoor Zarger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Acute Neural Injury and Epilepsy Study Section.

Date: June 25, 2012.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Eye Disease and Brain Injury.

Date: June 25–26, 2012.

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: Kevin Walton, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *kevin.walton@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special: Pilot Clinical Studies in Nephrology and Urology.

Date: June 25–26, 2012.

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: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Neurodegeneration Study Section.

Date: June 25–26, 2012.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Oncological Sciences.

Date: June 25–28, 2012.

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.

Contact Person: Inese Z Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biological Chemistry and Macromolecular Biophysics A.

Date: June 25–26, 2012.

Time: 11:00 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: 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: Molecular Neuroscience.

Date: June 25, 2012.

Time: 1:00 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: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@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: May 29, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13736 Filed 6–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute On Aging; 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 on Aging Special Emphasis Panel; Healthy Aging and the Life Course.

Date: June 20, 2012.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeannette L. Johnson, Ph.D., Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *JOHNSONJ9@NIA.NIH.GOV.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel; Clinical Trials Support.

Date: June 22, 2012.

Time: 2:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca J. Ferrell, Ph.D., Scientific Review Officer, National Institute On Aging, Gateway Building Rm. 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *ferrellrj@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Stress and Aging.

Date: July 9, 2012.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alicja L. Markowska, Ph.D., DSC, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Genetics of Lifespan.

Date: July 11, 2012.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alicja L. Markowska, Ph.D., DSC, Scientific Review Branch, National Institute On Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

Name of Committee; National Institute on Aging Special Emphasis Panel; Health, Sex, and Aging.

Date: July 18, 2012.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alfonso R. Latoni, Ph.D., Deputy Chief and Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–402–7702, *Alfonso.Latoni@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; HIV and Aging.

Date: July 31, 2012.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Alicja L. Markowska, Ph.D., DSC, Scientific Review Branch, National Institute On Aging,

7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 29, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13732 Filed 6–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications/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 grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Emerging Technologies in Biospecimen Science.

Date: June 6, 2012.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 611, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Donald L Coppock, Ph.D., Scientific Review Officer, Scientific Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 7151, Bethesda, MD 20892, 301–451–9385, *donald.coppock@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Name of Committee: National Cancer Institute Special Emphasis Panel; the Chernobyl Tissue Bank Coordinating Center.

Date: June 13, 2012.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Blvd., Room 611, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Donald L Coppock, Ph.D., Scientific Review Officer, Scientific Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 7151, Bethesda, MD 20892, 301–451–9385, *donald.coppock@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Name of Committee: National Cancer Institute Special Emphasis Panel; Biopsy Instruments and Devices That Preserve Molecular Profiles and Alternative Biospecimen Stabilization and Storage.

Date: June 20, 2012.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 611, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Donald L Coppock, Ph.D., Scientific Review Officer, Scientific Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 7151, Bethesda, MD 20892, 301–451–9385, *donald.coppock@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Quantitative Imaging for Evaluation of Responses to Cancer Therapies.

Date: June 28, 2012.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 706, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eun Ah Cho, Ph.D., Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Suite 703, Room 7073, Bethesda, MD 20892, 301–435–1822 *choe@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 29, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13729 Filed 6–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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; Small Business: Cardiovascular and Surgical Devices.

Date: June 25, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

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; Vascular and Hematology.

Date: June 25–26, 2012.

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: Ai-Ping Zou, M.D., Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–435–1777, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: High Through Screening Assays For Probe Discovery.

Date: June 26–27, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ping Fan, M.D., Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–408–9971, *fanp@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Nursing and Related Clinical Sciences Study Section.

Date: June 26–27, 2012.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road NW., Washington, DC 20008.

Contact Person: Priscah Mujuru, RN, DRPH, COHNS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301–594–6594, *mujurup@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Parenting, Drug Use, Food Insecurity.

Date: June 26, 2012.

Time: 1:00 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: Anna L Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioengineering and Modeling.

Date: June 26, 2012.

Time: 1:00 p.m. to 2:30 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: Joseph Thomas Peterson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9694, *petersonjt@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: May 29, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13727 Filed 6–5–12; 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 Prokaryotic Cell and Molecular Biology Study Section, June 20, 2012, 8:30 a.m. to June 21, 2012, 5:00 p.m., Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA, 94102 which was published in the **Federal Register** on May 24, 2012, 77 FR 31030.

The meeting will be held June 20, 2012, from 8:30 a.m. to 5:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 29, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13725 Filed 6–5–12; 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 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 General Medical Sciences Special Emphasis Panel; Trauma, Burn and Peri-Operative Injury Research Centers.

Date: June 26, 2012.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An18, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An18, Bethesda, MD 20892, 301–594–2769, *pikbr@mail.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: May 29, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13723 Filed 6–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel; RFA–AA–12–007—Translational Research in Alcoholic Hepatitis (U01).

Date: July 17–18, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 5635 Fishers Lane—Terrace Level Conference Room, Rockville, MD 20852.

Contact Person: Philippe Marmillot, Ph.D. National Institutes of Health National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Rm 2017, Bethesda, MD 20892, 301–443–2861 *marmillotp@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: May 29, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13722 Filed 6–5–12; 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 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 General Medical Sciences Special Emphasis Panel; Review of U01 Grant Applications.

Date: June 25, 2012.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An18B, Bethesda, MD 20892, (Telephone Conference Call).

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 3AN18B, 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: May 29, 2012.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13720 Filed 6–5–12; 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 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 General Medical Sciences Initial Review Group, Minority Programs Review Subcommittee A.

Date: June 26, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Chicago Downtown/River North, 30 East Hubbard Street, Chicago, IL 60611.

Contact Person: Mona R. Trempe, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301–594–3998, *trempemo@mail.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: May 31, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13755 Filed 6–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request

ACTION: 30–Day Notice of Information Collection Under Review; No Form, Emergency Federal Law Enforcement Assistance (OMB Control No. 1653–0019).

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), is submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 21, 2011, Vol. 76 No. 245, pg 79204, allowing for a 60-day comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for 30 days until July 6, 2012.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of an existing information collection.

(2) *Title of the Form/Collection:* Emergency Federal Law Enforcement Assistance.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security*

sponsoring the collection: No Form, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Section 404(b) of the Immigration and Nationality Act (8 U.S.C. 1101 note) provides for the reimbursement to States and localities for assistance provided in meeting an immigration emergency. This collection of information allows for State or local governments to request reimbursement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 30 minutes (.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Gary Triplett, Program Manager, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Room 3138, Washington, DC 20024; (202) 732–4366.

Dated: May 25, 2012.

Rich Mattison,

Assistant Director, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012–13667 Filed 6–5–12; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

21st Century Conservation Service Corps Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the Department of the Interior, announce a public meeting of the 21st Century Conservation Service Corps Advisory Committee (Committee).

DATES: *Meeting:* Tuesday, June 26, 2012 from 8:30 a.m. to 6:00 p.m., and Wednesday, June 27, 2012, from 8:30 a.m. to 6:00 p.m., (Eastern Time). *Meeting Participation:* Notify Lisa Young (see **FOR FURTHER INFORMATION CONTACT**) by close of business Friday, June 22, 2012, if requesting to make an oral presentation (limited to 2 minutes per speaker). The meeting will accommodate no more than a total of 45 minutes for all public speakers.

ADDRESSES: The meeting will be held at the U.S. Department of the Interior, South Interior Building Auditorium, 1951 Constitution Avenue NW., Washington, DC. For specific directions, contact Lisa Young (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Lisa Young, Designated Federal Officer (DFO), 1849 C Street NW., MS 3559, Washington, DC 20240; telephone (202) 208–7586; fax (202) 208–5873; or email *Lisa_Young@ios.doi.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 2, we announce that the 21st Century Conservation Service Corps Advisory Committee will hold a meeting.

Background

Chartered in November 2011, the Committee is a discretionary advisory committee established under the authority of the Secretary of the Interior. The purpose of the Committee is to provide the Secretary of Interior with recommendations on: (1) Developing a framework for the 21CSC, including program components, structure, and implementation, as well as accountability and performance evaluation criteria to measure success; (2) the development of certification criteria for 21CSC providers and individual certification of 21CSC members; (3) strategies to overcome existing barriers to successful 21CSC program implementation; (4) identifying partnership opportunities with corporations, private businesses or entities, foundations, and non-profit groups, as well as state, local, and tribal governments, to expand support for conservation corps programs, career training and youth employment opportunities; (5) and developing pathways for 21CSC participants for future conservation engagement and natural resource careers. Background information on the Committee is available at *www.doi.gov/21csc*.

Meeting Agenda

The Committee will convene to finalize draft recommendations that will be included in the initial report from the Committee; and other Committee business. The public will be able to make comment on Tuesday, June 26, 2012 starting at 4:30 p.m. The final agenda will be posted on *www.doi.gov/21csc* prior to the meeting.

Public Input

Interested members of the public may present, either orally or through written comments, information for the Committee to consider during the public meeting. Speakers who wish to expand upon their oral statements, or those who had wished to speak, but could not be accommodated during the public comment period, are encouraged to submit their comments in written form to the Committee after the meeting.

Individuals or groups requesting to make comment at the public Committee meeting will be limited to 2 minutes per speaker, with no more than a total of 45 minutes for all speakers. Interested parties should contact Lisa Young, DFO, in writing (preferably via email), by Friday, April 27, 2012. (*See* **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this meeting.

In order to attend this meeting, you must register by close of business Friday, June 22, 2012. The meeting location is open to the public. Space is limited, so all interested in attending should pre-register. Please submit your name, time of arrival, email address and phone number to Lisa Young via email at *Lisa_Young@ios.doi.gov* or by phone at (202) 208–7586.

Dated: May 30, 2012.

Lisa Young,

Designated Federal Officer.

[FR Doc. 2012–13628 Filed 6–5–12; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2012–0010; OMB Control Number 1014–0007]

Information Collection Activities: Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line; Proposed Collection; Comment Request

ACTION: 60-day Notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), BSEE is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns a renewal to the paperwork requirements in the regulations under Part 254, ''Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.''

DATE: You must submit comments by August 6, 2012.

ADDRESSES: You may submit comments by either of the following methods listed below.

- *Electronically:* go to *http://www.regulations.gov*. In the entry titled ''Enter Keyword or ID,'' enter BSEE–2012–0010 then click search. Follow the

instructions to submit public comments and view all related materials. We will post all comments.

• Email *nicole.mason@bsee.gov*. Mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations Development Branch; Attention: Nicole Mason; 381 Elden Street, HE–3313; Herndon, Virginia 20170–4817. Please reference ICR 1014–0007 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Nicole Mason, Regulations Development Branch at (703) 787–1605 to request additional information about this ICR.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 254, Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.

OMB Control Number: 1014–0007.

Abstract: The Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990 (OPA), requires that a spill-response plan be submitted for offshore facilities prior to February 18, 1993. The OPA specifies that after that date, an offshore facility may not handle, store, or transport oil unless a plan has been submitted. The authority and responsibility were delegated to BSEE. Regulations at 30 CFR 254 establish requirements for spill-response plans for oil-handling facilities seaward of the coast line, including associated pipelines.

BSEE uses the information collected under 30 CFR 254 to determine compliance with OPA by lessees/operators. Specifically, BSEE needs the information to:

• Determine effectiveness of the spill-response capability of lessees/operators;

• Review plans prepared under the regulations of a State and submitted to BSEE to satisfy our requirements that they meet minimum requirements of OPA;

• Verify that personnel involved in oil-spill response are properly trained and familiar with the requirements of the spill-response plans and to witness spill-response exercises;

• Assess the sufficiency and availability of contractor equipment and materials;

• Verify that sufficient quantities of equipment are available and in working order;

• Oversee spill-response efforts and maintain official records of pollution events; and

• Assess the efforts of lessees/operators to prevent oil spills or prevent substantial threats of such discharges.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection.* No items of a sensitive nature are collected. Responses are mandatory.

Frequency: Varies, but mostly on occasion.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur lessees and/or operators of facilities located in both State and Federal waters seaward of the coast line and oil-spill response companies.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 35,070 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 254 and related NTLs	Reporting and/or requirement	Hour burden
1(a) thru (d); 2(a); 3 thru 5; 7; 20 thru 29; 44(b).	Submit spill response plan for OCS facilities and related documents	120
1(e)	Request BSEE jurisdiction over facility landward of coast line (no recent request received).	0.5
2(b)	Submit certification of capability to respond to worst case discharge or substantial threat of such.	15
2(c); 30	Submit revised spill response plan for OCS facilities at least every 2 years; notify BSEE of no change.	36 (revision) 1 (no change)
2(c)	Request deadline extension for submission of revised plan	4
8	Appeal BSEE orders or decisions (exempt under 5 CFR 1320.4)	0
40	Make records of all OSRO-provided services, equipment, personnel available to BSEE.	5
41	Conduct annual training; retain training records for 2 years	25
42(a) thru (e)	Conduct triennial response plan exercise; retain exercise records for 3 years	110
42(f)	Inform BSEE of the date of any exercise (triennial)	1
43	Inspect response equipment monthly; retain inspection & maintenance records for 2 years.	3.5
46(a)	Notify NRC of all oil spills from owner/operator facility (burden would be included in NRC inventory).	0
46(b) NTL	Notify BSEE of oil spills of one barrel or more from owner/operator facility; submit follow-up report.	2
46(c) NTL	Notify BSEE & responsible party of oil spills from operations at another facility	2
50; 51	Submit response plan for facility in State waters by modifying existing OCS plan	42
50; 52	Submit response plan for facility in State waters following format for OCS plan	100
50; 53	Submit response plan for facility in State waters developed under State requirements.	89
54	Submit description of oil-spill prevention procedures	5

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no non-hour paperwork cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A)

requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary and useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other than hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

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

Acting BSEE Information Collection Clearance Officer: Cheryl Blundon (703) 787–1607.

Dated: May 30, 2012.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2012–13721 Filed 6–5–12; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID No. BSEE–2011–0006; OMB Control Number 1014–NEW]

Information Collection Activities: Subpart A, General; Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Bureau of Safety and Environmental Enforcement (BSEE), Interior.

ACTION: 30-day Notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) for a new approval of the paperwork requirements under 30 CFR part 250, subpart A, General. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by July 6, 2012.

ADDRESSES: Submit comments by either fax (202) 395–5806 or email (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014–NEW). Please provide a copy of your comments to BSEE by any of the means below.

- *Electronically:* go to *http://www.regulations.gov.* In the entry titled, ''Enter Keyword or ID,'' enter BSEE–2011–0006 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email nicole.mason@bsee.gov; fax (703) 787–1546, or mail or hand-carry comments to: Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations Development Branch; Attention: Nicole Mason; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference 1014–NEW in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Nicole Mason, Regulations Development Branch, (703) 787–1605, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart A, General.

Form(s): BSEE–0132, BSEE–0143, and BSEE–1832.

OMB Control Number: 1014–NEW.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of the Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1332(6) states that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.''

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. This authority and responsibility are among those delegated to BSEE. A request for approval required in Subpart A is subject to cost recovery, and BSEE regulations specify a cost recovery fee for this request.

Regulations implementing these responsibilities are delegated to BSEE. Therefore, this ICR addresses the regulations under 30 CFR part 250, subpart A. This request also covers the related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify and provide additional guidance on some aspects of our regulations.

To accommodate the split of regulations from the Bureau of Ocean Energy Management, Regulation and Enforcement to BSEE (76 FR 64432), BSEE is requesting OMB approval of the

already approved burden hours that were previously under 1010–0114 to reflect BSEE's new 1014 numbering system.

Responses are mandatory or are required to obtain or retain benefits. No questions of a sensitive nature are asked. Requests for BSEE approval may contain proprietary information related to performance standards or alternative approaches to conducting operations different from those approved and specified in BSEE regulations. We will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552), under its implementing regulations (43 CFR 2); as well as 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection,* and 30 CFR 252, *OCS Oil and Gas Information Program.*

BSEE uses the information collected under the subpart A regulations to ensure that operations on the OCS are carried out in a safe and pollution-free manner, do not interfere with the rights of other users on the OCS, and balance the protection and development of OCS resources. Specifically, we use the information collected to:

- Review records of formal crane operator and rigger training, crane operator qualifications, crane inspections, testing, and maintenance to ensure that lessees/operators perform operations in a safe and workmanlike manner and that equipment is maintained in a safe condition. BSEE also uses the information to make certain that all new and existing cranes installed on OCS fixed platforms must be equipped with anti-two block safety devices, and to assure that uniform methods are employed by lessees for load testing of cranes.
- Review welding plans, procedures, and records to ensure that welding is conducted in a safe and workmanlike manner by trained and experienced personnel.
- Provide lessees/operators greater flexibility to comply with regulatory requirements through approval of alternative equipment or procedures and departures to regulations if they demonstrate equal or better compliance with the appropriate performance standards.
- Ensure that injection of gas promotes conservation of natural resources, prevents waste, and that subsurface storage of natural gas does not unduly interfere with development and production operations under existing leases.
- Record the agent and local agent empowered to receive notices and comply with regulatory orders issued.
- Provide for orderly development of leases through the use of information to determine the appropriateness of lessee/operator requests for suspension of operations, including production.
- Improve safety and environmental protection on the OCS through collection and analysis of accident reports to ascertain the cause of the accidents and to determine ways to prevent recurrences.
- Ascertain when the lease ceases production or when the last well ceases production in order to determine the 180th day after the date of completion of the last production. BSEE will use this information to efficiently maintain the lessee/operator lease status.
- Be informed when there could be a major disruption in the availability and supply of natural gas and oil due to natural occurrences/hurricanes, to advise the U.S. Coast Guard (USCG) in case of the need to rescue offshore workers in distress, to monitor damage to offshore platforms and drilling rigs, and to advise the news media and interested public entities when production is shut-in and when resumed. The Gulf of Mexico OCS Region (GOMR) uses a reporting form, BSEE–0132, Evacuation Statistics, for respondents to report evacuation statistics when necessary. This form requires the respondent to submit general information such as company name, contact, date, time, telephone number, as well as number of platforms and drilling rigs evacuated and not evacuated. We also require production shut-in statistics for oil (BOPD) and gas (MMSCFD).
- Form BSEE–0143, Facility/Equipment Damage Report, assists lessees, lease operators, and pipeline right-of-way holders when reporting damage by a hurricane, earthquake, or other natural phenomenon. They are required to submit an initial damage report to the Regional Supervisor within 48 hours after completing the initial evaluation of the damage and then, subsequent reports, monthly and immediately, whenever information changes until the damaged structure or equipment is returned to service.
- Allow lessees/operators who exhibit unacceptable performance an incremental approach to improving their overall performance prior to a final decision to disqualify a lessee/operator or to pursue debarment proceedings through the execution of a performance improvement plan (PIP). The subpart A regulations do not address the actual process that we will follow in pursuing the disqualification of operators under §§ 250.135 and 250.136. However, our internal enforcement procedures include allowing such operators to demonstrate a commitment to acceptable performance by the submission of a PIP.
- Determine that respondents have corrected all Incidents of Non-Compliance (INC)(s), Form BSEE–1832, identified during inspections. BSEE issues this form to the operator and the operator then corrects the INC(s), signs and returns the form to the BSEE Regional Supervisor within 14 days of issuance.

Frequency: On occasion; monthly, daily, or varies by section.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur OCS lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 50,859 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Non-hour cost burdens		
		Hour burden	Average Number of annual responses	Annual burden hours
Authority and Definition of Terms				
104; Form BSEE–1832	Appeal orders or decisions; appeal INCs	Exempt under 5 CFR 1320.4(a)(2), (c).		0

Citation 30 CFR 250 subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Non-hour cost burdens		
		Hour burden	Average Number of annual responses	Annual burden hours
Performance Standards				
109(a); 110	Submit welding, burning, and hot tapping plans	2	54 plans	108
118; 121; 124	Apply for injection of gas; use BSEE-approved formula to determine original gas from injected/stored.	10	4 applications	40
Subtotal			58 responses	148 hours
Cost Recovery Fees				
125; 126	Cost Recovery Fees; confirmation receipt etc; verbal approvals pertaining to fees.	Cost Recovery Fees and related items are covered individually throughout this subpart		0
Forms				
130–133	Submit "green" response copy of Form BSEE–1832 indicating date violations (INCs) corrected.	2	884 forms	1,768
145	Submit designation of agent and local agent for Regional Supervisor' and/or Regional Director's approval.	1	8 submittals	8
186(a)(3); NTL	Apply to receive administrative entitlements to eWell (electronic/digital form submittals).	Not considered information collection under 5 CFR 1320.3(h)(1).		0
192	Daily report of evacuation statistics for natural occurrence/hurricane (GOMR Form BSEE–0132 (form takes 1 hour)) when circumstances warrant; inform BSEE when you resume production.	1.5	1,950 reports or forms	2,925
192(b)	Use Form BSEE–0143 to submit an initial damage report to the Regional Supervisor.	3	133 forms	399
192(b)	Use Form BSEE–0143 to submit subsequent damage reports on a monthly basis until damaged structure or equipment is returned to service; immediately when information changes; date item returned to service must be in final report.	1	133 forms	133
Subtotal			3,108 responses	5,233 hours
Inspection of Operations				
130–133	Request reconsideration from issuance of an INC	2	169 requests	338
	Request waiver of 14-day response time	1	260 waivers	260
	Notify BSEE before returning to operations if shut-in	1	663 notices	663
133	Request reimbursement for food, quarters, and transportation provided to BSEE representatives (no requests received in many years; minimal burden).	1.5	6 requests	9
Subtotal			1,098 responses	1,270 hours
Disqualification				
135 BOEMRE internal process.	Submit PIP under BSEE implementing procedures for enforcement actions.	40	3 plans	120
Subtotal			3 responses	120 hours
Special Types of Approval				
140	Request various oral approvals not specifically covered elsewhere in regulatory requirements.	1	260 requests	260
140(c)	Submit documentation when stopping approved flaring with required information.	Burden covered under 30 CFR 250.1163(e) (1014–0019).		0

Citation 30 CFR 250 subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Non-hour cost burdens		
		Hour burden	Average Number of annual responses	Annual burden hours
141; 198	Request approval to use new or alternative procedures, along with supporting documentation if applicable, including BAST not specifically covered elsewhere in regulatory requirements.	20	490 requests	9,800
142; 198	Request approval of departure from operating requirements not specifically covered elsewhere in regulatory requirements, along with supporting documentation if applicable.	2.5	952 requests	2,380
Subtotal			1,702 responses	12,440 hours
Naming and Identifying Facilities and Wells (Does Not Include MODUs)				
150; 151; 152; 154(a)	Name and identify facilities, artificial islands, MODUs, helo landing facilities etc., with signs.	3	585 new/replacement signs.	1,755
150; 154(b)	Name and identify wells with signs	2	188 new wells	376
Subtotal			773 responses	2,131 hours
Suspensions				
168; 170; 171; 172; 174; 175; 177; 180(b), (d).	Request suspension of operation or production; submit schedule of work leading to commencement; supporting information; include pay.gov confirmation receipt.	10	1,661 requests	16,610
		$1,968 fee × 1,661 = $3,268,848 *		
	Submit progress reports on SOO or SOP as condition of approval.	3	703 reports	2,109
172(b); 177(a)	Conduct site-specific study; submit results; request payment by another party. No instances requiring this study in several years—could be necessary if a situation occurred such as severe damage to a platform or structure caused by a hurricane or a vessel collision.	100	1 study/report	100
177(b), (c), (d)	Various references to submitting new, revised, or modified exploration plan, development/production plan, or development operations coordination document.	Burden covered under BOEM's 30 CFR 550, subpart B, 1010–0151.		0
Subtotal			2,365 responses	18,819 hours
			$3,268,848 non-hour cost burden	
Primary Lease Requirements, Lease Term Extensions, and Lease Cancellations				
180(a), (h), (i),	Notify and submit report on various leaseholding operations and lease production activities.	2	53 reports or notices	106
180(f), (g), (h), (i)	Submit various operations and production data to demonstrate production in paying quantities to maintain lease beyond primary term; notify BSEE when you begin conducting operations beyond its primary term.	2		808
		0.5	404 submissions/notifications.	202
180(e), (j)	Request more than 180 days to resume operations; notify BSEE if operations do not begin within 180 days.	4		352
		0.5	88 requests/notifications	44
Subtotal			545 responses	1,512 hours

Citation 30 CFR 250 subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Non-hour cost burdens		
		Hour burden	Average Number of annual responses	Annual burden hours
Information and Reporting Requirements				
186; NTL	Submit information and reports, as BSEE requires	10	200	2,000
187; 188(a–b); 189; 190(a–c); 192; NTL.	Report to the District Manager immediately via oral communication and written follow-up within 15 calendar days, incidents pertaining to: fatalities; injuries; LoWC; fires; explosions; all collisions resulting in property or equipment damage >$25K; structural damage to an OCS facility; cranes; incidents that damage or disable safety systems or equipment (including firefighting systems); include hurricane reports such as platform/rig evacuation, rig damage, P/L damage, and platform damage; operations personnel to muster for evacuation not related to weather or drills; any additional information required. If requested, submit copy marked as public information.	Oral 0.5	898	449
		Written 2.5	950	2,375
187(d)	Report all spills of oil or other liquid pollutants	Burden covered under 30 CFR 254 (1014–0007).		0
188(a)(5)	Report to District Manager hydrogen sulfide (H2S) gas releases immediately by oral communication.	Burden covered under 30 CFR 250, subpart D, 1014–0018.		0
191	Submit written statement/Request compensation mileage and services for testimony re: accident investigation.	Exempt under 5 CFR 1320.4(a)(2), (c).		0
193	Report apparent violations or non-compliance	1.5	6 reports	9
194(c)	Report archaeological discoveries	2	6 reports	12
195	Notify District Manager within 5 workdays of putting well in production status (usually oral). Follow-up with either fax/email within same 5 day period (burden includes oral and written).	1	188 notifications	188
196	Submit data/information for post-lease G&G activity and request reimbursement.	Burden covered under BOEM's 30 CFR 551 (1010–0048).		0
197(c)	Submit confidentiality agreement	1	1	1
101–199	General departure or alternative compliance requests not specifically covered elsewhere in Subpart A.	2	21 requests	42
Subtotal			2,270 responses	5,076 hours
Recordkeeping				
108(e)	Retain records of design and construction for life of crane, including installation records for any anti-two block safety devices; all inspection, testing, and maintenance for at least 4 years; crane operator and all rigger personnel qualifications for at least 4 years.	1.5	2,151 record-keepers	3,227 (rounded)
109(b); 113(c)	Retain welding plan and drawings of safe-welding areas at site; designated person advises in writing that it is safe to weld.	1	637 operations	637
132(b)(3)	During inspections make records available as requested by inspectors.	2	123 requests	246
Subtotal			2,911 responses	4,110 hours
Total Burden			14,833 Responses	50,859 Hours

Citation 30 CFR 250 subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Non-hour cost burdens		
		Hour burden	Average Number of annual responses	Annual burden hours
	.....	.....	$3,268,848 Non-Hour Cost Burdens	

* Cost recovery monies collected are based on actual submittals through Pay.gov for FY 2011.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified one non-hour cost burden. Section 250.171 requests a cost recovery fee for a Suspension of Operations or a Production Request (SOO/SOP). We have not identified any other non-hour cost burdens associated with this collection of information. We estimate a total reporting non-hour cost burden of $3,268,848.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501 *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on February 3, 2012, we published a **Federal Register** notice (77 FR 5561) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, the § 250.199 regulation informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

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

Acting BSEE Information Collection Clearance Officer: Cheryl Blundon (703) 787–1607.

Dated: May 22, 2012.

Robert W. Middleton,

Acting Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2012–13724 Filed 6–5–12; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

[Docket No. 2899]

Certain Integrated Circuit Packages Provided With Multiple Heat-Conducting Paths and Products Containing Same; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Integrated Circuit Packages Provided With Multiple Heat-Conducting Paths and Products Containing Same,* DN 2899; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Industrial Technology Research Institute and ITRI International on May 31, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated circuit packages provided with multiple heat-conducting paths and products containing same. The complaint names as respondents LG Electronics, Inc. of Korea; and LG Electronics, U.S.A., Inc. of NJ.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the

subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2899'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: June 1, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–13675 Filed 6–5–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–845]

Certain Products Containing Interactive Program Guide and Parental Control Technology; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 1, 2012, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Rovi Corporation of Santa Clara, California; Rovi Guides, Inc. of Santa Clara, California; Rovi Technologies Corporation of Santa Clara, California; Starsight Telecast, Inc. of Santa Clara; United Video Properties, Inc. of Santa Clara, California; and Index Systems, Inc. of the British Virgin Islands. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain products containing interactive program guide and parental control technology by reason of infringement of certain claims of U.S. Patent No. 6,701,523 (''the '523 patent''); U.S. Patent No. 6,898,762 (''the '762 patent''); U.S. Patent No. 7,065,709 (''the '709 patent''); U.S. Patent No. 7,103,906 (''the '906 patent''); U.S. Patent No. 7,225,455 (''the '455 patent''); U.S. Patent No. 7,493,643 (''the '643 patent''); and U.S. Patent No. 8,112,776 (''the '776 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2012).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 25, 2012, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products containing interactive program guide and parental control technology that infringe one or more of claim 1–4, 10, and 11 of the '523 patent; claims 1, 6, 7, 12, 13, and 17 of the '762 patent; claims 13–20 of the '709 patent; claims 1–3, 10, and 11 of the '906 patent; 1–36 of the '455 patent; claims 1–4, 7–10, and 13–16 of the '643 patent; and claims 1, 2, 4, 6, 14, 15, 17, and 19 of the '776 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Rovi Corporation, 2830 De La Cruz Boulevard, Santa Clara, CA 95050;

Rovi Guides, Inc., 2830 De La Cruz Boulevard, Santa Clara, CA 95050;

Rovi Technologies Corporation, 2830 De La Cruz Boulevard, Santa Clara, CA 95050;

Starsight Telecast, Inc., 2830 De La Cruz Boulevard, Santa Clara, CA 95050;

United Video Properties, Inc., 2830 De La Cruz Boulevard, Santa Clara, CA 95050;

Index Systems, Inc., Craigmuir Chambers, P.O. Box 71, Road Town, Tortola, British Virgin Islands, VG.

(b) The respondents are the following entities alleged to be in violation of

section 337, and are the parties upon which the complaint is to be served:

LG Electronics, Inc., LG Twin Towers, 20 Yeouido-dong, Youngdeungpo-gu, Seoul 150–721, Republic of Korea;
LG Electronics U.S.A., Inc., 1000 Sylvan Avenue, Englewood Cliffs, NJ 07632;
Mitsubishi Electric Corp., Tokyo Building, 2–7–3, Marunouchi, Chiyoda-ku, Tokyo 100–8310, Japan;
Mitsubishi Electric US Holdings, Inc., 5665 Plaza Drive, Cypress, CA 90630;
Mitsubishi Electric and Electronics USA, Inc., 500 Corporate Woods Parkway, Vernon Hills, IL 60061;
Mitsubishi Electric Visual Solutions America, Inc., 9351 Jeronimo Road, Irvine, CA 92618;
Mitsubishi Digital Electronics America, Inc., 9351 Jeronimo Road, Irvine, CA 92618;
Netflix Inc., 100 Winchester Circle, Los Gatos, CA 95032;
Roku, Inc., 12980 Saratoga Avenue, Saratoga, CA 95070;
Vizio, Inc., 39 Tesla, Irvine, CA 92618.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

(4) The Office of Unfair Imports Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 31, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–13632 Filed 6–5–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–846]

Certain CMOS Image Sensors and Products Containing Same; Institution of Investigation Pursuant to 19 U.S.C. § 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 1, 2012, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of California Institute of Technology of Pasadena, California. Letters supplementing the complaint were filed on May 21, 2012, and May 22, 2012. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain CMOS image sensors and products containing same by reason of infringement of certain claims of U.S. Patent No. 5,841,126 (''the '126 patent''); U.S. Patent No. 5,990,506 (''the '506 patent''); and U.S. Patent No. 6,606,122 (''the '122 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.10 (2012).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 25, 2012, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain CMOS image sensors and products containing same that infringe one or more of claims 1 and 2 of the '126 patent; claims 15 and 16 of the '506 patent; and claim 6 of the '122 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors, 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

California Institute of Technology, 1200 East California Boulevard, Pasadena, CA 91125;

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

STMicroelectronics NV, 39 Chemin du Champ des Filles, C. P. 21, CH 1228 Plan-Les-Ouates, Geneva, Switzerland;
STMicroelectronics Inc., 750 Canyon Drive, Coppell, TX 75019;

Nokia Corp., Keilalahdentie 2–4, FI–02150 Espoo, Finland;

Nokia, Inc., 102 Corporate Park Drive, White Plains, NY 10604;

Research In Motion Ltd., 295 Phillip Street, Waterloo, Ontario, Canada N2L 3W8;

Research In Motion Corp., 122 W. John Carpenter Parkway, Suite 430, Irving, TX 75038;

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 31, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–13634 Filed 6–5–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on May 31, 2012, a proposed Consent Decree (the Consent Decree) in *United States of America* v. *Minnie Moore Resources, Inc. et al,* Civil Action No. 2:11–cv–00127–BLW, was lodged with the United States District Court for the District of Idaho.

In this action the United States sought reimbursement under Section 107 of CERCLA for past costs incurred at the Minnie Moore Mine Superfund Site (the Site), located in Blaine County, Idaho. The United States also sought a declaratory judgment under Section 113 of CERCLA for future costs to be incurred at the Site. Under the proposed Consent Decree, which is based on ability to pay, Minnie Moore Resources, Inc. has agreed to secure an environmental covenant to protect the remediation of the Site. The Consent Decree includes a covenant not to sue Minnie Moore Resources, Inc. pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 & 9607.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *Minnie Moore Resources, Inc.,* DJ. Ref. 90–11–3–09515.

During the comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.justice.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.75 (25 cents per page reproduction cost) payable to the United States Treasury or, if by email or fax, please forward a check in that amount to the Consent Decree Library at the address given above.

Maureen Katz,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–13633 Filed 6–5–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1590]

Draft Offender Tracking System Standard

AGENCY: National Institute of Justice.

ACTION: Notice of Draft Offender Tracking System Standard, Selection and Application Guide, and Certification Program Requirements.

SUMMARY: In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice will make available to the general public three draft documents: (1) A draft standard entitled, ''Offender Tracking System Standard'' (2) a draft companion document entitled, ''Offender Tracking System Certification Program Requirements'' and (3) a Selection and Application Guide.

The opportunity to provide comments on these three documents is open to industry technical representatives, criminal justice agencies and organizations, research, development and scientific communities, and all other stakeholders and interested parties. Those individuals wishing to obtain and provide comments on the draft documents under consideration are directed to the following Web site: *http://www.justnet.org.*

DATES: Comments must be received on or before July 23, 2012.

FOR FURTHER INFORMATION CONTACT: Jack Harne, by telephone at 202–616–2911 or Lisa Bache by telephone at 202–514–9337 [**Note:** these are not toll-free telephone numbers], or by email at *jack.harne@usdoj.gov* or by email at *lisa.bache@usdoj.gov.*

John H. Laub,

Director, National Institute of Justice.

[FR Doc. 2012–13681 Filed 6–5–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Wage and Hour Division (WHD) sponsored information collection request (ICR) revision titled, ''Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before July 6, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–WHD, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Migrant and Seasonal Agricultural Worker Protection Act provides that no individual may perform farm labor contracting activities without a certificate of registration. Form WH–530 is the application form that provides the DOL with the information necessary to issue certificates specifying the farm labor contracting activities authorized. In addition, certain vehicle and safety standards are required of farm labor contractor applicants and such data is collected via forms WH–514, WH–514a, and WH–515. The DOL currently obtains OMB approval to conduct those transportation related information collections under Control Number 1235–0017. This ICR proposes to combine collections under Control Numbers 1235–0016 and 1235–0017, with 1235–0016 being the survivor. The DOL will request to discontinue Control Number 1235–0017 upon OMB approval of the merger. The WHD also proposes to add and revise the forms to obtain some additional information.

These information collections are subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1235–0016. The current OMB approval for Control Number 1235–0016 is scheduled to expire on June 30, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. Control Number 1235–0017 expires September 30, 2013. New information collection requirements will only take effect on OMB approval. For additional information, see the related notice published in the **Federal Register** on September 29, 2012 (77 FR 12330).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1235–0016. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–WHD.

Title of Collection: Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration.

OMB Control Number: 1235–0016, as merged with 1235–0017.

Affected Public: Private Sector—businesses or other for-profits, farms, and not-for-profit institutions.

Total Estimated Number of Respondents: 15,026.

Total Estimated Number of Responses: 21,139.

Total Estimated Annual Burden Hours: 8,761.

Total Estimated Annual Other Costs Burden: $356,251.

Dated: May 31, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–13654 Filed 6–5–12; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,525]

Long Elevator & Machine Company, Inc., Including Workers Whose Unemployment Insurance (UI) Wages Were Reported Through Kone, Inc., Riverton, IL; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated April 18, 2012, a worker requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Long Elevator & Machine Company, Inc., including workers whose unemployment insurance (UI) wages were reported through KONE Inc., Riverton, Illinois (subject firm). The determination was issued on March 22, 2012, and the Notice of determination was published in the **Federal Register** on April 10, 2012 (77 FR 21590). The subject firm is engaged in activity related to the

production of elevator components and to the supply of elevator repair services (all related to the modernization and repair of elevator).

The initial investigation resulted in a negative determination based on the findings that there was no shift in production of elevator components (or a like or directly competitive article), that neither the subject firm nor its declining customer increased imports, and that the subject firm was neither a supplier nor downstream producer to a TAA-certified firm.

The request for reconsideration stated that the subject firm made not only elevator component parts and repaired elevators but also made complete elevators, and that the workers who produced the elevators are separately identifiable from the workers who supplied elevator repair services.

The Department has carefully reviewed the request for reconsideration and the existing record, and will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 21st day of May, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–13590 Filed 6–5–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,264]

Phillips-Van Heusen Corporation, Izod Women's Wholesale Division, New York, NY; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated May 14, 2012, a worker requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Phillips-Van Heusen Corporation, Izod Women's Wholesale Division, New York, New York (subject firm). The determination was issued on April 6, 2012. The Department's Notice of Determination was published in the **Federal Register** on April 19, 2012 (77 FR 23511).

The initial investigation resulted in a negative determination based on the findings that with respect to Section 222(a)(2)(A)(ii) of the Act, imports of services like or directly competitive with the design, sourcing, and sales services supplied by the subject firm has not increased.

With respect to Section 222(a)(2)(B) of the Act, the investigation revealed that the subject firm did not shift the supply of design, sourcing, and sales services to a foreign country (or like or directly competitive services) or acquire the supply of design, sourcing, and sales services (or like or directly competitive services) from a foreign country.

With respect to Section 222(b)(2) of the Act, the investigation revealed that Phillips-Van Heusen Corporation is not a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a).

In the request for reconsideration, the petitioner supplied new information regarding the worker group as well as a possible shift in services to a foreign country.

The Department has carefully reviewed the request for reconsideration and the existing record, and will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 21st day of May, 2012

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–13592 Filed 6–5–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,287]

American Woodmark Corporation, Moorefield, WV; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated March 26, 2012, a representative of the United Brotherhood of Carpenters and Joiners of America, Local Union 2101, requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance applicable to workers of the subject firm. The determination was issued on March 9, 2012 and the Department's Notice of Determination was published in the **Federal Register** on March 26, 2012 (77 FR 17528). The workers produce kitchen and bathroom cabinetry components.

The initial investigation resulted in a negative determination based on the findings that there was no shift in the production of articles like or directly competitive with the kitchen and bathroom cabinetry components produced by the subject firm nor were there increased subject firm or customer imports of articles like or directly competitive with those produced by the subject firm.

The Department has carefully reviewed the request for reconsideration and the existing record, and will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 21st day of May, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–13589 Filed 6–5–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,101]

Cequent Performance Products, Inc. a Subsidiary of Trimas Corporation Including Workers Whose Wages Were Reported Under Tekonsha Towing Systems, Inc., Cequent Electrical Products, Inc., Cequent Towing Products, Inc., and Towing Products, Inc. Including On-Site Leased Workers From Manpower Tekonsha, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 9, 2011, applicable to workers of Cequent Performance Product, a subsidiary of TriMas Corporation, Tekonsha, Michigan. The Department's Notice of determination was published in the **Federal Register** on December 21, 2011 (76 FR 79223).

At the request of the State Workforce Office, the Department reviewed the certification for workers of the subject firm. The workers were engaged in activities related to the assembly of electronic brake controllers for Ford Motor Company.

New information shows that some workers' wages were reported under Tekonsha Towing Systems, Inc., Cequent Electrical Products, Inc., Cequent Towing Products, Inc., and Towing Products, Inc., as well as Cequent Performance Products, Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in production to Reynosa, Mexico of electronic brake controllers for Ford Motor Company.

The amended notice applicable to TA–W–81,101 is hereby issued as follows:

All workers of Cequent Performance Product, a subsidiary of TriMas Corporation, including workers whose wages were reported under Tekonsha Towing Systems, Inc., Cequent Electrical Products, Inc., Cequent Towing Products, Inc., and Towing Products, Inc. and including on-site leased workers from Manpower, Tekonsha, Michigan, who became totally or partially separated from who became totally or partially separated from employment on or after November 27, 2010 through December 9, 2013 and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 22nd day of May, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–13591 Filed 6–5–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of May 14, 2012 through May 18, 2012.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or

are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,504	Allied Tube & Conduit, Morrisville Plant, Atkore International, Manpower.	Morrisville, PA	April 5, 2011.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,413	Merck Sharp & Dohme Corporation, Merck Research Labs, Disease Area Biology, In Vitro/In Vivo, etc.	Kenilworth, NJ	March 12, 2011.
81,451	AT&T Service, Inc., Mobility & U-Verse Delivery Division, AT&T, Inc., eCAM and Mastech, Inc.	Dallas, TX	March 10, 2012.
81,474	Wellpoint, CS90 Claims Processing, Kelly Services & Aerotek Staffing & Remote, etc.	Albany, NY	April 2, 2011.
81,477	Verizon Business Network Services, Inc., Service Assurance Department.	Tulsa, OK	March 28, 2011.
81,486	First Advantage, Select Business Services, (UI) Wages Accufacts Pre Employment Screening.	St. Petersburg, FL	April 2, 2011.
81,496	Standard Motor Products, Inc., Wire and Cable Division	Mishawaka, IN	March 17, 2011.
81,500	StarTek USA, Inc., Staffmark East, LLC	Jonesboro, AR	March 27, 2011.
81,501	The Travelers Indemnity Company, Personal Insurance Division, Account Analyst Operations.	Knoxville, TN	April 5, 2011.
81,518	Maersk Agency USA, Inc., A.P. Moller-Maersk, Finance Division, Remx and Remote Workers in New Jersey.	Charlotte, NC	April 13, 2011.
81,521	Journal Register East, Circulation Customer Service, Journal Register Company.	New Haven, CT	April 9, 2011.
81,533	CDR Systems Corp., Aventure Staffing	Estherville, IA	April 24, 2011.
81,547	Joerns Healthcare, LLC, Stevens Point, Wisconsin Division, ABR and Aerotek.	Stevens Point, WI	April 25, 2011.
81,580	Sanofi-Aventis US LLC, Sanofi Pharmaceuticals, Industrial Affairs Division, Pro-Unlimited.	Kansas City, MO	July 3, 2012.
81,610	Infinite Convergence Solutions, Inc., Platform Division, Infinite Computer Solutions, Inc.	Westford, MA	May 11, 2011.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,454	SIC Processing USA, LP, Express Personnel and De Paul Industries, (UI) Wages were through XEN 1.	Portland, OR	March 23, 2011.
81,454A	SIC Processing USA, LP, Solar World, Express Personnel and De Paul Industries, (UI) Wages XEN 1.	Hillsboro, OR	March 23, 2011.
81,509	Parkdale America, LLC, Plant 30, Serve Source/Defender Services.	Hillsville, VA	March 22, 2011.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1)(employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
81,431	Motorola Solutions, Inc., Enterprise Mobility Solutions, Astro System Integration and Test.	Schaumburg, IL.	
81,508	Burris, Incorporated	Spartanburg, SC.	
81,570	Sapa Inc.	Parsons, KS.	

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
81,387	Eastman Kodak Company, IPS—Dayton Location	Dayton, OH.	
81,448	General Dynamics Itronix Corporation, General Dynamics Corporation, Remote Workers Reporting to Sunrise, Florida.	Sunrise, FL.	
81,455	Abound Solar, Inc., Aerotek	Longmont, CO.	
81,461	LiteSteel Technologies America, LLC, Renick Group, Labor Finders, etc., Chase Professionals and API Group.	Troutville, VA.	
81,471	SNE Enterprises, Inc., Peachtree Companies, Inc.	Mosinee, WI.	
81,475	Huntington Foam LLC	Fort Smith, AR.	
81,476	Wells Fargo Bank, National Association, Subsidiary of Wells Fargo & Company, Wells Fargo Bank's Consumer Lending.	Fort Dodge, IA.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W No.	Subject firm	Location	Impact date
81,613	WellPoint, Inc., Care Management UM Intake	Newbury Park, CA.	

I hereby certify that the aforementioned determinations were issued during the period of May 14, 2012 through May 18, 2012. These determinations are available on the Department's Web site tradeact/taa/taa search form.cfm under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: May 23, 2012.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–13587 Filed 6–5–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment

and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 18, 2012.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 18, 2012.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 24th day of May 2012.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[28 TAA petitions instituted between 5/14/12 and 5/18/12]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
81607	Verizon Business Networks, Inc. (State/One-Stop)	Ashburn, VA	05/14/12	05/11/12
81608	Pentair Water (Company)	Ashland, OH	05/14/12	04/23/12
81609	AAA Nothern California (State/One-Stop)	Emeryville, CA	05/14/12	05/11/12
81610	Infinite Convergence Solutions, Inc. (State/One-Stop)	Westford, MA	05/14/12	05/11/12
81611	Hickory Springs Manufacturing Company (Workers)	New Albany, MS	05/15/12	05/11/12
81612	WellPoint, Inc., Care Management UM Intake (Company)	4 locations in CT, CA, NY and ME.	05/15/12	05/14/12
81613	WellPoint, Inc. (Company)	Newbury Park, CA	05/15/12	05/14/12
81614	Intelliverse (Workers)	Alpharetta, GA	05/15/12	05/14/12
81615	Coleman Cable, Inc. (State/One-Stop)	Texarkana, AR	05/15/12	05/14/12
81616	Bank of America (Workers)	Concord, CA	05/15/12	05/15/12
81617	G4S Secure Coalition (State/One-Stop)	Shreveport, LA	05/15/12	05/14/12
81618	Verifications Inc. (Company)	Mitchell, SD	05/16/12	05/15/12
81619	Keymark Corporation (State/One-Stop)	Lakeland, FL	05/16/12	05/15/12
81620	AT&T (Company)	Portland, OR	05/16/12	05/11/12
81621	Cooper Bussmann (Company)	Tualatin, OR	05/16/12	05/15/12
81622	Coastal Industries (State/One-Stop)	Jacksonville, FL	05/17/12	05/16/12
81623	Hydro Aluminum (State/One-Stop)	St. Augustine, FL	05/17/12	05/16/12
81624	Southeastern Aluminum Products (State/One-Stop)	Jacksonville, FL	05/17/12	05/16/12
81625	Fuel Total Systems, California Corporation (State/One-Stop)	Lathrop, CA	05/17/12	05/16/12
81626	ATI-Wah Chang (Union)	Albany, OR	05/17/12	05/16/12
81627	MI Metals, Inc. (State/One-Stop)	Oldsmar, FL	05/17/12	05/16/12
81628	MX Solar USA, LLC (Company)	Somerset, NJ	05/18/12	05/17/12
81629	Winzen Film, Inc. (Company)	Sulphur Springs, TX	05/18/12	05/17/12
81630	Benada Aluminum Products, LLC (State/One-Stop)	Sanford, FL	05/18/12	05/17/12
81631	JC Enterprise (Company)	Oak Creek, WI	05/18/12	05/17/12
81632	Wipro Technologies (Workers)	Oakbrook, IL	05/18/12	05/17/12
81633	IBM Corporate (Workers)	Armonk, NY	05/18/12	05/15/12
81634	Cardinal ST (State/One-Stop)	Mazomanie, WI	05/18/12	05/17/12

[FR Doc. 2012–13588 Filed 6–5–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0003]

Maritime Advisory Committee for Occupational Safety and Health (MACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of MACOSH Meeting.

SUMMARY: This **Federal Register** notice announces meetings of the full Committee and the workgroups on July 24 and 25, 2012 in Seattle, Washington.

DATES: *MACOSH meeting:* MACOSH will meet from 9 a.m. until approximately 5 p.m. on July 24 and 25, 2012.

Submission of written statements, requests to speak, and requests for special accommodation: Written statements, requests to speak at the full Committee meeting, and requests for special accommodations for these meetings must be submitted (postmarked, sent, or transmitted) by July 17, 2012.

ADDRESSES: The Committee and workgroups will meet at the OSHA Seattle Regional Office, 300 Fifth Ave., Suite 1280, Seattle, WA 98104.

Submission of written statements and requests to speak: You may submit written statements and requests to speak at the MACOSH meetings, identified by the docket number for this **Federal Register** notice (Docket No. OSHA 2012–0003), by one of the following methods:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Regular mail, express mail, hand (courier) delivery, and messenger service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0003, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (express mail, hand (courier) delivery, and messenger service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Requests for special accommodations: Submit requests for special accommodations for MACOSH and its workgroup meetings by hard copy, telephone, or email to: Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email *chatmon.veneta@dol.gov.*

Instructions: All submissions must include the Agency name and docket number for this Federal Register Notice (Docket No. OSHA–2012–0003). Because of security-related procedures, submissions by regular mail may result in a significant delay in receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by express mail, hand (courier) delivery, and messenger service.

OSHA will place written statements and requests to speak, including personal information provided, in the public docket which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

Docket: To read or download documents in the public docket for this MACOSH meeting, go to *http://www.regulations.gov.* All documents in the public docket are listed in the index; however, some documents (e.g., copyrighted material) are not publicly available to read or download through *http://www.regulations.gov.* All submissions are available for inspection and, when permitted, copying at the OSHA Docket Office at the above address. For information on using *http://www.regulations.gov* to make submissions or to access the docket, click on the ''Help'' tab at the top of the Home page. Contact the OSHA Docket Office for information about materials not available through that Web site and for assistance in using the Internet to locate submissions and other documents in the docket.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email *meilinger.frank2@dol.gov.*

For general information about MACOSH and this meeting: Mrs. Amy Wangdahl, Director, Office of Maritime and Agriculture, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2086; email *wangdahl.amy@dol.gov.*

Copies of this **Federal Register** notice: Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available at OSHA's Web page at: *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION: All MACOSH committee and workgroup meetings are open to the public. Interested persons may attend the full Committee and its workgroup meetings at the time and place listed above. The tentative agenda will include discussions on: safe entry and cleaning of vessel sewage tanks; injury and illness prevention programs; confined space and ventilation; hot work on hollow structures; person in the water; and log handling operations. The meeting agenda is subject to change without prior notice.

The workgroups, which include Longshoring and Shipyard, will meet from 9 a.m. until approximately 5 p.m. on July 24, 2012 in Rooms 815 and 820. The workgroups will discuss topics listed in the previous paragraph, as well as other topics that may arise during the remainder of the current Committee charter. The full Committee will meet from 9 a.m. until about 5 p.m. on July 25, 2012 in Rooms 815 and 820.

Public Participation: Interested parties may submit a request to make an oral presentation to MACOSH by any one of the methods listed in the **ADDRESSES** section above. The request must state the amount of time requested to speak, the interest represented (e.g., organization name), if any, and a brief outline of the presentation. Requests to address the full Committee may be granted as time permits and at the discretion of the MACOSH Chair.

Interested parties also may submit written statements, including data and other information, using any one of the methods listed in the **ADDRESSES** section above. OSHA will provide all submissions to MACOSH members prior to the meeting. Individuals who need special accommodations to attend the MACOSH meeting should contact Ms. Veneta Chatmon by one of the methods listed in the **ADDRESSES** section.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by Sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), Secretary of Labor's Order No. 1–2012 (77 FR 3912), and 29 CFR part 1912.

Signed at Washington, DC, on May 31, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–13631 Filed 6–5–12; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance for this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than three years.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; 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.

DATES: Written comments should be received by August 6, 2012, to be

assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Room 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION: *Title of Collection:* DUE Project Data Form.

OMB Control No.: 3145–0201.

Expiration Date of Approval: August 31, 2012.

Abstract: The Division of Undergraduate Education (DUE) Project Data Form is a component of all grant proposals submitted to NSF's Division of Undergraduate Education. This form collects information needed to direct proposals to appropriate reviewers and to report the estimated collective impact of proposed projects on institutions, students, and faculty members. Requested information includes the discipline of the proposed project, collaborating organizations involved in the project, the academic level on which the project focuses (e.g., lower-level undergraduate courses, upper-level undergraduate courses), characteristics of the organization submitting the proposal, special audiences (if any) that the project would target (e.g., women, minorities, persons with disabilities), strategic foci (if any) of the project (e.g., research on teaching and learning, international activities, integration of research and education), and the number of students and faculty at different educational levels who would benefit from the project.

Respondents: Investigators who submit proposals to NSF's Division of Undergraduate Education.

Estimated Number of Annual Respondents: 2,500.

Burden on the Public: 20 minutes (per response) for an annual total of 833 hours.

Dated: May 31, 2012.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2012–13613 Filed 6–5–12; 8:45 am]

BILLING CODE 7555–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

[OMB–3420–0004]

Submission for OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for approval.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency has prepared an information collection for OMB review and approval.

DATES: This 60 day notice is to inform the public, that this collection is being submitted to OMB for approval.

ADDRESSES: Copies of the subject form may be obtained from the Agency submitting officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Essie Bryant, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527; (202) 336–8563.

Summary Form Under Review

Type of Request: Form Renewal.

Title: Project Information Report.

Form Number: OPIC–71.

Frequency of Use: No more than once per contract.

Type of Respondents: Business or other institution (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 15 hours per project.

Number of Responses: 30 per year.

Federal Cost: $3,024.60.

Authority for Information Collection: Title 22 U.S.C. 2191(k)(2) and 2199(h) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Project Information Report is necessary to elicit information on the developmental, environmental, and U.S. economic effects of OPIC assisted projects. The information will be used by OPIC's staff and management solely as a basis for monitoring these projects and reporting the results in aggregate form, as required by Congress.

Dated: May 30, 2012.

Nichole Cadiente,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2012–13579 Filed 6–5–12; 8:45 am]

BILLING CODE M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Public Hearing Cancellation Notice; June 6, 2012

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (77 FR 13158) on March 5, 2012. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 p.m., March 21, 2012 in conjunction with OPIC's March 29, 2012 Board of Directors meeting has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, or via email at *Connie.Downs@opic.gov.*

Dated: March 19, 2011.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2012–13804 Filed 6–4–12; 11:15 am]

BILLING CODE 3210–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Qualified Domestic Relations Orders Submitted to PBGC

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request OMB approval of revised collection of information.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') intends to request that the Office of Management and Budget (''OMB'') approve, under the Paperwork Reduction Act, revisions to an information collection relating to PBGC's booklet, *Qualified Domestic Relations Orders & PBGC* (OMB control number 1212–0054; expires August 31, 2012). PBGC is requesting 3-year approval of the revised collection of information. The booklet provides guidance on how to submit a qualified domestic relations order (''QDRO'') to the PBGC. This notice informs the public of PBGC's intent and solicits

public comment on the collection of information, as modified.

DATES: Comments should be submitted by August 6, 2012.

ADDRESSES: Comments may be submitted by any of the following methods:

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

Email: paperwork.comments@pbgc.gov.

Fax: 202–326–4224.

Mail or Hand Delivery: Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

PBGC will make all comments available on its Web site at *www.pbgc.gov.*

Copies of the collection of information may be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The regulations relating to this collection of information are available on PBGC's Web site at *www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Jo Amato Burns, Attorney, or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: A defined benefit pension plan that does not have enough money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. In such an event, PBGC becomes trustee of the plan and pays benefits, subject to legal limits, to plan participants and beneficiaries.

The benefits of a pension plan participant generally may not be assigned or alienated. Title I of ERISA provides an exception for domestic relations orders that relate to child support, alimony payments, or marital property rights of an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the domestic relations order meets specific legal requirements that make it a qualified domestic relations order.

When PBGC is trustee of a plan, it reviews submitted domestic relations orders to determine whether the order is qualified before paying benefits to an alternate payee. The requirements for submitting a domestic relations order and the contents of such orders are established by statute. The models and the guidance provided by PBGC assist parties by making it easier for them to comply with ERISA's QDRO requirements in plans trusteed by PBGC; they do not create any additional requirements and result in a reduction of the statutory burden.

OMB has approved the collection of information in PBGC's booklet, *Qualified Domestic Relations Orders & PBGC* under control number 1212–0054 through August 31, 2012. PBGC intends to request that OMB approve the revised collection of information for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC intends to revise the booklet, *Qualified Domestic Relations Orders & PBGC,* to describe a proposed change in PBGC's procedures that would apply when a draft domestic relations order is submitted for informal review. Under PBGC's current procedures, PBGC delays the commencement of benefits (for participants not in pay status) or suspends payment of benefits (for participants in pay status) from the date of receipt of a draft domestic relations order to up to 60 days after the date PBGC notifies the parties of the results of the review. Under the proposed change, PBGC would suspend payments for participants in pay status only upon receipt of an original signed domestic relations order or a certified or authenticated copy.

PBGC is also revising or eliminating certain model language which has often led to confusion as to how the language was to be interpreted. In addition, PBGC is making clarifying, simplifying, and editorial changes to model forms in the information collection.

PBGC estimates that it will receive 1,361 domestic relations orders each year from prospective alternate payees and participants. PBGC further estimates that the total average annual burden of this collection of information will be 4,138 hours and $870,400.

PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Issued in Washington, DC, this 31st day of May 2012.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. 2012–13635 Filed 6–5–12; 8:45 am]

BILLING CODE 7709–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67091; File No. 4–631]

Joint Industry Plans; Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

May 31, 2012.

I. Introduction

On April 5, 2011, NYSE Euronext, on behalf of New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''),[1] and NYSE Arca, Inc. (''NYSE Arca''), and the following parties to the proposed National Market System Plan: BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated (''CBOE''), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the

[1] On May 14, 2012, NYSE Amex filed a proposed rule change on an immediately effective basis to change its name to NYSE MKT LLC (''NYSE MKT''). *See* Securities Exchange Act Release No. 67037 (May 21, 2012) (SR–NYSEAmex–2012–32).

Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the ''Participants''), filed with the Securities and Exchange Commission (the ''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 608 thereunder,[3] a proposed Plan to Address Extraordinary Market Volatility (as amended, the ''Plan'').[4] A copy of the Plan is attached as Exhibit A hereto. The Participants requested that the Commission approve the Plan as a one-year pilot.[5] The Plan was published for comment in the **Federal Register** on June 1, 2011.[6] The Commission received eighteen comment letters in response to the proposal.[7] On September 27, 2011, the Commission extended the deadline for Commission action on the Plan and designated November 28, 2011 as the new date by which the Commission would be required to take action.[8] The Commission found that such extension was appropriate in order to provide sufficient time to consider and take action on the Plan, in light of, among other things, the comments received on the proposal.[9] On November 2, 2011, the Participants to the Plan, other than CBOE, responded to the comment letters and proposed changes to the Plan that were subsequently reflected in an amendment.[10] On November 18, 2011, the Participants consented to the Commission's request that the deadline for Commission action on the Plan be extended an additional three months, to February 29, 2012.[11] On February 27, 2012, the Participants consented to the Commission's request that the deadline for Commission action on the Plan be extended an additional three months, to May 31, 2012.[12] On May 24, 2012, the Participants submitted an amendment that proposed several changes to the Plan.[13] This order approves the Plan, as amended, on a one-year pilot basis.

II. Background

On May 6, 2010, the U.S. equity markets experienced a severe disruption.[14] Among other things, the prices of a large number of individual securities suddenly declined by significant amounts in a very short time period, before suddenly reversing to prices consistent with their pre-decline levels. This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices and were broken by the exchanges and FINRA. The Commission was concerned that events such as those that occurred on May 6 could seriously undermine the integrity of the U.S. securities markets. Accordingly, Commission staff has worked with the exchanges and FINRA since that time to identify and assess the causes and contributing factors of the May 6 market disruption [15] and to fashion policy responses that will help prevent a recurrence.

One such response to the events of May 6, 2010, was the development of the single-stock circuit breaker pilot program, which was implemented through a series of rule filings by the Exchanges and FINRA. This pilot was introduced in three stages, beginning in June 2010. In the first stage, the Commission approved, on an accelerated basis, proposed rule changes by the Exchanges and FINRA to pause trading during periods of extraordinary market volatility in stocks included in Standard & Poor's 500 index.[16] In the second stage, the Commission approved the Exchanges' and FINRA's proposals to add securities included in the Russell 1000 index, as well as specified exchange traded products (''ETPs''), to the pilot.[17] In the third stage, the

[2] 15 U.S.C. 78k–1.

[3] 17 CFR 242.608.

[4] *See* Letter from Janet M. McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated April 5, 2011 (''Transmittal Letter'').

[5] *Id.* at 1.

[6] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (''Notice'').

[7] *See* Letter from Steve Wunsch, Wunsch Auction Associates, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated June 2, 2011 (''Wunsch Letter''); Letter from Peter J. Driscoll, Investment Professional, Chicago, IL, to Elizabeth M. Murphy, Secretary, Commission, dated June 17, 2011 (''Driscoll Letter''); Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association (''MFA''), to Elizabeth M. Murphy, Secretary, Commission, dated June 21, 2011 (''MFA Letter''); Letter from George U. Sauter, Managing Director and Chief Investment Officer, The Vanguard Group, Inc. (''Vanguard''), to Elizabeth M. Murphy, Secretary, Commission, dated June 22, 2011 (''Vanguard Letter''); Letter from Karrie McMillan, General Counsel, Investment Company Institute (''ICI''), to Elizabeth M. Murphy, Secretary, Commission, dated June 22, 2011 (''ICI Letter''); Letter from Manisha Kimmel, Executive Director, Financial Information Forum (''FIF''), to Elizabeth M. Murphy, Secretary, Commission, dated June 22, 2011 (''FIF Letter''); Letter from Craig S. Donohue, Chief Executive Officer, CME Group Inc., to Elizabeth M. Murphy, Secretary, Commission, dated June 22, 2011 (''CME Letter''); Letter from Joseph N. Cangemi, Chairman, and Jim Toes, President and Chief Executive Officer, Security Traders Association, to Elizabeth M. Murphy, Secretary, Commission, dated June 22, 2011 (''STA Letter''); Letter from Leonard J. Amoruso, General Counsel, Knight Capital Group, Inc. (''Knight''), to Elizabeth M. Murphy, Secretary, Commission, dated June 22, 2011 (''Knight Letter); Letter from Ann L. Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), to Elizabeth M. Murphy, Secretary, Commission, dated June 22, 2011 (''SIFMA Letter''); Letter from Jamie Selway, Managing Director, and Patrick Chi, Chief Compliance Officer, ITG Inc., to Elizabeth M. Murphy, Secretary, Commission, dated June 23, 2011 (''ITG Letter''); Letter from Jose Marques, Managing Director and Global Head of Electronic Equity Trading, Deutsche Bank Securities Inc. (''Deutsche Bank''), to Elizabeth M. Murphy, Secretary, Commission, dated June 23, 2011 (''Deutsche Bank Letter''); Letter from Kimberly Unger, Esq., Executive Director, The Security Traders Association of New York, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated June 23, 2011 (''STANY Letter''); Letter from James J. Angel, Ph.D., CFA, Associate Professor of Finance, Georgetown University, McDonough School of Business, to Commission, dated June 24, 2011 (''Angel Letter''); Letter from John A. McCarthy, General Counsel, GETCO, to Elizabeth M. Murphy, Secretary, Commission, dated June 24, 2011 (''GETCO Letter''); Letter from Andrew C. Small, Executive Director and General Counsel, Scottrade, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated July 5, 2011 (''Scottrade Letter''); Letter from Peter Skopp, President, Molinete Trading Inc., to Elizabeth M. Murphy, Secretary, Commission, dated July 19, 2011 (''Molinete Letter''); and Letter from Sal Arnuk, Joe Saluzzi, and Paul Zajac, Themis Trading, LLC, to Elizabeth M. Murphy, Secretary, Commission (''Themis Letter''). Copies of all comments received on the proposed Plan are available on the Commission's Web site, located at *http://www.sec.gov/comments/4-631/4-631.shtml*. Comments are also 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. ET.

[8] *See* Securities Exchange Act Release No. 65410 (September 27, 2011), 76 FR 61121 (Oct. 3, 2011).

[9] *Id.*

[10] *See* Letter from Janet M. McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated November 2, 2011 (''Response Letter'').

[11] *See* Letter from Janet M. McGinness, Senior Vice President and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated November 18, 2011.

[12] *See* Letter from Janet M. McGinness, Senior Vice President and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated February 27, 2012.

[13] *See* Letter from Janet M. McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated May 24, 2012 (''Amendment'').

[14] The events of May 6 are described more fully in a joint report by the staffs of the Commodity Futures Trading Commission (''CFTC'') and the Commission. *See Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues,* ''Findings Regarding the Market Events of May 6, 2010,'' dated September 30, 2010, available at *http://www.sec.gov/news/studies/2010/marketevents-report.pdf.*

[15] *Id.*

[16] *See* Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047); 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025).

[17] *See* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618

Continued

Commission approved the Exchanges' and FINRA's proposals to add all remaining NMS stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Act (''NMS Stocks'') [18] to the pilot.[19] The Exchanges and FINRA each subsequently filed, on an immediately effective basis, proposals to exempt all rights and warrants from the pilot.[20] The single-stock circuit breaker pilot is currently set to expire on July 31, 2012.[21]

The Plan is intended to replace the single-stock circuit breaker pilot that is currently in place.

III. Description of the Proposal

The Participants filed the Plan to create a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks.[22] The Plan sets forth procedures that provide for market-wide limit up-limit down requirements that would be designed to prevent trades in individual NMS Stocks from occurring outside of the specified price bands.[23] These limit up-limit down requirements would be coupled with trading pauses, as defined in Section I(X) of the Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

As set forth in Section V of the Plan, the price bands would consist of a Lower Price Band and an Upper Price Band for each NMS Stock.[24] The price bands would be calculated by the Securities Information Processors (''SIPs'' or ''Processors'') responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act.[25] Those price bands would be based on a Reference Price [26] for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period. The price bands for an NMS Stock would be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter [27] below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. Between 9:30 a.m. and 9:45 a.m. ET and 3:35 p.m. and 4:00 p.m. ET, the price bands would be calculated by applying double the Percentage Parameters.

The Processors would also calculate a Pro-Forma Reference Price for each NMS Stock on a continuous basis during Regular Trading Hours. If a Pro-Forma Reference Price did not move by one percent or more from the Reference Price in effect, no new price bands would be disseminated, and the current Reference Price would remain the effective Reference Price. If the Pro-Forma Reference Price moved by one percent or more from the Reference Price in effect, the Pro-Forma Reference Price would become the Reference Price, and the Processors would disseminate new price bands based on the new Reference Price. Each new Reference Price would remain in effect for at least 30 seconds.

When one side of the market for an individual security is outside the applicable price band, the Processors would be required to disseminate such National Best Bid [28] or National Best Offer [29] with an appropriate flag identifying it as non-executable. When the other side of the market reaches the applicable price band, the market for an individual security would enter a Limit State,[30] and the Processors would be required to disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation.[31] All trading would immediately enter a Limit State if the National Best Offer equals the Lower Limit Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Limit Band and does not cross the National Best Offer. Trading for an NMS Stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market did not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause, which would be applicable to all markets trading the security.

These limit up-limit down requirements would be coupled with trading pauses [32] to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). As set forth in more detail in

(September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08); and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[18] 17 CFR 242.600(b)(47).

[19] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64).

[20] *See, e.g.,* Securities Exchange Act Release No. 65810 (November 23, 2011) 76 FR 74080 (November 30, 2011) (SR–NYSE–2011–57).

[21] *See, e.g.,* Securities Exchange Act Release No. 66134 (January 11, 2012), 77 FR 2592 (January 18, 2012) (SR–NYSE–2011–68).

In addition to the trading pause pilot for individual securities, the Commission and the SROs also implemented other regulatory responses to the events of May 6, 2010. For example, the Commission approved proposed rule changes that set forth clearer standards and reduced the discretion of self-regulatory organizations with respect to breaking erroneous trades. *See e.g.,* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010). Further, the Commission approved proposed rule changes that enhanced the minimum quoting standards for equity market makers to require that they post continuous two-sided quotations within a designated percentage of the inside market to eliminate market maker ''stub quotes'' that are so far away from the prevailing market that they are clearly not intended to be executed. *See* Securities Exchange Act Release No. 63255 (November 5, 2010), 75 FR 69484 (November 12, 2010).

[22] *See* Section I(H) of the Plan.

[23] As set forth in Section V of the Plan, the price bands would consist of a Lower Price Band and an Upper Price Band for each NMS Stock. The price bands would be based on a Reference Price that equals the arithmetic mean price of Eligible Reported Transactions for the NMS stock over the immediately preceding five-minute period. As defined in the proposed Plan, Eligible Reported Transactions would have the meaning prescribed by the Operating Committee for the proposed Plan, and generally mean transactions that are eligible to update the sale price of an NMS Stock.

[24] Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Plan.

[25] 17 CFR 242.603(b). The Plan refers to this entity as the Processor.

[26] *See* Section I(T) of the Plan.

[27] As initially proposed by the Participants, the Percentage Parameters for Tier 1 NMS Stocks (*i.e.,* stocks in the S&P 500 Index or Russell 1000 Index and certain ETPs) with a Reference Price of $1.00 or more would be five percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for Tier 2 NMS Stocks (*i.e.,* all NMS Stocks other than those in Tier 1) with a Reference Price of $1.00 or more would be 10 percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP would be the applicable Percentage Parameter set forth above multiplied by the leverage ratio of such product. On May 24, 2012, the Participants amended the Plan to create a 20% price band for Tier 1 and Tier 2 stocks with a Reference Price of $0.75 or more and up to and including $3.00. The Percentage Parameter for stocks with a Reference Price below $0.75 would be the lesser of (a) $0.15 or (b) 75 percent.

[28] 17 CFR 242.600(b)(42). *See also* Section I(G) of the Plan.

[29] *Id.*

[30] A stock enters the Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer. *See* Section VI(A) of the Plan.

[31] *See* Section I(D) of the Plan.

[32] The primary listing market would declare a trading pause in an NMS Stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS Stock could occur during the trading pause, but all bids and offers may be displayed. *See* Section VII(A) of the Plan.

the Plan, all trading centers [33] in NMS Stocks, including both those operated by Participants and those operated by members of Participants, would be required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan.

Under the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless inadvertently may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

As proposed, the Plan would be implemented as a one-year pilot program in two Phases. Phase I of the Plan would be implemented immediately following the initial date of Plan operations; Phase II of the Plan would commence six months after the initial date of the Plan or such earlier date as may be announced by the Processors with at least 30 days' notice. Phase I of the Plan would apply only to Tier 1 NMS Stocks, as defined in Appendix A of the Plan. During Phase I of the Plan, the first Price Bands would be calculated and disseminated 15 minutes after the start of Regular Trading Hours, no Price Bands would be calculated and disseminated less than 30 minutes before the end of Regular Trading Hours, and trading would not enter a Limit State less than 25 minutes before the end of Regular Trading Hours. In Phase II, the Plan would fully apply to all NMS Stocks beginning at 9:30 a.m. and ending at 4:00 p.m. each trading day.

As stated by the Participants in the Plan, the limit up-limit down mechanism is intended to reduce the negative impacts of sudden, unanticipated price movements in NMS Stocks,[34] thereby protecting investors and promoting a fair and orderly market.[35] In particular, the Plan is designed to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.[36]

IV. Comment Letters and Response Letter

The Commission received 18 comment letters on the proposed Plan.[37] Many commenters generally supported the Plan,[38] while others indicated that they did not oppose the Plan and its intended goals, but raised concerns regarding specific details on the terms of the Plan.[39] A few commenters opposed [40] the Plan and suggested different alternatives to achieve the intended goal of the Plan. The Participants responded to the comments regarding the proposal.[41]

A. Reference Price Calculation

As proposed in the Plan, the Processors would be responsible for calculating and disseminating the applicable Price Bands as provided for in Section V of the Plan. The Processors for each NMS stock would calculate and disseminate to the public a Lower Price Band and an Upper Price Band during regular trading hours, as defined in Section I(R) of the Plan, for such NMS Stock. The Price Bands would be based on a Reference Price for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions [42] for the NMS stock over the immediately preceding five-minute period (except for periods following openings and reopenings).[43] The Price Bands for an NMS Stock would be calculated by applying the Percentage Parameter [44] for such NMS Stock to the Reference Price, with the lower Price Band being a Percentage Parameter below the Reference Price, and the upper Price Band being a Percentage Parameter above the Reference Price. Some commenters expressed concern about the complexity involved in calculating the Reference Price.[45]

Commenters suggested alternative ways to calculate the Reference Price. In its letter, one commenter suggested simplifying the Reference Price calculation by ''calculating a new Reference Price on regular 30 second intervals, regardless of whether it has changed by 1%'' and noted that ''[t]his simplification also obviates the definition of a Pro-Forma Reference Price.''[46] That commenter also recommended calculating the Reference Prints with a volume weighted average price rather than an arithmetic average price, which would remove the possibility of market participants splitting orders in different ways to affect the calculation of the Reference Price.[47] Another commenter stated that

[33] As defined in Section I(W) of the Plan, a trading center shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Act.

[34] 17 CFR 242.600(b)(47).

[35] *See* Transmittal Letter, *supra* note 4.

[36] The limit up-limit down mechanism set forth in the proposed Plan would replace the existing single-stock circuit breaker pilot. *See e.g.,* Securities Exchange Act Release Nos. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025); 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[37] *See supra* note 7.

[38] *See* MFA Letter at 1; Vanguard Letter at 1; ICI Letter at 1; STA Letter at 1; Knight Letter at 1; SIFMA Letter at 1; ITG Letter at 1; Deutsche Bank Letter at 1; STANY Letter at 1; GETCO Letter at 1.

[39] *See* Driscoll Letter at 1; FIF Letter at 1; Angel Letter at 1 (stating that the proposed Plan is an improvement over the current single stock circuit breaker pilot); Scottrade Letter at 1 and 5 (supporting the goals of the proposed Plan, but stating that it believes that more work needs to be done before it can support the proposed Plan); Themis Letter at 1 (commending the efforts of the proposed Plan); Molinete Letter at 1.

[40] *See* Wunsch Letter at 1; CME Group Letter at 1–2 (supporting the proposed Plan's fundamental goal of promoting fair and orderly markets and mitigating the negative impacts of sudden and extraordinary price movements in NMS stocks, but stating that the proposed Plan sets forth an overly complicated and insufficiently coordinated structure that, in a macro-liquidity event, will have the unintended consequence of undermining rather than promoting liquidity).

[41] *See* Response Letter, *supra* note 10.

[42] As defined in the proposed Plan, Eligible Reported Transactions shall have the meaning prescribed by the Operating Committee for the proposed Plan, and generally mean transactions that are eligible to update the sale price of an NMS Stock.

[43] *See infra,* Section III.G. for a discussion on the application of the Price Bands at the open and close of the trading day.

[44] As defined in Section (I)(M) of the proposed Plan, the ''Percentage Parameter'' means the percentages for each tier of NMS Stocks set forth in Appendix A of the Plan. As such, the Percentage Parameters for Tier 1 NMS Stocks with a Reference Price of $1.00 or more would be 5%, and the Percentage Parameters for Tier 2 NMS Stocks with a Reference Price of $1.00 or more would be 10%. For Tier 1 and Tier 2 NMS Stocks with a Reference Price less than $0.75, the Percentage Parameters would be the lesser of $0.15 or 75%. The Percentage Parameters for a Tier 2 NMS Stock that is a leveraged exchange-traded product would be the applicable Percentage Parameter multiplied by the leverage ratio of such product.

[45] *See* Angel Letter at 4; GETCO Letter at 3–4; MFA Letter at 5; Molinete Letter at 1–2 (stating that it is not clear whether the trades used to calculate the Reference Price are weighted by volume, or if this is a strict average of the trade prices reported); Themis Letter at 1. *See also* SIFMA Letter at 8 (noting that if the market price for an NMS Stock moves by less than one percent, the Price Bands will not change and, as a result, the limit up and limit down prices will be closer to four percent than five percent over the prevailing market price because a new Reference Price will only be disseminated if there is a change of one percent or more in the Pro-Forma Reference Price over the then prevailing Reference Price).

[46] *See* MFA Letter at 5.

[47] *Id.*

the Participants should consider using the opening price of a stock as the Reference Price because it would be much simpler than the calculation that the Participants proposed.[48] Another commenter stated that the Participants should consider using the prior day's closing price as a static Reference Price, rather than constantly updating the Reference Price throughout the trading day, noting that this would be similar to how the futures markets calculate their limit up-limit down Price Bands.[49]

Commenters also stated that certain types of trades should be exempted from the Plan and thus the calculation of the Reference Price. Three commenters noted that certain Regulation NMS-exempt trades should be exempt from the Plan because they are unrelated to the last sale of a stock.[50] More specifically, one commenter stated that ''trading centers should be permitted to execute orders internally at prices outside of the specified Price Bands if the executions comply [with certain Regulation NMS exemptions].'' [51] That commenter noted that most Regulation NMS exemptions ''have corresponding sale conditions that identify those trades as being not eligible for last sale.'' [52] Another commenter stated that certain block facilitation trades should be exempted from the Plan.[53] That commenter argued that block facilitation trades tend to stabilize the market because a block positioner is committing capital to absorb a large trading interest that would otherwise impact the market for the underlying stock of the block order.[54] Finally, two commenters suggested that trades that are executed outside of the current Price Bands be exempt from Reference Price calculations.[55]

The Participants noted that alternatives were considered when the Plan was being drafted, but the Participants determined that something more dynamic would be preferable, and that the five percent level is more therefore appropriate, particularly for highly liquid stocks.[56] Moreover, the Participants stated that the proposed one percent requirement would help to reduce quote traffic but still provide for appropriate adjustments of Reference Prices in a rapidly moving market.[57] The Participants also stated that using the arithmetic average would reduce the impact of any erroneous trades that may be included in the calculation of the Reference Price.[58]

As discussed in greater detail below, the Participants recently amended the Plan to clarify that the Reference Price used in determining which Percentage Parameter is applicable during the trading day would be based on the closing price of the subject security on the Primary Listing Exchange on the previous trading day or, if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processors. The Participants also amended the Plan to permit certain transactions to execute outside of the price bands. Specifically, the Participants proposed that transactions that are exempt under Rule 611 of Regulation NMS,[59] and which do not update the last sale price (except if solely because the transaction was reported late), should be allowed to execute outside of the price bands.[60] As part of the amendment, the Participants also proposed to exclude rights and warrants from the Plan, consistent with the current single-stock circuit breaker pilot.[61]

B. Display of Offers Below the Lower Price Band and Bids Above the Upper Price Band

As proposed in the Plan, offers below the Lower Price Band and bids above the Upper Price Band would not be displayed on the consolidated tape. One commenter disagreed with this aspect of the Plan and stated that all quotes should be displayed, but marked as non-executable if outside the Price Bands.[62] That commenter stated that preventing the display of quotes outside the Price Bands could lead to unusual side effects and that a broker-dealer entering an order on behalf of a customer should have the option of re-pricing or posting the order in accordance with the customer's wishes, rather than a market center re-pricing non-executable orders to a Price Band.[63] Another commenter stated that displaying certain non-accessible quotes that are the result ''of an altered price discovery process will have greater negative implications for investor confidence'' because the only trades than can be executed during a Limit State ''do not represent the true equilibrium of supply and demand.'' [64]

The Participants noted that under the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock.[65] When one side of the market for an individual security is outside the applicable Price Band, the Processors would be required to disseminate such National Best Bid or National Best Offer with an appropriate flag identifying it as non-executable. When the other side of the market reaches the applicable Price Band, the market for an individual security would enter a Limit State, and the Processor would be required to disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation. The Participants stated that after considering whether more quotes should be displayed as unexecutable, they determined that any potential benefits arising from such practice would be outweighed by the risk of investor confusion. As a result, the Participants did not believe that the Plan should be amended to permit all quotes outside the Price Bands to be displayed. The Participants stated that they would continue to review this issue and could

[48] *See* Angel Letter 4.

[49] *See* GETCO Letter at 3–4. *See also* SIFMA Letter at 9 (requesting that the Participants clarify how Price Bands will apply to stocks with prices that cross the one dollar threshold during intra-day trading); Molinete Letter at 3–4 (stating its belief that changes in Price Band calculations throughout the trading day can create problems).

[50] *See e.g.,* FIF Letter at 1–2; Deutsche Bank Letter at 3; SIFMA Letter at 2–4.

[51] *See* FIF Letter at 1–2 (listing the exemptions found in Rule 611(a)—non-convertible preferred securities; Rule 611(b)(2)—not regular way; Rule 611(b)(7)—benchmark derivatively priced; Rule 611(b)(9)—stopped stock; Rule 611(d)—qualified contingent trades; Rule 611(d)—error correction; Rule 611(d)—print protection).

[52] *Id.*

[53] *See* Deutsche Bank Letter at 3 (stating that ''it is critical for a block facilitator to execute outside a band when the market is moving rapidly or it will lose the ability to trade effectively for its client.'') *See also* FIF Letter at 2 (requesting an impact analysis on the printing of block transactions accompanied by a Regulation NMS sweep as well as block transactions printed without ISO modifiers in adherence with Regulation NMS FAQ 3.23).

[54] *Id.*

[55] *See* MFA Letter at 6 (recommend that the Plan include a more explicit definition for which prints are included in calculating a Reference Price); STANY Letter at 2 (noting that clearly erroneous transactions may still occur, and thus suggesting that trades that are executed outside the then existing price bands not be included in the calculation of the Reference Price).

[56] *See* Response Letter at 4.

[57] The Participants are not proposing to amend the Plan with respect to the calculation of the Reference Price. However, in an effort to keep a rapidly-moving market aware of the current price bands, the Processor would republish the existing price bands every 15 seconds. *See* Response Letter at 5.

[58] *Id.*

[59] 17 CFR 242.611.

[60] *See* Amendment, *supra* note 13.

[61] *Id.*

[62] *See* MFA Letter at 2–3.

[63] *See id.*

[64] *See* Driscoll Letter at 3.

[65] *See* Response Letter at 4.

revisit it after gaining experience during the pilot.[66]

C. Criteria for Entering the Limit State

As set forth in Section VI of the Plan, when one side of the market for an individual security is outside the applicable Price Band (*i.e.,* when the National Best Bid[67] is below the Lower Limit Band or the National Best Offer[68] is above the Upper Limit Band for an NMS Stock), the Processors would be required to disseminate such National Best Bid or National Best Offer with an appropriate flag identifying it as non-executable. When the other side of the market reaches the applicable Price Band (*i.e.*, when the National Best Offer is equal to the Lower Limit Band or the National Best Bid is equal to the Upper Limit Band for an NMS Stock), the market for an individual security would enter a Limit State,[69] and the Processors would be required to disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation.[70]

Commenters expressed concern that requiring the National Best Bid or Offer (''NBBO'') to be equal to, but not necessarily cross the applicable Price Band in order to enter a Limit State could create some unusual market discrepancies.[71] One commenter stated that ''it does not make sense for a Limit State to be triggered if the national best bid or offer *equals* a price band, but not if the national best bid or offer has *crossed* a price band [because the] same rationale for entering a Limit State exists in either case.''[72] Instead, the commenters suggested that if either the best bid or offer is outside the Price Band, the market should enter the Limit State.

One commenter expressed concern about a scenario where a stock is effectively not trading, but still has not entered a Limit State—for example, where the National Best Bid is below the Lower Price Band, and is thus non-executable, while the National Best Offer remains within the price bands. Since, in this example, the offer has not hit the Lower Price Band, the Limit State has not yet been triggered; however, the market for that stock is essentially one-sided, as the bid cannot be executed against. Since the Limit State has not yet been triggered, the concern is that the market could remain in this condition for an indefinite period of time.[73]

In the situation where a stock is effectively not trading, *i.e.*, because the National Best Bid is below the Lower Price Band, but the National Best Offer is still within the price bands and thus the Limit State would not be triggered, the Participants responded that the National Best Offer would generally follow the National Best Bid downwards, and sellers would be willing to offer the stock at the Lower Price Band, triggering the Limit State.[74] The Participants also responded that, alternatively, the reference price may be recalculated due to transactions occurring in the previous five minutes. This could adjust the price bands downwards, potentially bringing the National Best Bid within the price bands, at which time it may be executed against.[75] The Participants represented that they would monitor these situations during the pilot and consider modifications to the Plan structure if needed.[76]

As discussed below, in response to commenters' concerns, the Participants recently amended the Plan to create a manual override function where the National Best Bid (Offer) for a security is below (above) the Lower (Upper) Price Band, and the security has not entered the Limit State. With this provision, the Primary Listing Exchange has the ability to initiate a trading pause for a stock in this situation.[77]

D. Order Handling During the Limit State

As set forth in the Plan, all trading centers[78] in NMS Stocks, including both those operated by Participants and those operated by members of Participants, would be required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan. Some commenters stated that clarifications are necessary regarding the Commission's Order Handling Rules so that they could be applied uniformly across all market centers once the Plan is in effect.[79] One commenter noted that market centers would benefit from guidance on best industry standards for handling customer orders during the periods of time when securities are in a Limit State, as well as periods when trading in a security restarts after a trading pause.[80]

E. Duration of the Limit State

By the terms of the Plan, trading for an NMS Stock would exit a Limit State if, within 15 seconds of entering the Limit State, the entire size of all Limit State Quotations is executed or cancelled. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause pursuant to Section VII of the Plan.

Two commenters suggested that the Plan should contemplate a longer Limit State than 15 seconds, such as 30 seconds, because a shorter time period would trigger too many trading pauses.[81] One commenter advocated for a longer Limit State ''[b]ecause the price bands should eliminate significant erroneous trades, and trading halts interfere with the natural interaction of orders and the price discovery process.''[82] That commenter stated that halts should thus ''be limited to extraordinary circumstances.''[83] Another commenter noted that ''15 seconds is not a sufficient amount of time for most investors to digest information about a limit state condition and to react to the information.''[84] These commenters believe that a 30 second Limit State would provide a more sufficient opportunity for market participants to provide liquidity to the market of an NMS Stock. These

[66] *Id.*

[67] 17 CFR 242.600(b)(42). *See also* Section I(G) of the Plan.

[68] *Id.*

[69] As set forth in Section VI(B) of the Plan, when trading for an NMS Stock enters a Limit State, the Processor shall cease calculating and disseminating updated Reference Prices and Price Bands for the NMS Stock until either trading exits the Limit State or trading resumes with an opening or re-opening as provided in Section V of the proposed Plan.

[70] *See* Section I(D) of the Plan.

[71] *See* MFA Letter at 6 (stating that ''buyers may not submit orders if the Upper Price Band is sufficiently far away from the market'' and recommending that ''if either the best bid or ask is outside the Price Band, the market enters a Limit State and has 5 seconds to readjust before a Trading Halt''); Deutsche Bank Letter at 4.

[72] *See* Deutsche Bank Letter at 4 (emphasis in original).

[73] *See* Molinete Letter at 2–3 (discussing a situation where the market may not enter a Limit State due to a market order against an illiquid book that would execute against a quote that is outside the applicable price bands).

[74] *See* Response Letter at 5.

[75] *Id.*

[76] *Id.*

[77] *See* Amendment, *supra* note 13.

[78] As defined in Section I(W) of the Plan, a trading center shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Exchange Act.

[79] *See* STA Letter at 3; SIFMA Letter at 6 (stating that the proposal contemplates that broker-dealers may delay, reprice or reject ''held'' orders, thus implicating the limit order display rule as well as best execution requirements); Angel Letter at 4 (requesting the clarification of best execution requirements during the Limit State).

[80] *See* STA Letter at 3.

[81] *See* Vanguard Letter at 2; ICI Letter at 2. One commenter stated it would serve the public to understand why 15 seconds was chosen for the Limit State condition, as opposed to 30 seconds, or perhaps 60 seconds. *See* Themis Letter at 1.

[82] *See* Vanguard Letter at 2.

[83] *Id.*

[84] *See* ICI Letter at 2.

commenters stated that, at a minimum, the timeframe should not be shortened from the proposed 15 seconds.

Other commenters proposed shortening the length of the Limit State to 5 seconds, suggesting that this would be ample time for the market to replenish the necessary liquidity given the technological advances in modern trading.[85] One commenter stated that a shorter Limit State is preferable because a longer Limit State could lead to wider spreads and uncertainty in the options markets.[86] Another commenter stated that retail investors may wonder why their orders had not been executed.[87]

In response, the Participants stated that the 15-second Limit State should be long enough to reasonably attract additional available liquidity without recourse to a trading pause, while short enough to reasonably limit any market uncertainty that might accompany a Limit State.[88] The Participants represented that, during the pilot period, they will continue to review the length of the Limit State and consider whether, based on that experience, it should be lengthened or shortened.[89]

F. Criteria for Exiting a Limit State

Under the Plan, trading for an NMS Stock would exit a Limit State if within 15 seconds of entering the Limit State, the entire size of all Limit State Quotations is executed or cancelled. Some commenters proposed alternative criteria for exiting a Limit State. One commenter expressed concern ''that the exit from a Limit State is arbitrary and may be easily manipulated * * * [because] it's not clear to market participants from moment to moment whether a trading pause will be declared or whether the Price Bands will suddenly be adjusted. Exiting a Limit State would depend upon the timing of an order that could clear out the Limit State quotation and when a new limit order arrives at the Limit State quotation.'' [90] Another commenter suggested that in order to reestablish an orderly market, that the Plan should require a new bid and a new offer that are executable before the expiration of a Limit State period.[91] Another commenter stated that the conditions for exiting a Limit State are not clearly defined in the Plan and further clarifications are necessary.[92]

The Participants declined to amend the Plan to address these concerns, noting in the Response Letter that adding a requirement that a new executable bid or offer be entered before exiting a Limit State raises the question of who would be obligated to enter such a bid or offer.[93] Moreover, the Participants stated that depending on the price movements during the five minutes prior to entering the Limit State, the Reference Price may have moved, thus moving the Price Bands.[94] The Participants noted that in such a case, executable bids and offers may become available simply by virtue of the recalculated Price Bands.

G. Application of the Price Bands at the Open and Close

During Phase I of the Plan's implementation time period, the terms of the Plan would apply only to Tier 1 NMS Stocks, as defined in Appendix A of the Plan, and the first Price Bands would be calculated and disseminated 15 minutes after the start of Regular Trading Hours, as specified in Section V(A) of the Plan, and no Price Bands would be calculated and disseminated less than 30 minutes before the end of Regular Trading Hours. In Phase II, the Plan would fully apply to all NMS Stocks beginning at 9:30 a.m. ET and ending at 4:00 p.m. ET of each trading day.

Some commenters expressed concerns about the application of the Price Bands at the opening of the trading day. One commenter stated that the approach proposed in Phase I—the first Price Bands would be calculated and disseminated 15 minutes after the start of Regular Trading Hours, and no Price Bands would be calculated and disseminated less than 30 minutes before the end of Regular Trading Hours—should apply to both phases of the Plan.[95] Another commenter agreed that the Plan should not be in effect during the first five minutes of the trading day because price information is critical at that time.[96] That commenter also stated that any regulatory gap during this time period could be filled by the clearly erroneous trade rules, which it proposed should only be in effect during the first five (and last five) minutes of the trading day.[97] Rather than placing a specific time limit on the opening, another commenter asserted that it would benefit the market if Price Bands were not established until a single opening price occurs at the Primary Listing Exchange.[98] However, one commenter stated that the Price Bands should be in effect for the entire trading day because long-term investors may appreciate this simplicity.[99]

Commenters also expressed concerns about the application of the Price Bands at the close of the trading day. Six commenters opposed applying the Price Bands at the close of the trading day.[100] These commenters described the close of the trading day as a critical part of the trading day [101] and argued that under the terms of the Plan, exchanges could have inconsistent closing times as a result of a trading pause.[102] According to these commenters, keeping track of various closing times could have serious negative effects for market participants attempting to close positions or hedge by the end of the day.[103] Alternatively, one commenter suggested that if there is a disruptive event immediately prior to the close, regular-way trading and the closing auction should be extended to make sure the closing price is accurate.[104]

The Participants stated in the Response Letter that they believe that the proposed doubling of the Percentage Parameters around the opening and closing periods is appropriate in light of the increased volatility at those times, and that no adjustment to the timing or levels of the Price Bands should be made to the Plan until experience is gained from both Phases I and II.[105]

[85] *See* SIFMA Letter at 5–6; MFA Letter at 6; and Scottrade Letter at 2.

[86] *See* SIFMA Letter at 5.

[87] *See* Scottrade Letter at 2 (stating its confidence that stocks that enter the Limit State Quotation erroneously will be addressed within a 5 second threshold, allowing the security to continue trading).

[88] *See* Response Letter at 6.

[89] *Id.*

[90] *See* MFA Letter at 5.

[91] *See* SIFMA Letter at 6.

[92] *See* Molinete Letter at 3.

[93] *Id.*

[94] *Id.*

[95] *See* SIFMA Letter at 8. The commenter also requested clarification on whether it is true that there may be no Price Bands in effect for an NMS Stock during the first five minutes if the Opening Price for the stock does not occur on the Primary Market within that period because there will be no Reference Price under such circumstance. *See id.*

[96] *See* Knight Letter at 3.

[97] *Id.*

[98] *See* Scottrade Letter at 2.

[99] *See* Themis Letter at 1.

[100] Six commenters generally advocated for the Plan not being in effect during the final 10 minutes of the trading day, *i.e.,* 3:50 p.m. to 4:00 p.m. ET. *See* FIF Letter at 5; Deutsche Bank Letter at 2 and 4; Knight Letter at 3; SIFMA Letter at 2; ITG Letter at 2; Scottrade Letter at 2–3. Two of these commenters suggested that it would be ideal to suspend the operation of the Plan from 3:35 p.m. to 4:00 p.m. ET. *See* ITG Letter at 2; Scottrade Letter at 2–3.

[101] *See e.g.,* Knight Letter at 3.

[102] *See e.g.,* FIF Letter at 5 (stating that exchanges could have different closing times as a result of trading pauses); Deutsche Bank Letter at 2 (advocating for consistent closing times across all of the exchanges).

[103] *See* Deutsche Bank Letter at 2.

[104] *See* Angel Letter at 5.

[105] *See* Response Letter at 4.

H. Reopenings on the Primary Listing Exchange

Under the terms of the Plan, following a trading pause in an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the next Reference Price would be the Reopening Price on the Primary Listing Exchange if such Reopening Price occurs within ten minutes after the beginning of the trading pause, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan.

One commenter stated, instead of this provision, exchanges could compete for the five to ten minute exclusive window to reopen an issue.[106] The commenter suggested reviewing trading volumes and awarding the reopening rights to the venue with the most average daily volume over the review period.[107]

I. Classification and Treatment of Tier 2 Stocks

Pursuant to the Plan, Tier 1 NMS Stocks would include all NMS Stocks included in the S&P 500 Index, the Russell 1000 Index, and the exchange-traded products listed on Schedule 1 to the Plan's Appendix. Tier 2 NMS Stocks would include all NMS Stocks other than those in Tier 1. The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price of $1.00 or more would be 10% and the Percentage Parameters for Tier 2 NMS Stocks with a Reference Price less than $1.00 would be the lesser of (a) $0.15 or (b) 75%.

One commenter stated that a 10% price band may be too restrictive for some Tier 2 stocks and suggested that the Participants reduce the number of Tier 2 stocks to a test group.[108] That commenter also stated that a 10% price band may be too restrictive for thinly traded stocks.[109] Another commenter proposed the creation of a Tier 3 for stocks with a sufficiently low average daily volume (''ADV'') and wide bid-offer spreads.[110] That commenter stated that the originally proposed limit up-limit down parameters may be unsuitable for these types of low-liquidity stocks and that they may require a higher percentage parameter.[111]

As discussed below, the Participants recently amended the Plan to create a 20% price band for Tier 1 and Tier 2 stocks with a Reference Price equal to $0.75 and up to and including $3.00. The Participants also proposed a conforming amendment for Tier 1 and Tier 2 stocks with a Reference Price less than $0.75. The Percentage Parameters for these stocks shall be the lesser of (a) $0.15 or (b) 75%.[112] As initially proposed, those Percentage Parameters would have applied to Tier 1 and Tier 2 stocks with a Reference Price less than $1.00.

J. Treatment and Impact of the Plan on Exchange Traded Products (ETPs)

The Commission also received comments on the scope of the Plan as it applies to ETPs. ICI stated that all ETFs should be included in the pilot on an expedited basis.[113] Vanguard seconded this idea and noted that the original list of ETPs was created when the Commission, FINRA, and the exchanges had to act quickly following the market events of May 6, 2010.[114]

MFA suggested that there could be unintended consequences of the Plan on ETFs (or derivatives) because the spreads in such products could increase due to uncertainty in the underlying security, *i.e.,* if the components of an ETF are subject to Limit States or trading pauses, quotes in the ETF would widen accordingly, potentially causing the ETF itself to enter a Limit State.[115] According to MFA, index arbitragers may decline to trade because of uncertainty if they do not have a way to hedge risk.[116]

In response, the Participants noted that the proposed phases of the Plan appropriately focus on trading characteristics and volatility rather than instrument type, and that including only certain ETPs in Tier 1 was consistent with scope of the current single-stock circuit breaker pilot.[117]

As discussed below, the Participants recently amended the Plan to require a review and update, on a semi-annual basis, of the list of ETPs included in Tier I of the Plan, and re-stated the criteria by which ETPs would be selected for inclusion in Tier I.

K. Coordination of the Plan With Other Volatility Moderating Mechanisms

Five commenters noted that the Plan implicates other volatility moderating mechanisms that currently exist[118] and requested that the interaction of the Plan with these existing mechanisms be clarified.[119] The commenters stated that the Plan could interact with the single-stock circuit breaker pilot,[120] the Regulation SHO circuit breaker,[121] and the exchange-specific volatility guards.[122] One commenter stated that ''simultaneous triggering of two or more of these speed bumps during times of heightened market volatility could cause confusion and uncertainty unless there is a scheme in place for handing multiple triggers.'' [123] One commenter advocated that as the Participants implement the Plan, the Commission phase out: (1) The NYSE LRPs; (2) the Nasdaq Volatility Guard; (3) the Regulation SHO alternative uptick rule; and (4) the single-stock circuit breakers.[124] Two commenters also requested that the Commission amend clearly erroneous rules so the presumption is that trades executed within the Price Band are not subject to being broken.[125]

Another commenter stated that the Plan does not consider how it would interact with the market-wide circuit breakers being evaluated by the Commission and the U.S. Commodity Futures Trading Commission.[126] This commenter stated that single-stock circuit breaker halts may affect products across markets, and may undermine rather than promote liquidity during market disruptions.[127] Moreover, according to this commenter, halting individual securities without a market-wide halt would, in the case of an index, impair the calculation of that index, which would have cross-market effects. This commenter concluded that market-wide circuit breakers, coupled with automated volatility and risk management functionality, *i.e.,* price bands, protection points, order quantity

[106] *See* Driscoll Letter at 2–3.

[107] *Id.* at 4.

[108] *See* MFA Letter at 4.

[109] *Id.* (for example, the commenter suggested that reopening rights be awarded to the trading venue with the most average daily volume over the review period).

[110] *See* Knight Letter at 3.

[111] *Id.*

[112] *See* Amendment, *supra* note 13.

[113] *See* ICI Letter at 2–3.

[114] *See* Vanguard Letter at 2.

[115] *See* MFA Letter at 6.

[116] *Id.*

[117] *See* Response Letter at 9.

[118] *See* Scottrade Letter at 3; STANY Letter at 4; Knight Letter at 2–3; SIFMA Letter at 6–7; CME Letter at 1 and 3 (noting that the proposed Plan would replace the existing single-stock circuit breaker pilot program currently in effect); FIF Letter at 5 (noting that under the single-stock circuit breaker pilot, exchanges deal with held orders differently).

[119] *See e.g.,* Scottrade Letter at 3.

[120] *See e.g.,* Scottrade Letter at 3; STANY Letter at 4; FIF Letter at 5.

[121] *See e.g.,* STANY Letter at 4;

[122] *See e.g.,* STANY Letter at 4; Knight Letter at 2–3.

[123] *See* STANY Letter at 4.

[124] *See* Knight Letter at 1.

[125] *See* SIFMA Letter at 6–7; STANY Letter at 4. *See also* Knight Letter at 3 (Knight stated that clearly erroneous rules should only operate during the first and last five minutes of the trading day and that there is also a utility in extending the clearly erroneous rules to after-hours trading).

[126] *See* CME Letter at 2–3.

[127] *Id.* at 3.

protections, and stop logic functionality, would be the better alternative.[128]

The Participants noted that some commenters requested that the Participants amend their rules to provide that an execution within a Price Band could not be deemed a clearly erroneous execution. The Participants responded that, while it may be useful to do so and that a key benefit of the limit up-limit down mechanism should be the prevention of clearly erroneous executions, the clearly erroneous trade rules are separate from the Plan and as such the Participants would consider such a change on a separate track.[129]

L. Coordination and Impact on Other Markets

Commenters also expressed opinions regarding the impact of the Plan on other markets, *e.g.,* options,[130] futures,[131] and foreign markets.[132] One commenter suggested that in the options markets, the proposed Limit State for an NMS Stock could create uncertainty and result in wider spreads on the related option.[133] In its letter, that commenter stated that option traders hedge option transactions with the underlying security, so that a Limit State could impact hedging activity as well. This commenter suggested that options market-makers may be unwilling to be subject to normal market-making requirements and minimum quoting widths when the underlying security is in a Limit State. Moreover, options markets do not have uniform clearly erroneous standards. Accordingly, when the underlying security is in a Limit State, some options exchanges may reject all options market orders, while other exchanges may reject only orders on the same side of the market that caused the Limit State.[134]

The Participants responded that the Plan will generally benefit the market for NMS Stocks and protect investors and should not be delayed while further consideration is given to coordination with options and futures markets.[135] The Participants also stated their belief that the Plan strikes appropriate balance in the areas noted. Because the Plan would be adopted as a pilot, the Participants represented that they would have an opportunity to further consider the commenters' suggestions above after gaining experience with the Plan.

M. Role of the Processors

The Processors are fundamental to the operation of the Plan. In short, the single plan processor responsible for consolidation of information for an NMS Stock would be responsible for calculating and disseminating the applicable Price Bands as well as marking certain quotations as non-executable.

One commenter stated that the SIPs should run test data to prove that they are up to the tasks required by them under the terms of the Plan.[136] Another commenter questioned the ability of the SIPs to perform the tasks because under the Plan, SIPs would be producing data rather than merely passing through data to the markets for the first time.[137] Another commenter stated that the SIPs should have mechanisms to determine when they have invalid or delayed market data and thus the ability to halt the dissemination of the Price Bands accordingly.[138] Finally, because SIP data is slower than data disseminated directly by an exchange, one commenter questioned whether participants co-located to an exchange could calculate Price Band information faster than the rest of the market and use this information to their advantage.[139]

The Participants responded that the Processor is well-suited to carrying out its responsibilities under the Plan and the Participants will monitor the Processor's performance during the pilot.[140]

N. Operating Committee Composition

Section III(C) of the Plan provides for each Participant to designate an individual to represent the Participant as a member of an Operating Committee.[141] No later than the initial date of the Plan, the Operating Committee would be required to designate one member of the Operating Committee to act as the Chair of the Operating Committee. The Operating Committee would monitor the procedures established pursuant to the Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. While the Plan generally provides that amendments to the Plan shall be unanimous, any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, would be submitted to the Commission as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS under the Act.[142]

Two commenters suggested that the Operating Committee be supplemented by an advisory committee, made up of a cross-section of users, investors, and agents in the marketplace, that would report to the Operating Committee.[143] One of these commenters stated that this would achieve due process for the both review and recommendations of altering the Plan.[144] In the spirit of transparency, the other commenter recommended that the minutes of the Plan committee meetings be made available to interested parties.[145] Two additional commenters recommended that industry representatives who are not parties to the Plan be added to the Operating Committee of the Plan.[146]

The Participants initially responded that a non-voting advisory committee is unnecessary.[147] Except with respect to the addition of new Participants to the Plan, the Participants stated that any proposed change in, addition to, or deletion from the Plan would have to be effected by means of a written amendment to the Plan that (1) sets forth the change, addition, or deletion; (2) is executed on behalf of each Participant; and (3) is approved by the SEC pursuant to, or otherwise becomes effective under, Rule 608 of Regulation NMS under the Exchange Act. Thus, any person affected by changes to the Plan would have notice and an opportunity to comment as part of the SEC approval process in accordance with Rule 608.[148]

As discussed below, however, the Participants recently proposed an amendment to the Plan to create an Advisory Committee to the Operating Committee. Members of the Advisory Committee would have the right to submit their view on Plan matters to the

[128] *Id.*

[129] *See* Response Letter at 7.

[130] *See* SIFMA Letter at 7; STANY Letter at 3–4.

[131] *See e.g.,* CME Group Letter, *supra* note 38.

[132] *See* Angel Letter at 5 (stating that policy makers should consider how foreign markets address issues of extraordinary market volatility).

[133] *See* STANY Letter at 3–4.

[134] *Id.*

[135] *See* Response Letter at 7.

[136] *See* STA Letter at 4.

[137] *See* STANY Letter at 5. *See also* FIF Letter at 5 (noting that it is possible that a trade will be executed at a price within the Price Bands, but will be reported to the SIP after the Price Band has moved and potentially should be studied.)

[138] *See* SIFMA Letter at 9.

[139] *See* Themis Letter at 1–2.

[140] *See* Response Letter at 8.

[141] *See* Section I(J) of the proposed Plan.

[142] 17 CFR 242.608.

[143] *See* STA Letter at 4–5; SIFMA Letter at 7.

[144] *See* STA Letter at 5.

[145] *See* SIFMA Letter at 7.

[146] *See* STANY Letter at 5–6; Driscoll Letter at 4 (recommending diverse representation of all key trading groups, retail order execution representation, institutional buy-side representation, representatives of various trading venues and representation of those who focus on small capitalization securities).

[147] *See* Response Letter at 7.

[148] *Id.*

Operating Committee prior to a decision by the Operating Committee on such matters. Such matters may include, but would not be limited to, proposed material amendments to the Plan. The Operating Committee would be required to select at least one representative from each of the following categories to be members of the Advisory Committee: (i) A broker-dealer with a substantial retail investor customer base, (ii) a broker-dealer with a substantial institutional investor customer base, (iii) an alternative trading system, and (iv) an investor.[149]

O. Withdrawal of Participants From the Plan

Section IX of the Plan provides that a Participant may withdraw from the Plan upon obtaining approval from the Commission and upon providing not less than 30 days written notice to the other participants. Four commenters expressed concern about the withdrawal provision and suggested that Commission require FINRA and all trading centers to participate in the Plan because withdrawal could create problems if only some market centers are part of the Plan.[150]

P. Implementation Time-Period

The Participants proposed that the initial date of the Plan operations be 120 calendar days following the publication of the Commission's order approving the Plan in the **Federal Register**. The Participants would implement that Plan as a one-year pilot program in two Phases, consistent with Section VIII of the Plan. Phase I of Plan implementation would apply immediately following the initial date of Plan operations; Phase II of the Plan would commence six months after the initial date of the Plan or such earlier date as may be announced by the Processor with at least 30 days notice. As discussed below, the Participants recently proposed an amendment to the Plan that included a new implementation date of February 4, 2013.

One commenter stated that the Plan should be implemented as quickly as possible.[151] Another commenter recommended an implementation date of 12 months instead of 120 days,[152] while another commenter stated that the Plan should be implemented no earlier than the second quarter of 2012.[153]

Prior to the implementation of Phase II of the Plan, one commenter recommended that the Participants analyze empirical evidence derived from Phase I.[154] Another commenter recommended that the Participants seek comment before implementing the Plan on a permanent basis.[155] Yet another commenter stated that the Commission should have to approve Phase II of the Plan prior to its implementation.[156]

Q. Comments on Rule-Making Process of the Plan

The Participants filed the Plan with the Commission pursuant to Section 11A of the Act[157] and Rule 608 thereunder.[158] The Commission solicited comments on the Plan from interested persons. One commenter stated that the process for the creation of a new NMS plan circumvented the formal notice and comment process provided for in The Administrative Procedure Act.[159] The commenter stated that the existence of confidentiality agreements among the Participants in developing the proposal has negative implications for transparency in the rulemaking process.[160]

Another commenter questioned whether there is a need for a Commission rule instead of an NMS plan and stated that ongoing and direct involvement of the Commission will be important to efficient and effective resolution of interpretive questions relating to the Plan and the reasonable policies and procedures.[161] The same commenter also stated that self-regulatory organizations will need to adopt rules specifying how they plan to handle orders that have been routed to them when such orders present display or execution issues under the Plan.[162]

Finally, one commenter stated that a cost-benefit analysis of the Plan should be conducted to address the anticipated costs of implementing the Plan, the parties that would pay for new systems, whether processors would be allowed to charge more than their costs for the new data components of the consolidated feeds, and the incremental benefits that would be incurred over the existing trading pause rules if the Plan were approved.[163]

V. Amendment to the Plan

On May 24, 2012, in response to the comments received on the proposed Plan, the Participants submitted an amendment that proposed several changes to the Plan.[164] First, the participants proposed to amend the Plan to allow transactions that are exempt under Rule 611 of Regulation NMS[165], and which do not update the last sale price (except if solely because the transaction was reported late), to execute outside of the price bands.[166]

Second, the Participants proposed to amend the Plan to provide for a 20% price band for Tier 1 and Tier 2 stocks with a Reference Price equal to $0.75 and up to and including $3.00. The Participants also proposed a conforming amendment for Tier 1 and Tier 2 stocks with a Reference Price less than $0.75. The Percentage Parameters for these stocks would be the lesser of (a) $0.15 or (b) 75%.[167] As initially proposed, those Percentage Parameters would apply to Tier 1 and Tier 2 stocks with a Reference Price less than $1.00.

Third, the Participants proposed to amend the Plan to exclude rights and warrants from the Plan, consistent with the current single-stock circuit breaker pilot.[168]

Fourth, the Participants proposed to amend the Plan to provide for the creation of an Advisory Committee to the Operating Committee. As set forth in greater detail in the amendment, the Operating Committee would be required to select at least one representative from each of the following categories to be members of the Advisory Committee: (i) A broker-dealer with a substantial retail investor customer base, (ii) a broker-dealer with a substantial institutional investor customer base, (iii) an alternative trading system, and (iv) an investor.[169] Members of the Advisory Committee would have the right to submit their view on Plan matters to the Operating Committee prior to a decision by the Operating Committee on such matters. Such matters could include, but would not be limited to, proposed material amendments to the Plan.

Fifth, the Participants proposed to amend the Plan to provide for a manual

[149] *See* Amendment, *supra* note 13.

[150] *See* FIF Letter at 5; SIFMA Letter at 7; STANY Letter at 5; Molinete Letter at 3.

[151] *See* Vanguard Letter at 2. *See also* ICI Letter at 3 (recommending that ETPs be included in the pilot on an expedited basis).

[152] *See* FIF Letter at 5–6.

[153] *See* SIFMA Letter at 9. *See also* Molinete Letter at 5 (stating that the 120-day implementation time period is too ambitious).

[154] *See* Deutsche Bank Letter at 4.

[155] *See* SIFMA Letter at 9.

[156] *See* STANY Letter at 7.

[157] 15 U.S.C. 78k–1.

[158] 17 CFR 242.608.

[159] Pub. Law 79–404, 5 U.S.C. 500 *et seq. See* Driscoll Letter at 1.

[160] *Id* (stating that the narrow focus of the group that developed the regulation may have also allowed some opportunities to increase competition between exchanges to have been overlooked).

[161] *See* SIFMA Letter at 7.

[162] *Id.* at 9.

[163] *See* Scottrade Letter at 4.

[164] *See* Amendment, *supra* note 13.

[165] 17 CFR 242.611.

[166] *See* Amendment, supra note 13.

[167] *Id.*

[168] *Id.*

[169] *Id.*

override functionality when, for example, the National Best Bid for an NMS Stock is below the Lower Price Band, the NMS Stock has not entered the Limit State, and the Primary Listing Exchange has determined that trading in that stock has sufficiently deviated from its normal trading characteristics such that a trading pause would promote the Plan's core purpose of addressing extraordinary market volatility. Upon making this determination, the Primary Listing Exchange would have the ability to declare a trading pause in that stock.[170]

Sixth, the Participants proposed a new implementation date of February 4, 2013. The Participants stated that this date would provide appropriate time to develop and test the technology necessary to implement the Plan, including market-wide testing.

Finally, the Participants proposed to amend the Plan to require the Participants to review and update, on a semi-annual basis, the list of ETPs included in Tier I of the Plan, and re-stated the criteria by which ETPs would selected for inclusion in Tier I.[171]

The Participants also proposed technical changes to the Plan. For example, the Participants clarified that Regular Trading Hours could end earlier than 4:00 p.m. ET in the case of an early scheduled close. The Participants also provided that Participants may re-transmit the price bands calculated and disseminated by the Processor. Finally, the Participants clarified that the Reference Price used in determining which Percentage Parameter is applicable during the trading day would be based on the closing price of the subject security on the Primary Listing Exchange on the previous trading day or, if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

The Participants also proposed to amend the Plan in order to collect and provide to the Commission various data and analysis throughout the duration of the pilot period. Specifically, the Participants will provide summary statistics to the Commission, including data covering how often stocks enter the Limit State, and how often stocks enter a trading pause as a result of the limit up-limit down mechanism. The Participants will also examine certain parameters of the limit up-limit down mechanism, including the appropriateness of the proposed price bands, and the appropriateness of the duration of the Limit State. Finally, the Participants will provide raw data to the Commission, including the record of every limit price, the record of every Limit State, and the record of every trading pause.

VI. Discussion and Commission Findings

A. Section 11A of the Act

In 1975, Congress directed the Commission, through the enactment of Section 11A of the Act,[172] to facilitate the establishment of a national market system to link together the individual markets that trade securities. Congress found the development of a national market system to be in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among the exchange markets.[173] Section 11A(a)(3)(B) of the Act directs the Commission, ''by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this title in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities.'' [174] The Commission's approval of a national market system plan is required to be conditioned upon a finding that the plan is ''necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of, a national market system, or otherwise in furtherance of the purposes of the Act.'' [175]

After carefully considering the proposed Plan and the issues raised by the comment letters, the Commission has determined to approve the Plan, as amended by the Participants, pursuant to Section 11A(a)(3)(B) of the Act [176] and Rule 608.[177] The Commission believes that the Plan is reasonably designed to prevent potentially harmful price volatility, including severe volatility of the kind that occurred on May 6, 2010.[178] The Plan should thereby help promote the goals of investor protection and fair and orderly markets. The Commission also believes that the Plan is a prudent replacement of the single-stock circuit breaker that is currently in effect, and that it is appropriately being introduced on a pilot basis. The pilot period will allow the public, the Participants, and the Commission to assess the operation of the Plan and whether the Plan should be modified prior to approval on a permanent basis.

As discussed above, commenters raised a variety of thoughtful concerns about the proposal and recommended certain changes. Some of the recommended changes were incorporated in the Amendment. As discussed further below, other comments raised important issues that are difficult to evaluate fully in the absence of practical experience with the Plan. These issues will warrant close consideration during the pilot period.

The Commission believes that it is consistent with the Act to approve the

[170] *Id.*

[171] For example, ETPs, including inverse ETPs, that trade over $2,000,000 consolidated average daily volume would be included in Tier I, as would ETPs that do not meet this volume criterion, but track similar benchmarks.

[172] 15 U.S.C. 78k–1.

[173] 15 U.S.C. 78k–1(a)(1)(C).

[174] 15 U.S.C. 78k–1(a)(3)(B).

[175] 17 CFR 242.608(b)(2). *See also* 15 U.S.C. 78k–1(a).

[176] 15 U.S.C. 78k–1(a)(3)(B).

[177] 17 CFR 242.608. In approving this Plan, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[178] The Commission and the Participants have conducted simulations on historical data to examine how a limit up-limit down mechanism might work. The simulations generally support the structure of the proposal. In particular, the proposal would reduce, but not eliminate, extreme short-term price changes, and would not result in an excessive number of trading pauses.

Commission staff, for example, conducted a simulation that suggested that the percentage limits should be larger at the open and close and that the percentage limits should be larger for lower priced stocks. In addition, the simulation suggested that most trades occurring outside of the bands are reversed quickly, providing support for the notion that a limit state may help avoid unnecessary trading pauses. The simulation also showed that an average of slightly more than one large index stock would have a trading pause every four days, based on the structure of the simulation, which was not the same as the proposed structure. A follow-up analysis using the proposed structure showed that only one large index stock would have a trading pause in the three months analyzed.

The NYSE staff also simulated the proposed limit up-limit down mechanism to examine how the mechanism would have worked on May 6th, 2010. Given time constraints, the simulation was limited to the price band aspect of the proposal and did not consider the limit state or trading pause provisions of the proposal. This simulation suggested that the price bands alone would have reduced the size of the flash crash significantly, but stocks would still have experienced large five-minute declines. For example, on May 6th, Accenture experienced a five-minute decline of 99.98%. The simulation suggests that if there had been price bands in place on May 6th, the most extreme five-minute decline in Accenture might have been 6.43%. While the Commission recognizes that this is still a significant decline, it would have much less than the actual decline.

The NYSE simulation also examined the ability of the limit up-limit down price bands to reduce extreme positive and negative returns. In the Tier 1 stocks priced more than $1.00, the price bands would eliminate five-minute returns more extreme than 10% and -10%. The price bands would reduce but not eliminate these extreme five-minute returns in other stocks. A sensitivity analysis comparing the proposed price limit percentages to alternative ones suggested that the proposed bands behave at least as well as the alternatives examined.

Plan on a pilot basis at this time because the Plan reflects the considered judgments of the Participants on operational issues and clearly represents a significant step forward that builds upon the experience with the current single-stock circuit breaker. The limit up-limit down mechanism set forth in the Plan approved today and the single-stock circuit breaker are broadly similar in some respects. For example, both mechanisms calculate a reference price that is based on a rolling five-minute price band, and both mechanisms incorporate a five-minute trading pause, followed by a reopening auction on the Primary Listing Exchange.

The Plan, however, provides a more finely calibrated mechanism than that of the current single-stock circuit breaker. For example, the single-stock circuit breaker is triggered by trades that occur at or outside of the price band, and erroneous trades have triggered trading halts throughout the current pilot. In contrast, under the Plan, all trading centers in NMS stocks, including both those operated by Participants and those operated by members of Participants, are required to establish policies and procedures that are reasonably designed to prevent trades at prices outside of the price bands. In addition, quotes outside of the price bands will be marked as non-executable. Given that trades should not occur outside of the price bands, the Commission believes that the Plan is reasonably designed to reduce the number of erroneous trades in comparison to the current single-stock circuit breaker.

Moreover, Limit States under the Plan (and, ultimately, trading pauses) will be triggered by movements in the National Best Bid or the National Best Offer, rather than single trades. These quoting-based triggers are designed to be more stable and reliable indicators of a significant market event than the single trades that currently can trigger a single stock circuit breaker. The result of this change should be to reduce the frequency of Limit States (and, ultimately, trading pauses) to those circumstances that truly warrant a check on continuous trading.

In contrast to the current single-stock circuit breaker, the Plan also features a fifteen-second Limit State that precedes a trading pause. In those instances where the movement of, for example, the National Best Bid below the Lower Price Band is due to a momentary gap in liquidity, rather than a fundamental price move, the Limit State is reasonably designed to allow the market to quickly correct and resume normal trading, without resorting to a trading pause. Because a Limit State, rather than a trading pause, may be sufficient to resolve some of these scenarios, the corresponding price bands can be narrower than in the single-stock circuit breaker. As such, the Commission believes that the Plan is reasonably designed to be a more finely calibrated mechanism than the current single-stock circuit breaker in guarding against market volatility.[179]

While the price bands in the Plan are reasonably designed to be more finely calibrated than the current single-stock circuit breaker, the Commission notes that the Plan is also designed to accommodate more fundamental price moves, albeit in a manner that lessens the velocity of such moves. In this regard, the Commission notes that the Plan provides that the price bands shall not apply to single-priced re-openings, which allows for the stock to enter a trading pause and reopen at a price that is potentially significantly above or below its previous price. The Commission finds that this mechanism is reasonably designed to allow for more fundamental price moves to occur. To the extent that a reopening only may occur following a five-minute trading pause, however, the Plan is still reasonably designed to reduce the velocity of more significant price moves.

The Amendment improves the initial proposal by addressing a number of concerns raised by commenters. Specifically, it excludes transactions that are exempt under Rule 611 of Regulation NMS and do not update the last sale price (except if solely because the transaction was reported late), from the requirement that such transactions occur within the price bands. This exclusion addresses commenters' concerns that such transactions often are executed at prices unrelated to the current market and do not have the capacity to initiate or exacerbate volatility.

In response to the concerns of commenters about the potential for bids or offers in an NMS stock to become unexecutable without triggering a Limit State, the Amendment authorizes the Primary Listing Exchange manually to declare a trading pause in these circumstances. This mechanism should help ensure that the market for a stock does not remain impaired for an indefinite period of time, while providing the Primary Listing Exchange with the discretion to determine whether such impairment is inconsistent with the stock's normal trading characteristics.

The Amendment assigns wider price bands for Tier 1 and Tier 2 securities that are priced between $0.75 and $3.00 that are reasonably designed to reflect more appropriately the characteristics of stocks that trade in that price range. Similarly, the Amendment excludes all rights and warrants from the Plan, which reflects the trading characteristics of such securities and is consistent with the scope of the current single-stock circuit breaker pilot. The Amendment's provision for evaluating, on a semi-annual basis, the ETPs that are included in Tier I helps assure that ETPs meeting the criteria for inclusion are appropriately included in Tier I, and vice versa.

The Amendment also extends the implementation date to February 4, 2013. This extension of time should provide appropriate time to develop and test the technology necessary to implement the Plan, including market-wide testing.

Finally, in response to concerns expressed by commenters, the Amendment establishes an Advisory Committee to the Operating Committee composed of a broad cross-section of market participants. The Advisory Committee members will have the right to submit their views on Plan matters to the Operating Committee and thereby engage in the ongoing assessment of Plan operations and formulation of future proposed amendments to the Plan.

One serious concern raised by comments was the interaction between the limit up-limit down mechanism and the market-wide circuit breakers that apply across all securities and securities-related products, particularly

[179] The Commission also finds that the Plan is consistent with the requirements of Rule 602 under Regulation NMS. Under that rule, bids and offers must be firm, *i.e.,* brokers and dealers are obligated to execute any order to buy or sell a subject security presented to it by another broker or dealer at a price at least as favorable to such buyer or seller as that broker or dealer's published bid or published offer in any amount up to its published quotation size. Similarly, the best bids and offers collected by national securities exchanges must also be firm. *See* 17 CFR 242.602. However, Rule 602(a)(3)(i) relieves exchanges of their obligation to collect and make available bids and offers (which are firm) if the existence of ''unusual market conditions'' makes those bids and offers no longer accurately reflective of the current state of the market. This provision also relieves brokers and dealers of their corresponding obligation to submit firm quotes. The Commission believes that, when the National Best Bid (Offer) crosses the Lower (Upper) Price Band, and such quote becomes non-executable, an unusual market condition exists for purposes of Rule 602. To the extent that this scenario constitutes an unusual market condition, the broker or dealer could submit a quote that is outside of the applicable price band, and is thus not firm (as it is non-executable), and the exchange could collect and display such quote, without violating Rule 602. The Commission notes, however, that the firmness requirement continues to apply to quotes at or within the price bands that are submitted by brokers or dealers and collected by exchanges, as such quotes are executable.

during a ''macro market event'' that affects a large number of securities and securities-related products. The Commission is approving separately today on a pilot basis SRO proposals to revise these market-wide circuit breakers and make them more meaningful in today's high-speed electronic markets.[180] These SRO rules include both tighter parameters and shorter halt periods. The Commission recognizes the potential for limit up-limit down trading halts in many securities to affect both the calculation of broader indexes and the trading in products related to such indexes. Nevertheless, it believes that the need for protection against extraordinary volatility in individual equities is essential for both investors in such listed equities and for their listed companies. Accordingly, it is approving the Plan on a pilot basis, but welcomes comments during the pilot period on ways that the Plan could be improved to address potential problems in its interaction with market-wide circuit breakers. The Commission also is accepting comment during the pilot period for the market-wide circuit breakers on ways to improve them to address this question on their interaction with the Plan.

The Commission notes that the Participants did not amend the Plan to incorporate some of the recommendations to modify the operational details of the Plan, including the duration of the Limit State, the calculation of the Reference Price, the application of the price bands at the open and the close, the criteria required to enter and exit the Limit State, and the display of quotes outside of the price bands. The Commission recognizes the thoughtfulness of the comments that put forward such recommendations, and indeed believes they raise valid concerns that warrant close scrutiny during the pilot period. At this time, however, the Commission believes that it is consistent with the Act to accept the considered collective judgment of the Participants on these complex issues, particularly given their expertise and responsibility for operating markets on a daily basis.[181]

Approving the Plan on a pilot basis will allow the Participants and the public to gain valuable practical experience with Plan operations during the pilot period. This experience should prove invaluable in assessing whether further modifications of the Plan are necessary or appropriate prior to final approval. The Participants also have agreed to provide the Commission with a significant amount of data bearing on operational questions that should assist the Commission in its evaluation of Plan operations. Finally, the Commission welcomes additional comments, and empirical evidence, on the Plan during the pilot period to further assist it in its evaluation of the Plan. Of course, any final approval of the Plan would require a proposed amendment of the Plan, and such amendment will provide an opportunity for public comment prior to further Commission action.

To the extent that the Participants did not amend the Plan to reflect other operational or procedural concerns, the Commission believes that those suggestions and concerns were generally considered by the Participants in developing a uniform proposal that would not be excessively complicated and yet could still provide important benefits to the markets. For example, one commenter noted that allowing the primary listing market to control the re-opening process in the first five minutes following a trading pause may confer a competitive advantage upon that market. The Commission notes that this aspect of the Plan is consistent with the current procedure for re-opening the market following a trading pause that has been triggered under the single-stock circuit breaker pilot.

Another commenter suggested that a market-wide limit up-limit down mechanism was more appropriately developed through Commission rulemaking than through an NMS plan. While a Commission rulemaking may be an appropriate means for developing such a mechanism, the Commission believes that an NMS plan, which was the means selected by the Participants here, is equally appropriate, particularly given the Participants' expertise in the trading characteristics in individual securities and the operation of market systems.

Some commenters expressed concern over the provision in the Plan governing withdrawal of Participants from the Plan. The Commission notes that withdrawing from the Plan would require an amendment to the Plan, and Commission approval of that amendment. Given the importance of applying a limit up-limit down mechanism uniformly throughout the market, the Commission would anticipate approving such withdrawal from the Plan only if the Participant seeking to withdraw from the Plan ceased to trade NMS securities.

One commenter suggested that a cost-benefit analysis of the Plan should be conducted. The Commission notes that market participants are welcome to submit additional comments and empirical evidence during the pilot period with respect to, among other things, the operation of the limit up-limit down mechanism, its effectiveness in achieving its intended goals, and the costs associated therewith. The Commission will take such comments into account in considering whether to approve any amendment, in accordance with Rule 608 of Regulation NMS, that proposes to make the Plan permanent.

As such, the Commission believes that the Plan is consistent with the Act, notwithstanding such comments, and that it is reasonably designed to achieve its objective of reducing extraordinary market volatility.

Given that the Plan is being approved on a pilot basis, the Commission expects that the Participants will monitor the scope and operation of the Plan and study the data produced during that time with respect to such issues, and will propose any modifications to the Plan that may be necessary or appropriate. Similarly, the Commission expects that the Participants will propose any modifications to the Plan that may be necessary or appropriate in response to the data being gathered by the Participants during the pilot.[182]

[180] *See* Securities Exchange Act Release No. 67090 (May 31, 2012) (File Nos. SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex-2011–73; SR–NYSEArca-2011–68; SR–Phlx-2011–129).

[181] The Commission notes that one of the concerns of requiring the National Best Offer (Bid) to trigger the Limit Down (Up) may be partially alleviated by one of the amendments to the Plan. Specifically, if the National Best Bid is outside of the lower price band and is thus non-executable, while the offer remains within the price bands, the stated concern is that the market for that stock is impaired, perhaps for an indefinite period of time, while the stock has not entered the Limit State. The Commission believes that the addition of a manual override, as proposed by the Participants in the amendment to the Plan, may, at least partially, alleviate this concern.

[182] The Commission notes that some of the comments focused on the relation between the Plan, and other, exchange-specific volatility mechanisms, including the NYSE Liquidity Replenishment Points, and the Nasdaq Volatility Guard. While a stated purpose of the Plan is to replace the current single-stock circuit breaker, the Commission is also aware of the potential for unnecessary complexity that could result if the Plan were adopted, and exchange-specific volatility mechanisms were retained. To this end, the Commission expects that, upon implementation of the Plan, such exchange-specific volatility mechanisms would be discontinued by the respective exchanges. In that regard, the Commission notes that one such mechanism, the Nasdaq Volatility Guard, is currently set to expire on the earlier of July 31, 2012, or the date on which the Plan is approved by the Commission. *See* Securities Exchange Act Release No. 66275 (January 30, 2012), 77 FR 5606 (February 3, 2012) (SR–Nasdaq–2012–019).

VII. Conclusion

It is therefore ordered, pursuant to Sections 11A of the Act,[183] and the rules thereunder, that the Plan (File No. 4–631), as amended, is approved on a one-year pilot basis and declared effective, and the Participants are authorized to act jointly to implement the Plan as a means of facilitating a national market system.

By the Commission.

Elizabeth M. Murphy,

Secretary.

Exhibit A

Plan To Address Extraordinary Market Volatility Submitted to the Securities and Exchange Commission Pursuant to Rule 608 of Regulation NMS Under the Securities Exchange Act of 1934

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Preamble

The Participants submit to the SEC this Plan establishing procedures to address extraordinary volatility in NMS Stocks. The procedures provide for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses to accommodate more fundamental price moves. The Plan procedures are designed, among other things, to protect investors and promote fair and orderly markets. The Participants developed this Plan pursuant to Rule 608(a)(3) of Regulation NMS under the Exchange Act, which authorizes the Participants to act jointly in preparing, filing, and implementing national market system plans.

I. Definitions

(A) ''*Eligible Reported Transactions*'' shall have the meaning prescribed by the Operating Committee and shall generally mean transactions that are eligible to update the last sale price of an NMS Stock.

(B) ''*Exchange Act*'' means the Securities Exchange Act of 1934, as amended.

(C) ''*Limit State*'' shall have the meaning provided in Section VI of the Plan.

(D) ''*Limit State Quotation*'' shall have the meaning provided in Section VI of the Plan.

(E) ''*Lower Price Band*'' shall have the meaning provided in Section V of the Plan.

(F) ''*Market Data Plans*'' shall mean the effective national market system plans through which the Participants act jointly to disseminate consolidated information in compliance with Rule 603(b) of Regulation NMS under the Exchange Act.

(G) ''*National Best Bid*'' and ''*National Best Offer*'' shall have the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act.

(H) ''*NMS Stock*'' shall have the meaning provided in Rule 600(b)(47) of Regulation NMS under the Exchange Act.

(I) ''Opening Price'' shall mean the price of a transaction that opens trading on the Primary Listing Exchange, or, if the Primary Listing Exchange opens with quotations, the midpoint of those quotations.

(J) ''Operating Committee'' shall have the meaning provided in Section III(C) of the Plan.

(K) ''Participant'' means a party to the Plan.

(L) ''Plan'' means the plan set forth in this instrument, as amended from time to time in accordance with its provisions.

(M) ''Percentage Parameter'' shall mean the percentages for each tier of NMS Stocks set forth in Appendix A of the Plan.

(N) ''Price Bands'' shall have the meaning provided in Section V of the Plan.

(O) ''Primary Listing Exchange'' shall mean the Participant on which an NMS Stock is listed. If an NMS Stock is listed on more than one Participant, the Participant on which the NMS Stock has been listed the longest shall be the Primary Listing Exchange.

(P) ''Processor'' shall mean the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act.

(Q) ''Pro-Forma Reference Price'' shall have the meaning provided in Section V(A)(2) of the Plan.

(R) ''Regular Trading Hours'' shall have the meaning provided in Rule 600(b)(64) of Regulation NMS under the Exchange Act. For purposes of the Plan, Regular Trading Hours can end earlier than 4:00 p.m. ET in the case of an early scheduled close.

(S) ''Regulatory Halt'' shall have the meaning specified in the Market Data Plans.

(T) ''Reference Price'' shall have the meaning provided in Section V of the Plan.

(U) ''Reopening Price'' shall mean the price of a transaction that reopens

[183] 15 U.S.C. 78k–1.

trading on the Primary Listing Exchange following a Trading Pause or a Regulatory Halt, or, if the Primary Listing Exchange reopens with quotations, the midpoint of those quotations.

(V) ''SEC'' shall mean the United States Securities and Exchange Commission.

(W) ''Straddle State'' shall have the meaning provided in Section VII(A)(2) of the Plan.

(X) ''Trading center'' shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Exchange Act.

(Y) ''Trading Pause'' shall have the meaning provided in Section VII of the Plan.

(Z) ''Upper Price Band'' shall have the meaning provided in Section V of the Plan.

II. Parties

(A) List of Parties

The parties to the Plan are as follows:

(1) BATS Exchange, Inc., 8050 Marshall Drive, Lenexa, Kansas 66214.
(2) BATS Y–Exchange, Inc., 8050 Marshall Drive, Lenexa, Kansas 66214.
(3) Chicago Board Options Exchange, Incorporated, 400 South LaSalle Street, Chicago, Illinois 60605.
(4) Chicago Stock Exchange, Inc., 440 South LaSalle Street, Chicago, Illinois 60605.
(5) EDGA Exchange, Inc., 545 Washington Boulevard, Sixth Floor, Jersey City, NJ 07310.
(6) EDGX Exchange, Inc., 545 Washington Boulevard, Sixth Floor, Jersey City, NJ 07310.
(7) Financial Industry Regulatory Authority, Inc., 1735 K Street, NW., Washington, DC 20006.
(8) NASDAQ OMX BX, Inc., One Liberty Plaza, New York, New York 10006.
(9) NASDAQ OMX PHLX LLC, 1900 Market Street, Philadelphia, Pennsylvania 19103.
(10) The Nasdaq Stock Market LLC, 1 Liberty Plaza, 165 Broadway, New York, NY 10006.
(11) National Stock Exchange, Inc., 101 Hudson, Suite 1200, Jersey City, NJ 07302.
(12) New York Stock Exchange LLC, 11 Wall Street, New York, New York 10005.
(13) NYSE MKT LLC, 20 Broad Street, New York, New York 10005.
(14) NYSE Arca, Inc., 100 South Wacker Drive, Suite 1800, Chicago, IL 60606.

(B) Compliance Undertaking

By subscribing to and submitting the Plan for approval by the SEC, each Participant agrees to comply with and to enforce compliance, as required by Rule 608(c) of Regulation NMS under the Exchange Act, by its members with the provisions of the Plan. To this end, each Participant shall adopt a rule requiring compliance by its members with the provisions of the Plan, and each Participant shall take such actions as are necessary and appropriate as a participant of the Market Data Plans to cause and enable the Processor for each NMS Stock to fulfill the functions set forth in this Plan.

(C) New Participants

The Participants agree that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) becoming a participant in the applicable Market Data Plans; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

(D) Advisory Committee

(1) *Formation.* Notwithstanding other provisions of this Plan, an Advisory Committee to the Plan shall be formed and shall function in accordance with the provisions set forth in this section.

(2) *Composition.* Members of the Advisory Committee shall be selected for two-year terms as follows:

(A) *Advisory Committee Selections.* By affirmative vote of a majority of the Participants, the Participants shall select at least one representatives from each of the following categories to be members of the Advisory Committee: (1) A broker-dealer with a substantial retail investor customer base; (2) a broker-dealer with a substantial institutional investor customer base; (3) an alternative trading system; and (4) an investor.

(3) *Function.* Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating Committee on such matters. Such matters shall include, but not be limited to, proposed material amendments to the Plan.

(4) *Meetings and Information.* Members of the Advisory Committee shall have the right to attend meetings of the Operating Committee and to receive any information concerning Plan matters; provided, however, that the Operating Committee may meet in executive session if, by affirmative vote of a majority of the Participants, the Operating Committee determines that an item of Plan business requires confidential treatment.

III. Amendments to Plan

(A) General Amendments

Except with respect to the addition of new Participants to the Plan, any proposed change in, addition to, or deletion from the Plan shall be effected by means of a written amendment to the Plan that: (1) Sets forth the change, addition, or deletion; (2) is executed on behalf of each Participant; and, (3) is approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act, or otherwise becomes effective under Rule 608 of Regulation NMS under the Exchange Act.

(B) New Participants

With respect to new Participants, an amendment to the Plan may be effected by the new national securities exchange or national securities association executing a copy of the Plan, as then in effect (with the only changes being the addition of the new Participant's name in Section II(A) of the Plan) and submitting such executed Plan to the SEC for approval. The amendment shall be effective when it is approved by the SEC in accordance with Rule 608 of Regulation NMS under the Exchange Act or otherwise becomes effective pursuant to Rule 608 of Regulation NMS under the Exchange Act.

(C) Operating Committee

(1) Each Participant shall select from its staff one individual to represent the Participant as a member of an Operating Committee, together with a substitute for such individual. The substitute may participate in deliberations of the Operating Committee and shall be considered a voting member thereof only in the absence of the primary representative. Each Participant shall have one vote on all matters considered by the Operating Committee. No later than the initial date of Plan operations, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee.

(2) The Operating Committee shall monitor the procedures established pursuant to this Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. The Operating Committee shall establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of this Plan and the Appendixes thereto. With respect to

matters in this paragraph, Operating Committee decisions shall be approved by a simple majority vote.

(3) Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the SEC as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS.

IV. Trading Center Policies and Procedures

All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down requirements specified in Sections VI of the Plan, and to comply with the Trading Pauses specified in Section VII of the Plan.

V. Price Bands

(A) Calculation and Dissemination of Price Bands

(1) The Processor for each NMS stock shall calculate and disseminate to the public a Lower Price Band and an Upper Price Band during Regular Trading Hours for such NMS Stock. The Price Bands shall be based on a Reference Price for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS stock over the immediately preceding five-minute period (except for periods following openings and reopenings, which are addressed below). If no Eligible Reported Transactions for the NMS Stock have occurred over the immediately preceding five-minute period, the previous Reference Price shall remain in effect. The Price Bands for an NMS Stock shall be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. The Price Bands shall be calculated during Regular Trading Hours. Between 9:30 a.m. and 9:45 a.m. ET, and 3:35 p.m. and 4:00 p.m. ET, or in the case of an early scheduled close, during the last 25 minutes of trading before the early scheduled close, the Price Bands shall be calculated by applying double the Percentage Parameters set forth in Appendix A. If a Reopening Price does not occur within ten minutes after the beginning of a Trading Pause, the Price Band, for the first 30 seconds following the reopening after that Trading Pause, shall be calculated by applying triple the Percentage Parameters set forth in Appendix A.

(2) The Processor shall calculate a Pro-Forma Reference Price on a continuous basis during Regular Trading Hours, as specified in Section V(A)(1) of the Plan. If a Pro-Forma Reference Price has not moved by 1% or more from the Reference Price currently in effect, no new Price Bands shall be disseminated, and the current Reference Price shall remain the effective Reference Price. When the Pro-Forma Reference Price has moved by 1% or more from the Reference Price currently in effect, the Pro-Forma Reference Price shall become the Reference Price, and the Processor shall disseminate new Price Bands based on the new Reference Price; provided, however, that each new Reference Price shall remain in effect for at least 30 seconds.

(B) Openings

(1) Except when a Regulatory Halt is in effect at the start of Regular Trading Hours, the first Reference Price for a trading day shall be the Opening Price on the Primary Listing Exchange in an NMS Stock if such Opening Price occurs less than five minutes after the start of Regular Trading Hours. During the period less than five minutes after the Opening Price, a Pro-Forma Reference Price shall be updated on a continuous basis to be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock during the period following the Opening Price (including the Opening Price), and if it differs from the current Reference Price by 1% or more shall become the new Reference Price, except that a new Reference Price shall remain in effect for at least 30 seconds. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) If the Opening Price on the Primary Listing Exchange in an NMS Stock does not occur within five minutes after the start of Regular Trading Hours, the first Reference Price for a trading day shall be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(C) Reopenings

(1) Following a Trading Pause in an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the next Reference Price shall be the Reopening Price on the Primary Listing Exchange if such Reopening Price occurs within ten minutes after the beginning of the Trading Pause, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If such Reopening Price does not occur within ten minutes after the beginning of the Trading Pause, the first Reference Price following the Trading Pause shall be equal to the last effective Reference Price before the Trading Pause. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) Following a Regulatory Halt, the next Reference Price shall be the Opening or Reopening Price on the Primary Listing Exchange if such Opening or Reopening Price occurs within five minutes after the end of the Regulatory Halt, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If such Opening or Reopening Price has not occurred within five minutes after the end of the Regulatory Halt, the Reference Price shall be equal to the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

VI. Limit Up-Limit Down Requirements

(A) Limitations on Trades and Quotations Outside of Price Bands

(1) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the Lower Price Band or above the Upper Price Band for an NMS Stock. Single-priced opening, reopening, and closing transactions on the Primary Listing Exchange, however, shall be excluded from this limitation. In addition, any transaction that both does not update the last sale price (except if solely because the transaction was reported late) and is excepted or exempt from Rule 611 under Regulation NMS shall be excluded from this limitation.

(2) When a National Best Bid is below the Lower Price Band or a National Best Offer is above the Upper Price Band for an NMS Stock, the Processor shall disseminate such National Best Bid or National Best Offer with an appropriate flag identifying it as non-executable. When a National Best Offer is equal to

the Lower Price Band or a National Best Bid is equal to the Upper Price Band for an NMS Stock, the Processor shall distribute such National Best Bid or National Best Offer with an appropriate flag identifying it as a ''Limit State Quotation''.

(3) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processor shall disseminate an offer below the Lower Price Band or bid above the Upper Price Band that may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; provided, however, that any such bid or offer shall not be included in National Best Bid or National Best Offer calculations.

(B) Entering and Exiting a Limit State

(1) All trading for an NMS Stock shall immediately enter a Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer.

(2) When trading for an NMS Stock enters a Limit State, the Processor shall disseminate this information by identifying the relevant quotation (*i.e.,* a National Best Offer that equals the Lower Price Band or a National Best Bid that equals the Upper Price Band) as a Limit State Quotation. At this point, the Processor shall cease calculating and disseminating updated Reference Prices and Price Bands for the NMS Stock until either trading exits the Limit State or trading resumes with an opening or re-opening as provided in Section V.

(3) Trading for an NMS Stock shall exit a Limit State if, within 15 seconds of entering the Limit State, the entire size of all Limit State Quotations are executed or cancelled.

(4) If trading for an NMS Stock exits a Limit State within 15 seconds of entry, the Processor shall immediately calculate and disseminate updated Price Bands based on a Reference Price that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period (including the period of the Limit State).

(5) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry, the Limit State will terminate when the Primary Listing Exchange declares a Trading Pause pursuant to Section VII of the Plan. If trading for an NMS Stock is in a Limit State at the end of Regular Trading Hours, the Limit State will terminate when the Primary Listing Exchange executes a closing transaction in the NMS Stock or five minutes after the end of Regular Trading Hours, whichever is earlier.

VII. Trading Pauses

(A) Declaration of Trading Pauses

(1) If trading for an NMS Stock does not exit a Limit State within *15* seconds of entry during Regular Trading Hours, then the Primary Listing Exchange shall declare a Trading Pause for such NMS Stock and shall notify the Processor.

(2) The Primary Listing Exchange may also declare a Trading Pause for an NMS Stock when an NMS Stock is in a Straddle State, which is when National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State, and trading in that NMS Stock deviates from normal trading characteristics such that declaring a Trading Pause would support the Plan's goal to address extraordinary market volatility. The Primary Listing Exchange shall develop policies and procedures for determining when it would declare a Trading Pause in such circumstances. If a Trading Pause is declared for an NMS Stock under this provision, the Primary Listing Exchange shall notify the Processor.

(3) The Processor shall disseminate Trading Pause information to the public. No trades in an NMS Stock shall occur during a Trading Pause, but all bids and offers may be displayed.

(B) Reopening of Trading During Regular Trading Hours

(1) Five minutes after declaring a Trading Pause for an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the Primary Listing Exchange shall attempt to reopen trading using its established reopening procedures. The Trading Pause shall end when the Primary Listing Exchange reports a Reopening Price.

(2) The Primary Listing Exchange shall notify the Processor if it is unable to reopen trading in an NMS Stock for any reason other than a significant order imbalance and if it has not declared a Regulatory Halt. The Processor shall disseminate this information to the public, and all trading centers may begin trading the NMS Stock at this time.

(3) If the Primary Listing Exchange does not report a Reopening Price within ten minutes after the declaration of a Trading Pause in an NMS Stock, and has not declared a Regulatory Halt, all trading centers may begin trading the NMS Stock.

(4) When trading begins after a Trading Pause, the Processor shall update the Price Bands as set forth in Section V(C)(1) of the Plan.

(C) Trading Pauses Within Five Minutes of the End of Regular Trading Hours

(1) If a Trading Pause for an NMS Stock is declared less than five minutes before the end of Regular Trading Hours, the Primary Listing Exchange shall attempt to execute a closing transaction using its established closing procedures. All trading centers may begin trading the NMS Stock when the Primary Listing Exchange executes a closing transaction.

(2) If the Primary Listing Exchange does not execute a closing transaction within five minutes after the end of Regular Trading Hours, all trading centers may begin trading the NMS Stock.

VIII. Implementation

(A) Phase I

(1) Phase I of Plan implementation shall apply immediately following the initial date of Plan operations.

(2) During Phase I, the Plan shall apply only to the Tier 1 NMS Stocks identified in Appendix A of the Plan.

(3) During Phase I, the first Price Bands for a trading day shall be calculated and disseminated 15 minutes after the start of Regular Trading Hours as specified in Section *(*V)(A) of the Plan. No Price Bands shall be calculated and disseminated less than 30 minutes before the end of Regular Trading Hours, and trading shall not enter a Limit State less than 25 minutes before the end of Regular Trading Hours.

(B) Phase II—Full Implementation

Six months after the initial date of Plan operations, or such earlier date as may be announced by the Processor with at least 30 days notice, the Plan shall fully apply (i) to all NMS Stocks; and (ii) beginning at 9:30 a.m. ET, and ending at 4:00 p.m. ET each trading day, or earlier in the case of an early scheduled close or if the Processor disseminates a closing trade for the Primary Listing Exchange.

(C) Pilot

The Plan shall be implemented on a one-year pilot basis.

IX. Withdrawal from Plan

If a Participant obtains SEC approval to withdraw from the Plan, such Participant may withdraw from the Plan

at any time on not less than 30 days' prior written notice to each of the other Participants. At such time, the withdrawing Participant shall have no further rights or obligations under the Plan.

X. Counterparts and Signatures

The Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

IN WITNESS THEREOF, this Plan has been executed as of the_day of____2012 by each of the parties hereto.

BATS EXCHANGE, INC.
BY: _____
BATS Y-EXCHANGE, INC.
BY: _____
CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
BY: _____
CHICAGO STOCK EXCHANGE, INC.
BY: _____
EDGA EXCHANGE, INC.
BY: _____
EDGX EXCHANGE, INC.
BY: _____
FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.
BY: _____
NASDAQ OMX BX, INC.
BY: _____
NASDAQ OMX PHLX LLC
BY: _____
THE NASDAQ STOCK MARKET LLC
BY: _____
NATIONAL STOCK EXCHANGE, INC.
BY: _____
NEW YORK STOCK EXCHANGE LLC
BY: _____
NYSE MKT LLC
BY: _____
NYSE ARCA, INC.
BY: _____

Appendix A—Percentage Parameters

I. Tier 1 NMS Stocks

(1) Tier 1 NMS Stocks shall include all NMS Stocks included in the S&P 500 Index, the Russell 1000 Index, and the exchange-traded products (''ETP'') listed on Schedule 1 to this Appendix. Schedule 1 to the Appendix will be reviewed and updated semi-annually based on the fiscal year by the Primary Listing Exchange to add ETPs that meet the criteria, or delete ETPs that are no longer eligible. To determine eligibility for an ETP to be included as a Tier 1 NMS Stock, all ETPs across multiple asset classes and issuers, including domestic equity, international equity, fixed income, currency, and commodities and futures will be identified. Leveraged ETPs will be excluded and the list will be sorted by notional consolidated average daily volume (''CADV''). The period used to measure CADV will be from the first day of the previous fiscal half year up until one week before the beginning of the next fiscal half year. Daily volumes will be multiplied by closing prices and then averaged over the period. ETPs, including inverse ETPs, that trade over $2,000,000 CADV will be eligible to be included as a Tier 1 NMS Stock. To ensure that ETPs that track similar benchmarks but that do not meet this volume criterion do not become subject to pricing volatility when a component security is the subject of a trading pause, non-leveraged ETPs that have traded below this volume criterion, but that track the same benchmark as an ETP that does meet the volume criterion, will be deemed eligible to be included as a Tier 1 NMS Stock. The semi-annual updates to Schedule 1 do not require an amendment to the Plan. The Primary Listing Exchanges will maintain the updated Schedule 1 on their respective Web sites.

(2) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price more than $3.00 shall be 5%.

(3) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price equal to $0.75 and up to and including $3.00 shall be 20%.

(4) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price less than $0.75 shall be the lesser of (a) $0.15 or (b) 75%.

(5) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

II. Tier 2 NMS Stocks

(1) Tier 2 NMS Stocks shall include all NMS Stocks other than those in Tier 1, provided, however, that all rights and warrants are excluded from the Plan.

(2) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price more than $3.00 shall be 10%.

(3) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price equal to $0.75 and up to and including $3.00 shall be 20%.

(4) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price less than $0.75 shall be the lesser of (a) $0.15 or (b) 75%.

(5) Notwithstanding the foregoing, the Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP shall be the applicable Percentage Parameter set forth in clauses (2), (3), or (4) above, multiplied by the leverage ratio of such product.

(6) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

APPENDIX A—SCHEDULE 1

Symbol	Name
AAVX	ETRACS Daily Short 1-Month S&P 500 VIX Futures ETN
AAXJ	iShares MSCI All Country Asia ex Japan Index Fund
ACWI	iShares MSCI ACWI Index Fund
ACWX	iShares MSCI ACWI ex US Index Fund
AGG	iShares Barclays Aggregate Bond Fund
AGZ	iShares Barclays Agency Bond Fund
ALD	WisdomTree Asia Local Debt Fund
AMJ	JPMorgan Alerian MLP Index ETN
AMLP	Alerian MLP ETF
BAB	PowerShares Build America Bond Portfolio
BDG	PowerShares DB Base Metals Long ETN
BIK	SPDR S&P BRIC 40 ETF
BIL	SPDR Barclays Capital 1–3 Month T-Bill ETF
BIV	Vanguard Intermediate-Term Bond ETF
BKF	iShares MSCI BRIC Index Fund
BKLN	PowerShares Senior Loan Portfolio
BLV	Vanguard Long-Term Bond ETF
BND	Vanguard Total Bond Market ETF
BNO	United States Brent Oil Fund LP
BOND	Pimco Total Return ETF
BOS	PowerShares DB Base Metals Short ETN

APPENDIX A—SCHEDULE 1—Continued

Symbol	Name
BRF	Market Vectors Brazil Small-Cap ETF
BSV	Vanguard Short-Term Bond ETF
BWX	SPDR Barclays Capital International Treasury Bond ETF
BXDB	Barclays ETN+short B Leveraged ETN Linked to S&P 500
CEW	WisdomTree Dreyfus Emerging Currency Fund
CFT	iShares Barclays Credit Bond Fund
CIU	iShares Barclays Intermediate Credit Bond Fund
CLY	iShares 10+ Year Credit Bond Fund
CORN	Teucrium Corn Fund
CSJ	iShares Barclays 1–3 Year Credit Bond Fund
CVY	Guggenheim Multi-Asset Income ETF
CWB	SPDR Barclays Capital Convertible Securities ETF
CWI	SPDR MSCI ACWI ex-US ETF
CYB	WisdomTree Dreyfus Chinese Yuan Fund
DBA	PowerShares DB Agriculture Fund
DBB	PowerShares DB Base Metals Fund
DBC	PowerShares DB Commodity Index Tracking Fund
DBE	PowerShares DB Energy Fund
DBO	PowerShares DB Oil Fund
DBP	PowerShares DB Precious Metals Fund
DBV	PowerShares DB G10 Currency Harvest Fund
DEM	WisdomTree Emerging Markets Equity Income Fund
DGL	PowerShares DB Gold Fund
DGS	WisdomTree Emerging Markets SmallCap Dividend Fund
DGZ	PowerShares DB Gold Short ETN
DHS	WisdomTree Equity Income Fund
DIA	SPDR Dow Jones Industrial Average ETF Trust
DJCI	E–TRACS UBS AG Dow Jones-UBS Commodity Index Total Return ETN
DJP	iPath Dow Jones-UBS Commodity Index Total Return ETN
DLN	WisdomTree LargeCap Dividend Fund
DOG	ProShares Short Dow30
DON	WisdomTree MidCap Dividend Fund
DOO	WisdomTree International Dividend Ex-Financials Fund
DTN	WisdomTree Dividend Ex-Financials Fund
DVY	iShares Dow Jones Select Dividend Index Fund
DWM	WisdomTree DEFA Fund
DWX	SPDR S&P International Dividend ETF
DXJ	WisdomTree Japan Hedged Equity Fund
ECH	iShares MSCI Chile Investable Market Index Fund
ECON	EGShares Emerging Markets Consumer ETF
EDIV	SPDR S&P Emerging Markets Dividend ETF
EDV	Vanguard Extended Duration Treasury ETF
EEB	Guggenheim BRIC ETF
EEM	iShares MSCI Emerging Markets Index Fund
EFA	iShares MSCI EAFE Index Fund
EFG	iShares MSCI EAFE Growth Index
EFV	iShares MSCI EAFE Value Index
EFZ	ProShares Short MSCI EAFE
EIDO	iSHARES MSCI Indonesia Investable Market Index Fund
ELD	WisdomTree Emerging Markets Local Debt Fund
ELR	SPDR Dow Jones Large Cap ETF
EMB	iShares JPMorgan USD Emerging Markets Bond Fund
EMLC	Market Vectors Emerging Markets Local Currency Bond ETF
EMM	SPDR Dow Jones Mid Cap ETF
EPHE	iShares MSCI Philippines Investable Market Index Fund
EPI	WisdomTree India Earnings Fund
EPP	iShares MSCI Pacific ex-Japan Index Fund
EPU	iShares MSCI All Peru Capped Index Fund
ERUS	iShares MSCI Russia Capped Index Fund
EUM	ProShares Short MSCI Emerging Markets
EWA	iShares MSCI Australia Index Fund
EWC	iShares MSCI Canada Index Fund
EWD	iShares MSCI Sweden Index Fund
EWG	iShares MSCI Germany Index Fund
EWH	iShares MSCI Hong Kong Index Fund
EWI	iShares MSCI Italy Index Fund
EWJ	iShares MSCI Japan Index Fund
EWL	iShares MSCI Switzerland Index Fund
EWM	iShares MSCI Malaysia Index Fund
EWP	iShares MSCI Spain Index Fund
EWQ	iShares MSCI France Index Fund
EWS	iShares MSCI Singapore Index Fund

APPENDIX A—SCHEDULE 1—Continued

Symbol	Name
EWT	iShares MSCI Taiwan Index Fund
EWU	iShares MSCI United Kingdom Index Fund
EWW	iShares MSCI Mexico Investable Market Index Fund
EWX	SPDR S&P Emerging Markets SmallCap ETF
EWY	iShares MSCI South Korea Index Fund
EWZ	iShares MSCI Brazil Index Fund
EZA	iShares MSCI South Africa Index Fund
EZU	iShares MSCI EMU Index Fund
FBT	First Trust NYSE Arca Biotechnology Index Fund
FCG	First Trust ISE-Revere Natural Gas Index Fund
FDL	First Trust Morningstar Dividend Leaders Index
FDN	First Trust Dow Jones Internet Index Fund
FEX	First Trust Large Cap Core AlphaDEX Fund
FEZ	SPDR EURO STOXX 50 ETF
FGD	First Trust DJ Global Select Dividend Index Fund
FLAT	iPath US Treasury Flattener ETN
FNX	First Trust Mid Cap Core AlphaDEX Fund
FRI	First Trust S&P REIT Index Fund
FVD	First Trust Value Line Dividend Index Fund
FXA	CurrencyShares Australian Dollar Trust
FXB	CurrencyShares British Pound Sterling Trust
FXC	CurrencyShares Canadian Dollar Trust
FXD	First Trust Consumer Discretionary AlphaDEX Fund
FXE	CurrencyShares Euro Trust
FXF	CurrencyShares Swiss Franc Trust
FXG	First Trust Consumer Staples AlphaDEX Fund
FXH	First Trust Health Care AlphaDEX Fund
FXI	iShares FTSE China 25 Index Fund
FXL	First Trust Technology AlphaDEX Fund
FXU	First Trust Utilities AlphaDEX Fund
FXY	CurrencyShares Japanese Yen Trust
FXZ	First Trust Materials AlphaDEX Fund
GAZ	iPath Dow Jones-UBS Natural Gas Subindex Total Return ETN
GCC	GreenHaven Continuous Commodity Index Fund
GDX	Market Vectors Gold Miners ETF
GDXJ	Market Vectors Junior Gold Miners ETF
GIY	Guggenheim Enhanced Core Bond ETF
GLD	SPDR Gold Shares
GMF	SPDR S&P Emerging Asia Pacific ETF
GNR	SPDR S&P Global Natural Resources ETF
GOVT	iShares Barclays U.S. Treasury Bond Fund
GSG	iShares S&P GSCI Commodity Indexed Trust
GSP	iPath GSCI Total Return Index ETN
GSY	Guggenheim Enhanced Short Duration Bond ETF
GVI	iShares Barclays Intermediate Government/Credit Bond Fund
GWX	SPDR S&P International Small Cap ETF
GXC	SPDR S&P China ETF
GXG	Global X FTSE Colombia 20 ETF
HAO	Guggenheim China Small Cap ETF
HDGE	Active Bear ETF/The
HDV	iShares High Dividend Equity Fund
HYD	Market Vectors High Yield Municipal Index ETF
HYG	iShares iBoxx $ High Yield Corporate Bond Fund
HYS	PIMCO 0–5 Year High Yield Corporate Bond Index Fund
IAU	iShares Gold Trust
IBB	iShares Nasdaq Biotechnology Index Fund
ICF	iShares Cohen & Steers Realty Majors Index Fund
ICI	iPath Optimized Currency Carry ETN
IDU	iShares Dow Jones US Utilities Sector Index Fund
IDV	iShares Dow Jones International Select Dividend Index Fund
IDX	Market Vectors Indonesia Index ETF
IEF	iShares Barclays 7–10 Year Treasury Bond Fund
IEI	iShares Barclays 3–7 Year Treasury Bond Fund
IEO	iShares Dow Jones US Oil & Gas Exploration & Production Index Fund
IEV	iShares S&P Europe 350 Index Fund
IEZ	iShares Dow Jones US Oil Equipment & Services Index Fund
IGE	iShares S&P North American Natural Resources Sector Index Fund
IGF	iShares S&P Global Infrastructure Index Fund
IGOV	iShares S&P/Citigroup International Treasury Bond Fund
IGS	ProShares Short Investment Grade Corporate
IGV	iShares S&P North American Technology-Software Index Fund
IHE	iShares Dow Jones US Pharmaceuticals Index Fund

APPENDIX A—SCHEDULE 1—Continued

Symbol	Name
IHF	iShares Dow Jones US Healthcare Providers Index Fund
IHI	iShares Dow Jones US Medical Devices Index Fund
IJH	iShares S&P MidCap 400 Index Fund
IJJ	iShares S&P MidCap 400/BARRA Value Index Fund
IJK	iShares S&P MidCap 400 Growth Index Fund
IJR	iShares S&P SmallCap 600 Index Fund
IJS	iShares S&P SmallCap 600 Value Index Fund
IJT	iShares S&P SmallCap 600/BARRA Growth Index Fund
ILF	iShares S&P Latin America 40 Index Fund
INDA	iShares MSCI India Index Fund
INDY	iShares S&P India Nifty 50 Index Fund
INP	iPath MSCI India Index ETN
IOO	iShares S&P Global 100 Index Fund
IPE	SPDR Barclays Capital TIPS ETF
ITB	iShares Dow Jones US Home Construction Index Fund
ITM	Market Vectors Intermediate Municipal ETF
IVE	iShares S&P 500 Value Index Fund
IVOO	Vanguard S&P Mid-Cap 400 ETF
IVOP	iPath Inverse S&P 500 VIX Short-Term FuturesTM ETN II
IVV	iShares S&P 500 Index Fund/US
IVW	iShares S&P 500 Growth Index Fund
IWB	iShares Russell 1000 Index Fund
IWC	iShares Russell Microcap Index Fund
IWD	iShares Russell 1000 Value Index Fund
IWF	iShares Russell 1000 Growth Index Fund
IWM	iShares Russell 2000 Index Fund
IWN	iShares Russell 2000 Value Index Fund
IWO	iShares Russell 2000 Growth Index Fund
IWP	iShares Russell Midcap Growth Index Fund
IWR	iShares Russell Midcap Index Fund
IWS	iShares Russell Midcap Value Index Fund
IWV	iShares Russell 3000 Index Fund
IWW	iShares Russell 3000 Value Index Fund
IWY	iShares Russell Top 200 Growth Index Fund
IWZ	iShares Russell 3000 Growth Index Fund
IXC	iShares S&P Global Energy Sector Index Fund
IXG	iShares S&P Global Financials Sector Index Fund
IXJ	iShares S&P Global Healthcare Sector Index Fund
IXN	iShares S&P Global Technology Sector Index Fund
IXP	iShares S&P Global Telecommunications Sector Index Fund
IYC	iShares Dow Jones US Consumer Services Sector Index Fund
IYE	iShares Dow Jones US Energy Sector Index Fund
IYF	iShares Dow Jones US Financial Sector Index Fund
IYG	iShares Dow Jones US Financial Services Index Fund
IYH	iShares Dow Jones US Healthcare Sector Index Fund
IYJ	iShares Dow Jones US Industrial Sector Index Fund
IYK	iShares Dow Jones US Consumer Goods Sector Index Fund
IYM	iShares Dow Jones US Basic Materials Sector Index Fund
IYR	iShares Dow Jones US Real Estate Index Fund
IYT	iShares Dow Jones Transportation Average Index Fund
IYW	iShares Dow Jones US Technology Sector Index Fund
IYY	iShares Dow Jones US Index Fund
IYZ	iShares Dow Jones US Telecommunications Sector Index Fund
JJC	iPath Dow Jones-UBS Copper Subindex Total Return ETN
JJG	iPath Dow Jones-UBS Grains Subindex Total Return ETN
JNK	SPDR Barclays Capital High Yield Bond ETF
JXI	iShares S&P Global Utilities Sector Index Fund
JYN	iPath JPY/USD Exchange Rate ETN
KBE	SPDR S&P Bank ETF
KBWB	PowerShares KBW Bank Portfolio
KIE	SPDR S&P Insurance ETF
KOL	Market Vectors Coal ETF
KRE	SPDR S&P Regional Banking ETF
KXI	iShares S&P Global Consumer Staples Sector Index Fund
LAG	SPDR Barclays Capital Aggregate Bond ETF
LQD	iShares iBoxx Investment Grade Corporate Bond Fund
LTPZ	PIMCO 15+ Year US TIPS Index Fund
LWC	SPDR Barclays Capital Long Term Corporate BondETF
MBB	iShares Barclays MBS Bond Fund
MBG	SPDR Barclays Capital Mortgage Backed Bond ETF
MCHI	iShares MSCI China Index Fund
MDY	SPDR S&P MidCap 400 ETF Trust

APPENDIX A—SCHEDULE 1—Continued

Symbol	Name
MGC	Vanguard Mega Cap 300 ETF
MGK	Vanguard Mega Cap 300 Growth ETF
MINT	PIMCO Enhanced Short Maturity Strategy Fund
MLPI	UBS E–TRACS Alerian MLP Infrastructure ETN
MLPN	Credit Suisse Cushing 30 MLP Index ETN
MOO	Market Vectors Agribusiness ETF
MUB	iShares S&P National Municipal Bond Fund
MXI	iShares S&P Global Materials Sector Index Fund
MYY	ProShares Short MidCap 400
NKY	MAXIS Nikkei 225 Index Fund ETF
OEF	iShares S&P 100 Index Fund
OIH	Market Vectors Oil Service ETF
OIL	iPath Goldman Sachs Crude Oil Total Return Index ETN
PALL	ETFS Physical Palladium Shares
PBJ	Powershares Dynamic Food & Beverage Portfolio
PCEF	PowerShares CEF Income Composite Portfolio
PCY	PowerShares Emerging Markets Sovereign Debt Portfolio
PDP	Powershares DWA Technical Leaders Portfolio
PEY	PowerShares High Yield Equity Dividend Achievers Portfolio
PFF	iShares S&P US Preferred Stock Index Fund
PFM	PowerShares Dividend Achievers Portfolio
PGF	PowerShares Financial Preferred Portfolio
PGX	PowerShares Preferred Portfolio
PHB	PowerShares Fundamental High Yield Corporate Bond Portfolio
PHO	PowerShares Water Resources Portfolio
PHYS	Sprott Physical Gold Trust
PID	PowerShares International Dividend Achievers Portfolio
PIE	PowerShares DWA Emerging Markets Technical Leaders Portfolio
PIN	PowerShares India Portfolio
PJP	Powershares Dynamic Pharmaceuticals Portfolio
PLW	PowerShares 1–30 Laddered Treasury Portfolio
PPH	Market Vectors Pharmaceutical ETF
PPLT	ETFS Platinum Trust
PRF	Powershares FTSE RAFI US 1000 Portfolio
PRFZ	PowerShares FTSE RAFI US 1500 Small-Mid Portfolio
PSLV	Sprott Physical Silver Trust
PSP	PowerShares Global Listed Private Equity Portfolio
PSQ	ProShares Short QQQ
PVI	PowerShares VRDO Tax Free Weekly Portfolio
PXH	PowerShares FTSE RAFI Emerging Markets Portfolio
PZA	PowerShares Insured National Municipal Bond Portfolio
QQQ	Powershares QQQ Trust Series 1
REM	iShares FTSE NAREIT Mortgage Plus Capped Index Fund
REMX	Market Vectors Rare Earth/Strategic Metals ETF
REZ	iShares FTSE NAREIT Residential Plus Capped Index Fund
RFG	Guggenheim S&P Midcap 400 Pure Growth ETF
RJA	ELEMENTS Linked to the Rogers International Commodity Index—Agri Tot Return
RJI	ELEMENTS Linked to the Rogers International Commodity Index—Total Return
RJN	ELEMENTS Linked to the Rogers International Commodity Index—Energy To Return
RJZ	ELEMENTS Linked to the Rogers International Commodity Index—Metals Tot Return
RPG	Guggenheim S&P 500 Pure Growth ETF
RSP	Guggenheim S&P 500 Equal Weight ETF
RSX	Market Vectors Russia ETF
RTH	Market Vectors Retail ETF
RWM	ProShares Short Russell 2000
RWO	SPDR Dow Jones Global Real Estate ETF
RWR	SPDR Dow Jones REIT ETF
RWX	SPDR Dow Jones International Real Estate ETF
RYH	Guggenheim S&P 500 Equal Weight Healthcare ETF
SAGG	Direxion Daily Total Bond Market Bear 1x Shares
SCHA	Schwab US Small-Cap ETF
SCHB	Schwab US Broad Market ETF
SCHD	Schwab US Dividend Equity ETF
SCHE	Schwab Emerging Markets Equity ETF
SCHF	Schwab International Equity ETF
SCHG	Schwab U.S. Large-Cap Growth ETF
SCHH	Schwab U.S. REIT ETF
SCHM	Schwab U.S. Mid-Cap ETF
SCHO	Schwab Short-Term U.S. Treasury ETF
SCHP	Schwab U.S. TIPs ETF
SCHR	Schwab Intermediate-Term U.S. Treasury ETF
SCHV	Schwab U.S. Large-Cap Value ETF

APPENDIX A—SCHEDULE 1—Continued

Symbol	Name
SCHX	Schwab US Large-Cap ETF
SCHZ	Schwab U.S. Aggregate Bond ETF
SCPB	SPDR Barclays Capital Short Term Corporate Bond ETF
SCZ	iShares MSCI EAFE Small Cap Index Fund
SDY	SPDR S&P Dividend ETF
SEF	ProShares Short Financials
SGG	iPath Dow Jones-UBS Sugar Subindex Total Return ETN
SGOL	ETFS Gold Trust
SH	ProShares Short S&P 500
SHM	SPDR Nuveen Barclays Capital Short Term Municipal Bond ETF
SHV	iShares Barclays Short Treasury Bond Fund
SHY	iShares Barclays 1–3 Year Treasury Bond Fund
SIL	Global X Silver Miners ETF
SIVR	ETFS Physical Silver Shares
SJB	ProShares Short High Yield
SJNK	SPDR Barclays Capital Short Term High Yield Bond ETF
SLV	iShares Silver Trust
SLX	Market Vectors Steel Index Fund
SMH	Market Vectors Semiconductor ETF
SOXX	iShares PHLX SOX Semiconductor Sector Index Fund
SPLV	PowerShares S&P 500 Low Volatility Portfolio
SPY	SPDR S&P 500 ETF Trust
SPYG	SPDR S&P 500 Growth ETF
SPYV	SPDR S&P 500 Value ETF
STIP	iShares Barclays 0–5 Year TIPS Bond Fund
STPP	iPath US Treasury Steepener ETN
STPZ	PIMCO 1–5 Year US TIPS Index Fund
SUB	iShares S&P Short Term National AMT-Free Municipal Bond Fund
SVXY	ProShares Short VIX Short-Term Futures ETF
TAN	Guggenheim Solar ETF
TBF	ProShares Short 20+ Year Treasury
TBX	ProShares Short 7–10 Treasury
TFI	SPDR Nuveen Barclays Capital Municipal Bond ETF
THD	iShares MSCI Thailand Index Fund
TIP	iShares Barclays TIPS Bond Fund
TLH	iShares Barclays 10–20 Year Treasury Bond Fund
TLT	iShares Barclays 20+ Year Treasury Bond Fund
TUR	iShares MSCI Turkey Index Fund
UDN	PowerShares DB US Dollar Index Bearish Fund
UGA	United States Gasoline Fund LP
UNG	United States Natural Gas Fund LP
URA	Global X Uranium ETF
USCI	United States Commodity Index Fund
USL	United States 12 Month Oil Fund LP
USO	United States Oil Fund LP
UUP	PowerShares DB US Dollar Index Bullish Fund
VAW	Vanguard Materials ETF
VB	Vanguard Small-Cap ETF
VBK	Vanguard Small-Cap Growth ETF
VBR	Vanguard Small-Cap Value ETF
VCIT	Vanguard Intermediate-Term Corporate Bond ETF
VCLT	Vanguard Long-Term Corporate Bond ETF
VCR	Vanguard Consumer Discretionary ETF
VCSH	Vanguard Short-Term Corporate Bond ETF
VDC	Vanguard Consumer Staples ETF
VDE	Vanguard Energy ETF
VEA	Vanguard MSCI EAFE ETF
VEU	Vanguard FTSE All-World ex-US ETF
VFH	Vanguard Financials ETF
VGK	Vanguard MSCI European ETF
VGT	Vanguard Information Technology ETF
VHT	Vanguard Health Care ETF
VIG	Vanguard Dividend Appreciation ETF
VIIX	VelocityShares VIX Short Term ETN
VIOO	Vanguard S&P Small-Cap 600 ETF
VIS	Vanguard Industrials ETF
VIXM	ProShares VIX Mid-Term Futures ETF
VIXY	ProShares VIX Short-Term Futures ETF
VMBS	Vanguard Mortgage-Backed Securities ETF
VNM	Market Vectors Vietnam ETF
VNQ	Vanguard REIT ETF
VO	Vanguard Mid-Cap ETF

APPENDIX A—SCHEDULE 1—Continued

Symbol	Name
VOE	Vanguard Mid-Cap Value Index Fund/Closed-end
VONE	Vanguard Russell 1000
VONG	Vanguard Russell 1000 Growth ETF
VONV	Vanguard Russell 1000 Value
VOO	Vanguard S&P 500 ETF
VOOG	Vanguard S&P 500 Growth ETF
VOOV	Vanguard S&P 500 Value ETF
VOT	Vanguard Mid-Cap Growth Index Fund/Closed-end
VOX	Vanguard Telecommunication Services ETF
VPL	Vanguard MSCI Pacific ETF
VPU	Vanguard Utilities ETF
VQT	Barclays ETN+ ETNs Linked to the S&P 500 Dynamic VEQTORTM TotaL Return Index
VSS	Vanguard FTSE All World ex-US Small-Cap ETF
VT	Vanguard Total World Stock Index Fund ETF
VTHR	Vanguard Russell 3000
VTI	Vanguard Total Stock Market ETF
VTV	Vanguard Value ETF
VTWG	Vanguard Russell 2000 Growth
VTWO	Vanguard Russell 2000
VTWV	Vanguard Russell 2000 Value
VUG	Vanguard Growth ETF
VV	Vanguard Large-Cap ETF
VWO	Vanguard MSCI Emerging Markets ETF
VXAA	ETRACS 1-Month S&P 500 VIX Futures ETN
VXEE	ETRACS 5-Month S&P 500 VIX Futures ETN
VXF	Vanguard Extended Market ETF
VXUS	Vanguard Total International Stock ETF
VXX	iPATH S&P 500 VIX Short-Term Futures ETN
VXZ	iPATH S&P 500 VIX Mid-Term Futures ETN
VYM	Vanguard High Dividend Yield ETF
VZZB	iPath Long Enhanced S&P 500 VIX Mid-Term FuturesTM ETN II
WDTI	WisdomTree Managed Futures Strategy Fund
WIP	SPDR DB International Government Inflation-Protected Bond ETF
XBI	SPDR S&P Biotech ETF
XES	SPDR S&P Oil & Gas Equipment & Services ETF
XHB	SPDR S&P Homebuilders ETF
XIV	VelocityShares Daily Inverse VIX Short Term ETN
XLB	Materials Select Sector SPDR Fund
XLE	Energy Select Sector SPDR Fund
XLF	Financial Select Sector SPDR Fund
XLG	Guggenheim Russell Top 50 ETF
XLI	Industrial Select Sector SPDR Fund
XLK	Technology Select Sector SPDR Fund
XLP	Consumer Staples Select Sector SPDR Fund
XLU	Utilities Select Sector SPDR Fund
XLV	Health Care Select Sector SPDR Fund
XLY	Consumer Discretionary Select Sector SPDR Fund
XME	SPDR S&P Metals & Mining ETF
XOP	SPDR S&P Oil & Gas Exploration & Production ETF
XPH	SPDR S&P Pharmaceuticals ETF
XRT	SPDR S&P Retail ETF
XSD	SPDR S&P Semiconductor ETF
XXV	iPath Inverse S&P 500 VIX Short-Term Futures ETN
ZROZ	PIMCO 25+ Year Zero Coupon US Treasury Index Fund

Appendix B—Data

Unless otherwise specified, the following data shall be collected and transmitted to the SEC in an agreed-upon format on a monthly basis, to be provided 30 calendar days following month end. Unless otherwise specified, the Primary Listing Exchanges shall be responsible for collecting and transmitting the data to the SEC. Data collected in connection with Sections II(E)–(G) below shall be transmitted to the SEC with a request for confidential treatment under the Freedom of Information Act. 5 U.S.C. 552, and the SEC's rules and regulations thereunder.

I. Summary Statistics

A. Frequency with which NMS Stocks enter a Limit State. Such summary data shall be broken down as follows:

1. Partition stocks by category
   a. Tier 1 non-ETP issues >$3.00
   b. Tier 1 non-ETP issues > =$0.75 and =$3.00
   c. Tier 1 non-ETP issues <$0.75
   d. Tier 1 non-leveraged ETPs in each of above categories
   e. Tier 1 leveraged ETPs in each of above categories
   f. Tier 2 non-ETPs in each of above categories
   g. Tier 2 non-leveraged ETPs in each of above categories
   h. Tier 2 leveraged ETPs in each of above categories
2. Partition by time of day
   a. Opening (prior to 9:45 a.m. ET)
   b. Regular (between 9:45 a.m. ET and 3:35 p.m. ET)
   c. Closing (after 3:35 p.m. ET)
   d. Within five minutes of a Trading Pause re-open or IPO open

3. Track reasons for entering a Limit State, such as:
a. Liquidity gap –price reverts from a Limit State Quotation and returns to trading within the Price Bands
b. Broken trades
c. Primary Listing Exchange manually declares a Trading Pause pursuant to Section (VII)(2) of the Plan
d. Other

B. Determine (1), (2) and (3) for when a Trading Pause has been declared for an NMS Stock pursuant to the Plan.

II. Raw Data (all Participants, except A–E, which are for the Primary Listing Exchanges only)

A. Record of every Straddle State.
1. Ticker, date, time entered, time exited, flag for ending with Limit State, flag for ending with manual override.
2. Pipe delimited with field names as first record.

B. Record of every Price Band
1. Ticker, date, time at beginning of Price Band, Upper Price Band, Lower Price Band
2. Pipe delimited with field names as first record

C. Record of every Limit State
1. Ticker, date, time entered, time exited, flag for halt
2. Pipe delimited with field names as first record

D. Record of every Trading Pause or halt
1. Ticker, date, time entered, time exited, type of halt (i.e., regulatory halt, non-regulatory halt, Trading Pause pursuant to the Plan, other)
2. Pipe delimited with field names as first record

E. Data set or orders entered into reopening auctions during halts or Trading Pauses
1. Arrivals, Changes, Cancels, # shares, limit/market, side, Limit State side
2. Pipe delimited with field name as first record

F. Data set of order events received during Limit States

G. Summary data on order flow of arrivals and cancellations for each 15-second period for discrete time periods and sample stocks to be determined by the SEC in subsequent data requests. Must indicate side(s) of Limit State.
1. Market/marketable sell orders arrivals and executions
a. Count
b. Shares
c. Shares executed
2. Market/marketable buy orders arrivals and executions
a. Count
b. Shares
c. Shares executed
3. Count arriving, volume arriving and shares executing in limit sell orders above NBBO mid-point
4. Count arriving, volume arriving and shares executing in limit sell orders=NBBO mid-point (non-marketable)
5. Count arriving, volume arriving and shares executing in limit buy orders above NBBO mid-point (non-marketable)
6. Count arriving, volume arriving and shares executing in limit buy orders below NBBO mid-point
7. Count and volume arriving of limit sell orders priced at or above NBBO+$0.05
8. Count and volume arriving of limit buy orders priced at or below NBBO – $0.05
9. Count and volume of (iii-viii) for cancels
10. Include: Ticker, date, time at start, time of Limit State, data item fields, last sale prior to 1-minute period (null if no trades today), range during 15-second period, last trade during 15-second period

III. At Least Two Months Prior to the End of the Pilot Period, All Participants Shall Provide to the SEC Assessments Relating to Impact of the Plan and Calibration of the Percentage Parameters as Follows:

A. Assess the statistical and economic impact on limit order book of approaching Price Bands.

B. Assess the statistical and economic impact of the Price Bands on erroneous trades.

C. Assess the statistical and economic impact of the appropriateness of the Percentage Parameters used for the Price Bands.

D. Assess whether the Limit State is the appropriate length to allow for liquidity replenishment when a Limit State is reached because of a temporary liquidity gap.

E. Evaluate concerns from the options markets regarding the statistical and economic impact of Limit States on liquidity and market quality in the options markets. (Participants that operate options exchange should also prepare such assessment reports.)

F. Assess whether the process for entering a Limit State should be adjusted and whether Straddle States are problematic.

G. Assess whether the process for exiting a Limit State should be adjusted.

H. Assess whether the Trading Pauses are too long or short and whether the reopening procedures should be adjusted.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67079; File No. SR–FINRA–2012–025]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 5270 (Front Running of Block Transactions) in the Consolidated FINRA Rulebook

May 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Interpretive Material (''IM'') 2110–3 (Front Running Policy) as FINRA Rule 5270 with the changes described below.

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, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt NASD IM–2110–3 (''Front Running Policy'') as FINRA Rule 5270 with the changes described below.

The Front Running Policy, which was adopted as interpretive material to

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

Article III, Section 1 of the NASD's Rules of Fair Practice[4] in 1987,[5] states that it is considered conduct inconsistent with just and equitable principles of trade for a member or an associated person of a member to buy or sell security futures or certain options for accounts in which the member or associated person has an interest when the member or associated person has material, non-public market information concerning an imminent block transaction[6] in the underlying security. Similarly, the same prohibition applies in the underlying security when the material, non-public market information regarding a block transaction concerns an option or security future on that underlying security.[7] The Front Running Policy also prohibits providing material, non-public market information concerning an imminent block transaction to customers who then trade on the basis of the information. The Front Running Policy is limited to transactions in equity securities and options that are required to be reported on a last sale reporting system and to any transaction involving a security future, regardless of whether the transaction is reported. The prohibitions apply until the information concerning the block transaction has been made publicly available (i.e., ''when [the information] has been disseminated via the tape or high speed communications line of one of those systems, a similar system of a national securities exchange under Section 6 of the Act, an alternative trading system under Regulation ATS, or by a third-party news wire service'').

Finally, the Front Running Policy includes exceptions from the general prohibitions in the rule for ''transactions executed by member participants in automatic execution systems in those instances where participants must accept automatic executions'' as well as situations where a member receives a customer's block order relating to both an option or security future and the underlying security and the member, in furtherance of facilitating the customer's block order, positions the other side of one or both components of the order. In the latter case, a member is still prohibited from covering any resulting proprietary position by entering an offsetting order until information concerning the block transaction has been made publicly available.

FINRA is proposing to adopt IM–2110–3 as FINRA Rule 5270 and amend the rule in several ways to broaden its scope and provide further clarity into activity that FINRA believes is inconsistent with just and equitable principles of trade. First, FINRA is proposing to extend the prohibitions in the rule to apply explicitly to all securities and other financial instruments and contracts (*i.e.,* not only options and security futures) that overlay the security that is the subject of an imminent block transaction and that have a value that is materially related to, or otherwise acts as a substitute for, the underlying security. Specifically, FINRA is proposing to extend the front running prohibitions to cover trading in an option, derivative, or other financial instrument overlying a security that is the subject of an imminent block transaction if the value of the underlying security is materially related to, or otherwise acts as a substitute for, such security, as well as any contract that is the functional economic equivalent of a position in such security (individually or collectively a ''related financial instrument''). The reverse would also be true: When the imminent block transaction itself involves a related financial instrument, the proposed rule would prevent trading in the underlying security. The proposed rule change also extends the trading provisions in the rule to include explicitly trading in the same security or related financial instrument that is the subject of an imminent block transaction.[8]

Although the proposed rule change would broaden the scope of trading covered by the front running rule, FINRA believes that the type of trading prohibited by the proposed rule change would generally already violate other existing FINRA rules, such as FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade). As FINRA noted when it first adopted the Front Running Policy, the adoption of the rule was never intended to imply that other forms of trading activity not explicitly covered by the Front Running Policy could not violate FINRA rules.[9] Because FINRA believes the Front Running Policy is unduly narrow in capturing the types of front running activity that are inconsistent with just and equitable principles of trade, FINRA is proposing to broaden the language of the Front Running Policy to apply equally to all related financial instruments (*e.g.,* stock options and futures, options futures, other derivatives, and security-based swaps) rather than be limited to equity securities, security futures, and certain options.[10]

As noted above, the trading restrictions imposed by the current Front Running Policy apply until information about the imminent customer block transaction ''has been made publicly available,'' which the rule defines as having been disseminated to the public in trade reporting data. The proposed rule change generally retains this standard for determining when information has become publicly available; however, because FINRA is proposing to expand the rule to include related financial instruments that may not result in publicly available trading information

[4] Article III, Section 1 of the NASD's Rules of Fair Practice was subsequently renumbered as NASD Rule 2110, and is now FINRA Rule 2010. *See Regulatory Notice* 08–57 (October 2008).

[5] NASD adopted the Front Running Policy at the same time as several other self-regulatory organizations (''SROs'') filed their policies regarding front running of block transactions. *See* Securities Exchange Act Release No. 25233 (December 30, 1987), 53 FR 296 (January 6, 1988). *See also* NASD *Notice to Members* 87–69 (October 1987).

[6] The rule states that ''[a] transaction involving 10,000 shares or more of an underlying security, or options or security futures covering such number of shares is generally deemed to be a block transaction, although a transaction of less than 10,000 shares could be considered a block transaction in appropriate cases.''

[7] The Front Running Policy initially applied only to certain options (either trading the option while in possession of material, non-public market information regarding an imminent block transaction in the underlying security or trading the underlying security while in possession of material, non-public market information regarding an imminent block transaction in the option). In 2002, the rule was broadened to include the same prohibitions with respect to security futures. *See* Securities Exchange Act Release No. 46663 (October 15, 2002), 67 FR 64944 (October 22, 2002); *see also* NASD *Notice to Members* 02–73 (November 2002).

[8] The Commission noted in the release seeking comment on the SRO front running rules that, generally, ''the SROs define frontrunning as the practice of trading a security while in possession of material, non-public information regarding an imminent block transaction in the same or a related security.'' *See* Securities Exchange Act Release No. 25233 (December 30, 1987), 53 FR 296 (January 6, 1988).

[9] FINRA has consistently noted that the Front Running Policy does not provide an exhaustive list of prohibited front running trading. *See* NASD *Notice to Members* 87–69 (October 1987) (''Although the Board believes it is important to provide guidelines describing the kind of [front running] conduct that will not be permitted, members and persons associated with a member should be aware that any conduct that is not consistent with their fiduciary responsibilities in this area would be a violation of [just and equitable principles of trade].''). *See also* NASD *Notice to Members* 96–66 (October 1996) (noting that although the Front Running Policy applied only to equity securities, actions for similar conduct involving government securities would violate just and equitable principles of trade).

[10] Notwithstanding the amendments discussed in the proposed rule change, FINRA notes that, as amended, the rule is still not intended to provide an exhaustive list of prohibited trading activity. Proposed Supplementary Material .05, for example, states that front running orders not explicitly covered by the terms of Rule 5270 could nonetheless violate other FINRA rules.

being made available, FINRA is also proposing that the prohibitions in the rule be in place until the material, non-public market information is either publicly available or ''otherwise becomes stale or obsolete.''[11]

The proposed rule change also replaces several existing provisions in the Front Running Policy with Supplementary Material to FINRA Rule 5270. Specifically, FINRA is proposing to replace the existing exceptions in the Front Running Policy for certain transactions in automatic execution systems and for positioning the other side of certain orders when a member receives a customer's block order relating to both an option and the underlying security or a security future and the underlying security with new Supplementary Material that identifies types of transactions that are permitted under the rule.

Under the Supplementary Material, there are three broad categories of permitted transactions: Transactions that the member can demonstrate are unrelated to the customer block order, transactions that are undertaken to fulfill or facilitate the execution of the customer block order, and transactions that are executed, in whole or in part, on a national securities exchange and comply with the marketplace rules of that exchange.

The first category of permitted transactions is [*sic*] those that the member can demonstrate are unrelated to the customer block order. Supplementary Material .04(a) recognizes that members may engage in such transactions provided that the member can demonstrate that the transactions are unrelated to the material, non-public market information received in connection with the customer order. The Supplementary Material includes an illustrative list of potentially permitted transactions as examples of transactions that, depending upon the circumstances, may be unrelated to the customer block order. These types of transactions could include transactions where the member has effective information barriers established to prevent internal disclosure of customer order information,[12] transactions in the security that is the subject of the customer block order that are related to a prior customer order in that security, transactions to correct bona fide errors, and transactions to offset odd-lot orders.

For each of these types of transactions, the member must be able to demonstrate that the transaction at issue was unrelated to the customer block order. Thus, for example, if the member can demonstrate that transactions occurring in a security (or a related financial instrument) that is the subject of an imminent customer block order were undertaken by a desk that is walled off from the desk handling the customer block order by the use of effective information barriers, the trading activity would be unrelated to the customer block order and, therefore, permitted.[13]

Similarly, FINRA believes that transactions that a member can demonstrate are related to other customer orders in the same security, correct bona fide errors made in earlier transactions involving the security, or offset other odd-lot orders in the security are generally unrelated to the customer block order and therefore should be permitted.

The second category of permitted transactions involves [*sic*] transactions that are undertaken to fulfill or facilitate the execution of the customer block order. FINRA has acknowledged that firms are permitted to trade ahead of a customer's block order when the purpose of such trading is to fulfill the customer order and when the customer has authorized such trading, including that the firm has disclosed to the customer that it may trade ahead of, or alongside of, the customer's order.[14] Supplementary Material .04(b) thus makes clear that Rule 5270 does not preclude transactions undertaken for the purpose of fulfilling, or facilitating the execution of, a customer's block order.[15] However, when engaging in trading activity that could affect the market for the security that is the subject of the customer block order, the member must minimize any potential disadvantage or harm in the execution of the customer's order, must not place the member's financial interests ahead of those of its customer, and must obtain the customer's consent to such trading activity. The Supplementary Material provides that a member may obtain its customers' consent through affirmative written consent or through means of a negative consent letter. The negative consent letter must clearly disclose to the customer the terms and conditions for handling the customer's orders, and if the customer does not object, then the member may reasonably conclude that the customer has consented and may rely on the letter. In addition, a member may provide clear and comprehensive oral disclosure to, and obtain consent from, the customer on an order-by-order basis, provided the member documents who provided the consent and such consent evidences the customer's understanding of the terms and conditions for handling the customer's order.

The third, and final, category of permitted transactions is addressed in Supplementary Material .04(c) and concerns transactions that are executed, in whole or in part, on a national securities exchange and comply with the marketplace rules of that exchange. This provision, which is being proposed in response to comments received from exchanges, states that the prohibitions in Rule 5270 shall not apply if the member's trading activity is undertaken in compliance with the marketplace rules of a national securities exchange and at least one leg of the trading activity is executed on that exchange.[16] This provision recognizes that it is not FINRA's intent to introduce conflicts with other existing SRO rules.

Finally, FINRA is proposing to adopt Supplementary Material .05 to the rule to reiterate that the front running of any customer order, not just imminent block transactions, that places the financial interests of the member ahead of those

[11] Whether information has become stale or obsolete will depend upon the particular facts and circumstances involved, including specific information the member has regarding the transaction, but could include factors such as the amount of time that has passed since the member learned of the block transaction, subsequent trading activity in the security, or a significant change in market conditions.

[12] In addition to more traditional information barriers, such as those in place to prevent communication between trading units, this provision could also include the use of automated systems (e.g., trades through a ''black box'') where the orders placed into the automated system are handled without the knowledge of a person associated with the member who may be trading in the same security. However, a person associated with a member who places an order into a ''black box'' or other automated system, or otherwise has knowledge of the order or the ability to access information in the system, may not then trade in the same security or a related financial instrument solely because the order ultimately was being handled by the automated system rather than by the person. Traders who have no knowledge of the order, due to the presence of an information barrier or otherwise, could continue to trade in the security or a related financial instrument. *See infra* note 23.

[13] FINRA believes that this approach is compatible with the existing provisions concerning customer order protection in Rule 5320 and its accompanying Supplementary Material concerning protection of customer limit and market orders and the implementation of effective information barriers.

[14] *See* NASD *Notice to Members* 05–51 (August 2005); NASD *Notice to Members* 97–57 (September 1997). Hedging and positioning activity around a customer block order was discussed in coordinated guidance published by both NASD and NYSE in 2005 with respect to volume-weighted average price transactions. *See* NASD *Notice to Members* 05–51 (August 2005); NYSE *Information Memo* 05–52 (August 2005).

[15] These transactions may include, for example, hedging or other positioning activity undertaken in connection with the handling of the customer order.

[16] *See infra* note 21.

of its customer or the misuse of knowledge of an imminent customer order may violate other FINRA rules, including FINRA Rules 2010 and 5320, or the federal securities laws.[17]

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The implementation date will be no later than 90 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[18] 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. The proposed rule change clarifies the types of front running trading activity that FINRA believes are inconsistent with just and equitable principles of trade while also ensuring that members may continue to engage in transactions that do not present the risk of abusive trading practices that the rule is intended to prevent. FINRA believes that expanding the terms of the rule beyond options and security futures will enhance the protection of customer orders by addressing more directly within the rule other types of abusive trading that may be intended to take advantage of customer orders. By broadening the scope of prohibited trading activity addressed in the rule, FINRA believes that imminent customer block orders will be better protected and that the proposed rule change will prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and better protect investors and the public interest.

The proposed rule change also specifically identifies three categories of trading activity that are permitted so that the expanded rule will not hamper legitimate trading activity to the detriment of customers, firms, or the market: Transactions that the member can demonstrate are unrelated to the customer block order, transactions that are undertaken to fulfill or facilitate the execution of the customer block order, and transactions that are executed, in whole or in part, on a national securities exchange and comply with the marketplace rules of that exchange. FINRA believes that permitting the trading activity in each of these three categories is consistent with promoting just and equitable principles of trade and protecting investors and the public interest and will not result in fraudulent and manipulative acts and practices. As discussed in Section (a), FINRA believes that transactions that the member can demonstrate are unrelated to the customer block order do not present the potential for abusive trading practices that can disadvantage a customer's order in violation of the rule. FINRA believes that transactions that are undertaken to fulfill or facilitate the execution of the customer block order similarly do not present the potential for abuse the rule is designed to prohibit but also will allow trading activity that can enhance the execution of a customer block order, thus promoting just and equitable principles of trade and protecting investors. Finally, FINRA believes that permitting transactions that are executed, in whole or in part, on a national securities exchange and comply with the marketplace rules of that exchange is consistent with Section 15A(b)(6) of the Act.[19] The marketplace rules of the exchanges that may otherwise conflict with the proposed rule change have been approved by the Commission and found consistent with the Act. Consequently, FINRA believes it promotes just and equitable principles of trade to permit specific trading activity allowed under other approved SRO rules that would otherwise be brought within the broader prohibitions of the proposed rule change.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in *Regulatory Notice* 08–83 (December 2008). FINRA received three comment letters in response to the *Regulatory Notice*.[20]

One commenter, NYSER, agreed with FINRA's proposals in *Regulatory Notice* 08–83 to broaden the scope of the rule by extending the prohibitions to include trading in the same security as well as other derivative securities and to add a consent provision for certain hedging or positioning activities in relation to a customer order. However, NYSER requested clarification on when information becomes ''publicly available'' under the proposed rule. Specifically, NYSER wanted clarification regarding whether the proposed rule was intended to apply to trading activity conducted in compliance with certain NYSE, NYSE Arca, and NYSE Amex rules that permit trading based on information related to imminent block transactions when the information has not yet been disseminated via a last sale reporting system but, rather, has entered the market in other ways (e.g., through gapped quotes or disclosure to a trading crowd in the context of anticipatory hedging with respect to options, which is permitted by rule by the options exchanges).[21]

By extending the front running prohibitions to explicitly cover types of securities other than options and security futures, FINRA intends to make clear that misusing material, non-public market information concerning an imminent customer block order is impermissible, regardless of the type of security that is the subject of the order and/or the front running transaction. It is not FINRA's intent to prohibit legitimate trading activity or to supersede other existing SRO rules. Consequently, FINRA has amended the proposed rule change and added a paragraph to the Supplementary Material regarding permitted transactions to clarify that trading will not violate FINRA Rule 5270 if such trading activity is permitted pursuant to the rules of an exchange and at least one leg of the transaction is executed on that exchange.

In its comment letter, SIFMA raises a number of concerns regarding the proposed changes. First, SIFMA opposes the proposed expansion of the rule beyond equity securities or to non-publicly-reported block trades because of the attenuated opportunity for firms to inappropriately benefit from the

[17] Although ''not held'' orders are not subject to the restrictions in FINRA Rule 5320, front running a ''not held'' order that is not of block size may nonetheless violate FINRA Rule 2010. *See* Securities Exchange Act Release No. 63895 (February 11, 2011), 76 FR 9386 (February 17, 2011). If the ''not held'' order is of block size, the proposed rule change would apply to trading activity ahead of the order.

[18] 15 U.S.C. 78*o*–3(b)(6).

[19] 15 U.S.C. 78*o*–3(b)(6).

[20] Letter from International Association of Small Broker-Dealers and Advisors (''IASBDA''), dated January 16, 2009; Letter from Securities Industry and Financial Markets Association (''SIFMA''), dated February 27, 2009; Letter from NYSE Regulation, Inc. (''NYSER''), dated July 22, 2009.

[21] *See* NYSE Arca Rules 6.47A, 6.49(b); NYSE Amex Options Rules 934.3NY; 935NY. FINRA notes that other options exchanges also have trading rules that may, in some scenarios, conflict with the proposed rule change. *See* CBOE Rule 6.9(e).

trade, absent dissemination, and the practical issues of when knowledge of a non-reported block trade is ''stale and obsolete.'' FINRA disagrees and believes that the front running rule should be broadened to include all securities, including fixed income securities, and related financial instruments. The primary issue the proposed rule change is designed to address is straightforward: firms should not use their knowledge of imminent block transactions to benefit themselves at the expense of their customers. This fundamental obligation applies any time a firm misuses this type of information to gain a benefit, regardless of what specific securities or financial products are at issue. Consequently, FINRA has proposed to make clear that front running concerns are not limited to securities futures and options and encompass the trading of any security or related financial instrument under the circumstances outlined in the rule.

FINRA recognizes, however, that because the terms of the front running rule are broad, it could capture trading activity that should otherwise be permitted. To balance this expansion, FINRA is also proposing Supplementary Material .04 that lays out the types of trading activity that would not violate the rule and would be permissible.[22] The sole purpose of Supplementary Material .04 is to ensure that appropriate trading activity not be prohibited by the breadth of the rule. In response to comments by SIFMA, FINRA has modified portions of proposed Supplementary Material .04 as discussed above.[23]

SIFMA also requested that FINRA provide guidance and/or objective standards concerning the scope of the term ''related financial instrument.'' For example, SIFMA suggested a rebuttable presumption with a more objective standard with respect to basket and index transactions and noted that some financial instruments, such as variable swaps and volatility swaps, are ''marginally linked to equity securities'' and are ''sufficiently complex'' that it is ''virtually impossible'' to determine on a trade-by-trade basis whether they would be considered to be ''related financial instruments.''

The proposed rule change defines a ''related financial instrument'' as ''any option, derivative, security-based swap, or other financial instrument overlying a security, the value of which is materially related to, or otherwise acts as a substitute for, such security, as well as any contract that is the functional economic equivalent of a position in such security.'' FINRA believes that the materiality standard used in the proposed rule is a common and well-understood standard in the securities industry. FINRA acknowledges SIFMA's concerns about the increasing variety of financial products and the complex nature of the relationships across products. It is for that exact reason that FINRA believes a materiality standard is appropriate and necessary in the context of the front running rule to ensure each instrument and its impact across products is properly reviewed by members and evaluated with respect to the potential for front running. FINRA also notes that the proposed rule change would extend only to those swaps that are security-based swaps.

SIFMA also commented on the continued use of the term ''block transaction'' in the proposed rule and recommended that FINRA replace the definition of ''block transaction'' and focus instead on ''material transactions.'' FINRA believes that the definition of ''block transaction,'' coupled with the proposed new supplementary material regarding non-block transactions, is sufficiently fluid to capture the appropriate transactions. The definition of ''block transaction'' makes clear that the 10,000-share threshold is not a strict standard and that transactions involving fewer shares could be considered a block transaction; moreover, a transaction more than 10,000 shares is only ''generally'' deemed to be a block transaction for purposes of the rule. The addition of Supplementary Material .05 also clarifies that the front running of other types of orders that may not be ''imminent block transactions'' may nonetheless be considered conduct inconsistent with just and equitable principles of trade and may violate other FINRA rules or provisions of the federal securities laws because such transactions may have violated the animating purpose of the rule that firms should not use their knowledge of imminent customer orders to benefit themselves.

SIFMA also suggested amending the definition of ''customer'' for purposes of the rule to exclude other institutions, such as banks and unregistered affiliates of broker-dealers. SIFMA's underlying concern is that a disclosure-based approach in the trading of OTC equity derivatives is more appropriate given that the counter-parties in such transactions are generally sophisticated institutional investors who are, nonetheless, included in the general FINRA definition of ''customer'' since such investors are not broker-dealers.[24] As an initial matter, FINRA believes that the amendment suggested by SIFMA to exclude banks, branches of foreign banks, or unregistered affiliates of a broker-dealer from the definition of ''customer'' for purposes of the rule is too broad. To exclude sophisticated institutional investors from the definition of ''customer'' is inappropriate given the use of the term throughout the rule for provisions that should include all customers, including sophisticated investors (e.g., prohibiting a member or an associated person of the member from providing material, non-public market information to ''customers'' to allow them to trade on the information). To address SIFMA's underlying concern regarding the proposed rule change's potential impact on the trading of OTC equity derivatives, FINRA notes that Supplementary Material .04 recognizes that certain trading can be affected provided the firm has received its customer's consent, which can be through negative consent.

Two commenters also requested that FINRA provide guidance on the knowledge standard in Supplementary Material .01, which provides that the violative practices set forth in the rule ''may include transactions that are executed based upon knowledge of less than all of the terms of the block transaction, so long as there is knowledge that all of the material terms of the transaction have been or will be agreed upon imminently.''[25] This

[22] As noted above, Supplementary Material .04 would replace the existing provisions in the Front Running Policy regarding exceptions for transactions executed in automatic execution systems and positioning activity when a member receives an order of block size relating to both an option or security future and the underlying security. Similarly, FINRA had proposed in its *Regulatory Notice* an exception for riskless principal trades; however, this exception is not separately included as it would fall within the scope of Supplementary Material .04. FINRA believes that proposed Supplementary Material .04 covers permissible trading activity under the proposed rule change. Any trading activity that falls within the current exceptions in the Front Running Policy would need to meet one of the exceptions in the proposed Supplementary Material in order to be excepted from the rule. *See* SIFMA.

[23] In addition to the modifications discussed above, FINRA has removed the general exception for '''black box' orders where the member has no actual knowledge that the customer order has been routed for execution,'' which was proposed as part of Supplementary Material .04 in *Regulatory Notice* 08–83. As discussed above in footnote 12, automated systems may serve as a means by which orders are handled and information regarding those orders is unavailable to other trading units; however, FINRA believes that the use of an automated system should not permit trading by those persons who may know the terms of the order placed into the automated system.

[24] *See* FINRA Rule 0160(b)(4).

[25] *See* IASBDA, SIFMA.

provision, which remains substantively the same as the current standard in the Front Running Policy, is intended to make clear that a member need not know every detail of a potential block order for the front running prohibitions to attach. As SIFMA noted, FINRA has provided guidance in the past in the context of volume-weighted average price transactions. For example, in NASD *Notice to Members* 05–51, FINRA stated that a duty to refrain from trading may exist ''before a member is awarded an order for execution [and] will turn on, among other factors, the type of order and the specifics of the order known by the member,'' which may include the security, the size of the order, the side of the market, the weighting of a basket order, and the timing for completion of the order. As this guidance recognizes, exactly when the front running prohibitions may attach depends upon the facts and circumstances of the communications between the member and its customer.

Finally, SIFMA commented on the proposed rule change's potential effects on the trading of OTC equity derivatives. SIFMA believes the proposed rule change will require firms to substantially reorganize their OTC equity derivatives operations to set up unwarranted information barriers to accommodate their trading, given that customer-facing OTC equity derivatives trading desks can be the same desks that manage the risk of the firm's overall OTC equity derivatives book. SIFMA asserts that the current regime of disclosure to sophisticated customers and counterparties works well for OTC equity derivatives (e.g., ISDA Master Agreements). FINRA does not believe that the proposed rule change would necessitate the imposition of unwarranted information barriers. FINRA believes that the provisions regarding permitted transactions in proposed Supplementary Material .04, as amended from the form proposed in *Regulatory Notice* 08–83 in response to comments, are broad enough to exclude appropriate trading activity from the scope of the rule, including trading activity that the member can demonstrate is unrelated to the material, non-public market information received in connection with an imminent customer block order.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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–2012–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–025. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2012–025 and should be submitted on or before June 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13638 Filed 6–5–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67088; File No. SR–FINRA–2012–024]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to FINRA Rule 4210 Margin Requirements

May 31, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2012, 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. 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 4210 (Margin Requirements) to: (1) Revise the definitions and margin treatment of option spread strategies; (2) clarify the maintenance margin requirement for non-margin eligible equity securities; (3) clarify the maintenance margin requirements for non-equity securities; (4) eliminate the current exemption from the free-riding prohibition for designated accounts; (5) conform the definition of ''exempt account''; and (6) eliminate the requirement to stress test portfolio margin accounts in the aggregate. In addition, the proposed rule change would amend FINRA Rule 4210 to make non-substantive technical and stylistic changes.

The text of the proposed rule change is available on FINRA's Web site at

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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, the Proposed Rule Change

1. Purpose

The proposed rule change would amend FINRA Rule 4210 (Margin Requirements) to: (1) Revise the definitions and margin treatment of option spread strategies; (2) clarify the maintenance margin requirement for non-margin eligible equity securities; (3) clarify the maintenance margin requirements for non-equity securities; (4) eliminate the current exemption from the free-riding prohibition for designated accounts; (5) conform the definition of ''exempt account''; and (6) eliminate the requirement to stress test portfolio margin accounts in the aggregate. In addition, the proposed rule change would amend FINRA Rule 4210 to make non-substantive technical and stylistic changes.

Option Spread Strategies

Basic option spreads can be paired in such ways that they offset each other in terms of risk. The total risk of the combined spreads is less than the sum of the risk of both spread positions if viewed as stand-alone strategies. FINRA Rule 4210(f)(2) currently recognizes several specific option spread strategies.[3] These strategies consist of either a ''long'' and a ''short'' option contract or two ''long'' and two ''short'' option contracts. The ''long'' and ''short'' option contracts have the same underlying security or instrument and the ''long'' option contracts must expire on or after the expiration of the ''short'' option contracts.

While the strategies recognized under FINRA Rule 4210 are the most common types of option spread strategies used by investors, there are other combinations of calls and/or puts that are similar in terms of their risk profile. Accordingly, FINRA proposes a broader definition of a spread in FINRA Rule 4210(f)(2)(A)(xxxii) to mean a ''long'' and ''short'' position in different call option series, different put option series, or a combination of call and put option series, that collectively have a limited risk/reward profile, and meet the following conditions: (1) All options must have the same underlying security or instrument; (2) all ''long'' and ''short'' option contracts must be either all American-style or all European-style;[4] (3) all ''long'' and ''short'' option contracts must be either all listed or all OTC;[5] (4) the aggregate underlying contract value of ''long'' versus ''short'' contracts within option type(s) must be equal; and (5) the ''short'' option (s) must expire on or before the expiration date of the ''long'' option(s).

The proposed revised margin requirements are set forth in FINRA Rule 4210(f)(2)(H) and would require that the ''long'' option contracts within such spreads must be paid for in full. The margin required for the ''short'' option contracts within such spreads would be the lesser of: (1) The margin required pursuant to FINRA Rule 4210(f)(2)(E); or (2) the maximum potential loss. The maximum potential loss would be determined by computing the intrinsic value of the options at price points for the underlying security or instrument that are set to correspond to every exercise price present in the spread. The intrinsic values are netted at each price point, and the maximum potential loss is the greatest loss, if any. The proceeds of the ''short'' options may be applied towards the cost of the ''long'' options and/or any margin requirement. FINRA Rule 4210(f)(2)(H)(iv) would also make clear that OTC option contracts that comprise a spread must be issued and guaranteed by the *same* carrying broker-dealer and the carrying broker-dealer must also be a FINRA member. If the OTC option contracts are not issued and guaranteed by the *same* carrying broker-dealer, or if the carrying broker-dealer is not a FINRA member, then the ''short'' option contracts must be margined separately pursuant to FINRA Rule 4210(f)(2)(E)(iii) or (E)(iv). In addition, FINRA proposes to amend FINRA Rule 4210(f)(2)(N) to similarly conform the margin requirements for spreads that are permitted in a cash account.

FINRA proposes to eliminate the definitions for the option spread strategies currently recognized within the rule, along with the specific margin requirements associated with each spread, with the exception of a ''long'' box spread consisting of European-style options.[6] FINRA Rule 4210(f)(2)(H)(v)g.[7] currently allows a margin requirement equal to 50% of the aggregate difference in the exercise prices. This is the only spread strategy that allows loan value, and FINRA believes that retaining this provision is appropriate.

Non-Margin Eligible Equity Securities

FINRA proposes to clarify the maintenance margin requirement for non-margin eligible equity securities. FINRA Rule 4210(c)(1) prescribes a maintenance margin requirement of 25% of the current market value of *all* securities (except for security futures contracts) held ''long'' in an account. FINRA believes that non-margin eligible equity securities should be subject to more stringent margin requirements in light of the nature of such securities. Accordingly, FINRA proposes to amend FINRA Rule 4210(c)(1) regarding securities held ''long'' to clarify that the maintenance margin requirement of 25% of the current market value would apply only to margin securities as defined in Regulation T.[8] Consequently, non-margin eligible equity securities would be excluded from such margin treatment and the maintenance margin requirement for non-margin eligible equity securities would be 100% of the

[3] *See* FINRA Rule 4210(f)(2)(A) that currently recognizes the following spread strategies: box spread, butterfly spread, calendar (or time) spread, ''long'' calendar butterfly spread, ''long'' calendar condor spread, ''long'' condor spread, ''short'' calendar iron butterfly spread, ''short'' calendar iron condor spread, ''short'' iron butterfly spread and ''short'' iron condor spread.

[4] American-style options can be exercised or assigned at any time during the life of the contract. European-style options can only be exercised or assigned at the time of expiration.

[5] *See* FINRA Rule 4210(f)(2)(A)(xxvi) (renumbered as 4210(f)(2)(A)(xxiv)) that defines a listed option as an option contract that is traded on a national securities exchange and is issued and guaranteed by a registered clearing agency. *See also* FINRA Rule 4210(f)(2)(A)(xxxii) (renumbered as 4210(f)(2)(A)(xxvii)) that defines an OTC option as an over-the-counter option contract that is not traded on a national securities exchange and is issued and guaranteed by the carrying broker-dealer.

[6] *See* FINRA Rule 4210(f)(2)(A)(vi). A box spread means an aggregation of positions in a ''long'' call and ''short'' put with the same exercise price (''buy side'') coupled with a ''long'' put and ''short'' call with the same exercise price (''sell side'') structured as: (1) a ''long'' box spread in which the sell side exercise price exceeds the buy side exercise price; or (2) a ''short'' box spread in which the buy side exercise price exceeds the sell side exercise price, all of which have the same contract size, underlying component or index and time of expiration, and are based on the same aggregate current underlying value.

[7] FINRA Rule 4210(f)(2)(H)(v)g. would be renumbered as FINRA Rule 4210(f)(2)(H)(v)e.

[8] *See* Regulation T section 200.2 for the definition of margin security.

current market value.[9] This maintenance margin requirement of 100% for non-margin eligible equity securities is consistent with the requirement outlined in *Regulatory Notice* 11–16. However, FINRA notes that two provisions of *Regulatory Notice* 11–16 would be superseded. Firms may no longer extend maintenance loan value on non-margin eligible equity securities either to satisfy maintenance margin deficiencies or when used to collateralize non-purpose loans, except as otherwise provided by FINRA in writing. To this end, FINRA intends to allow a firm to extend credit on a non-margin eligible security[10] only to the extent: (1) The security is collateralizing a non-purpose loan debit; and (2) such security can be liquidated in a period not exceeding 20 business days, based on a rolling 20 business day median trading volume. The maintenance loan value for the non-margin eligible security would be calculated based on the applicable maintenance margin requirements for a margin eligible security. If the security fails to meet the trading volume requirement, then the security would no longer be entitled to maintenance loan value, and a 100% maintenance margin requirement would be applied together with a deduction to net capital pursuant to Rule 15c3–1 and, if applicable, FINRA Rule 4110(a). Notwithstanding the foregoing, FINRA intends to allow that in the case of offshore mutual funds, a firm may extend maintenance loan value, based on a 25% maintenance margin requirement, to collateralize a non-purpose loan, provided that the fund has an affiliation with a U.S.-based fund registered with the SEC under the Investment Company Act of 1940, and the fund shares can be liquidated or redeemed daily.

Similar to the treatment above, FINRA also proposes to amend Rule 4210(f)(8)(B)(iii) to clarify that the special maintenance margin requirement for day traders, based on the cost of all day trades made during the day, would be 25% for margin eligible equity securities, and 100% for non-margin eligible equity securities.[11]

In addition, FINRA proposes to adopt new paragraph (g)(7)(E) of FINRA Rule 4210 regarding the margin requirements for non-margin eligible equity securities held in a portfolio margin account. Consistent with the margin treatment above, the provision would clarify that non-margin eligible equity securities held ''long'' in a portfolio margin account would have a maintenance margin requirement equal to 100% of the current market value at all times.[12] Paragraph (g)(7)(E) would also provide that non-margin eligible equity securities held ''short'' in a portfolio margin account would have a maintenance margin requirement equal to 50% of the current market value at all times.[13] FINRA believes that setting this specific requirement is necessary to help ensure that customers do not attempt to circumvent the initial margin requirements of Regulation T and place all short sales in a portfolio margin account to obtain lower margin requirements.[14]

FINRA also proposes to amend paragraph (g)(7)(D) of FINRA Rule 4210 to clarify that although non-margin eligible equity securities are not eligible for portfolio margin treatment, they may be carried in a portfolio margin account, provided that the member uses strategy-based margin requirements unless such securities are subject to other provisions of paragraph (g). For example, non-margin eligible equity securities may be carried in a portfolio margin account, but the amendment would clarify that they would be subject to the margin treatment set forth in FINRA Rule 4210(g)(7)(E), rather than FINRA Rule 4210(c).

Non-Equity Securities

FINRA proposes to further amend FINRA Rule 4210 to clarify the appropriate maintenance margin requirement for non-equity securities in a margin account. Paragraph (c)(4) stipulates a maintenance margin requirement for *each* bond held ''short'' in a margin account. Paragraph (e)(2)(C) stipulates the maintenance margin requirements on *any* positions in specified non-equity securities[15] that are inconsistent with the requirements in paragraph (c)(4). FINRA received several inquiries as to the appropriate maintenance margin requirement for any ''short'' non-equity security. Accordingly, FINRA proposes to amend FINRA Rule 4210 to clarify that the margin requirements in paragraph (c)(4) would apply to *non-margin eligible,* non-equity securities held ''short''[16] while the margin requirements in paragraph (e)(2)(C) would apply to the specified *margin-eligible* non-equity securities held ''short'' or ''long.''[17] FINRA also proposes to add a reference to ''short'' or ''long'' to each of paragraphs (e)(2)(B), (F) and (G) to further clarify that such provisions apply to securities held short or long.

''*Free-Riding*''

''Free-riding'' is the purchase of a security and the selling of the same security in the cash account, using the proceeds of the sale to satisfy the purchase. Such activity is prohibited under section 220.8(a)(1)(ii) of Regulation T. FINRA Rule 4210(f)(9) addresses free-riding in the cash account and currently exempts broker-dealers and ''designated accounts.''[18] While the term ''designated account'' generally includes banks, savings associations, insurance companies, investment companies, states or political subdivisions, and ERISA pension or profit sharing plans, FINRA believes that it is appropriate to treat such accounts as any other customer regarding this activity. Accordingly, FINRA proposes to eliminate this exemption for designated accounts consistent with Regulation T.

''*Exempt Account*''

Certain non-equity securities such as exempted securities, mortgage related securities, highly rated foreign sovereign debt securities, and investment grade debt securities may be subject to reduced maintenance margin requirements (or require no margin be deposited) for an ''exempt account,'' as defined in FINRA Rule 4210(a)(13).[19] FINRA notes that FINRA Rule 4210(f)(2)(E)(iv) regarding reduced maintenance margin requirements for OTC put and call options on certain U.S. Government and U.S. Government

[9] *See Regulatory Notice* 11–16 (April 2011) and *Regulatory Notice* 11–30 (June 2011) (*Regulatory Notice* 11–30 delayed the effective date of *Regulatory Notice* 11–16 until October 3, 2011).

[10] The exception to permit firms to extend maintenance loan value would apply to both equity and non-equity non-margin eligible securities.

[11] The special maintenance margin requirement for non-margin eligible equity securities for day traders is consistent with the margin requirements outlined in *Regulatory Notice* 11–16.

[12] The maintenance margin requirement for non-margin eligible equity securities held ''long'' in a portfolio margin account is consistent with the margin requirements outlined in *Regulatory Notice* 11–16.

[13] The maintenance margin requirement for ''short'' non-margin eligible equity securities held in a portfolio margin account would supersede the maintenance margin requirement for such securities specified in *Regulatory Notice* 11–16.

[14] *See* Rule 4210(g)(7).

[15] Paragraph (e)(2)(C) provides the maintenance margin requirements for (1) investment grade debt securities and (2) all other listed non-equity securities and all other margin eligible non-equity securities as defined in FINRA Rule 4210(a)(16).

[16] Non-margin eligible non-equity securities held ''long'' would be excluded from such margin treatment, and the maintenance margin requirement for such securities would be 100% of the current market value.

[17] *See also* FINRA Rule 4210(e)(2)(A), which establishes the maintenance margin requirements for long or short positions on obligations issued or guaranteed by the United States or obligations that are highly rated foreign sovereign debt securities.

[18] *See* FINRA Rule 4210(a)(4) for the definition of ''designated account.''

[19] *See* FINRA Rule 4210(e)(2)(F), (G) and (H).

Agency debt securities retained an earlier definition of ''exempt account'' that was not updated in 2003 when the NYSE and NASD amended the definition of ''exempt account'' by raising the dollar threshold in paragraph (a)(13) for all other purposes in their respective margin rules.[20] The definition of ''exempt account'' currently referenced in paragraph (f)(2)(E)(iv) was retained as a result of comment letters received by the SEC in 2003, expressing concern that customers who no longer qualified as ''exempt accounts'' in the amended paragraph (a)(13) definition would be subject to higher maintenance margin requirements for the securities addressed in paragraph (f)(2)(E)(iv). Therefore, such definition was maintained only for the provision in paragraph (f)(2)(E)(iv) to allow existing customers to continue to avail themselves of the reduced margin requirements. However, the SEC noted that exempt accounts that met the requirements for exempt account status would be ''grandfathered'' on the existing credit transactions but that the new requirements (the current paragraph (a)(13) ''exempt account'' requirements) would apply to any new credit transactions or roll-overs of existing transactions.[21] In light of the application of the 2003 exempt account definition to new and roll-over transactions and the significant passage of time, FINRA believes that maintaining these separate definitions is no longer necessary and proposes to delete the definition of ''exempt account'' contained in paragraph (f)(2)(E)(iv) and require an exempt account to satisfy the definition of ''exempt account'' in paragraph (a)(13) to qualify for the reduced margin on such options.

Portfolio Margin

FINRA proposes to eliminate the monitoring requirement contained in FINRA Rule 4210(g)(1)(D) that stress testing of accounts must be done in the aggregate for portfolio margin accounts. The rule would continue to require firms to stress test portfolio margin accounts on an individual account basis. FINRA has been reviewing the portfolio margin program and believes that the stress testing on an individual account basis is sufficient from a risk perspective.

Technical Changes

Finally, the proposed rule change amends FINRA Rule 4210 to make non-substantive technical and stylistic changes to encourage consistency throughout the rule and enhance readability.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 90 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[22] 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. FINRA believes that the proposed rule change regarding the options spread strategies would set margin requirements commensurate with the risk of options spread strategies. FINRA further believes that the proposed rule change would clarify the margin requirements for non-margin eligible equity securities and non-equity securities to ensure consistent regulation regarding the margin treatment for such securities and strategies. FINRA also believes that the proposed rule change regarding conforming the definition of ''exempt accounts'' would ensure consistent regulation regarding such accounts. In addition, FINRA believes that the proposed rule change regarding eliminating the exemption from the ''free-riding'' provision for ''designated accounts'' is consistent with Regulation T. Finally, FINRA believes that the proposed rule change regarding stress testing of individual portfolio margin accounts is reflective of the risk of such accounts.

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.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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 2012–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–024. 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

[20] *See* Securities Exchange Act Release No. 48407 (August 25, 2003), 68 FR 52259 (September 2, 2003) (Order Approving File No. SR–NASD–2000–08) (''NASD Order''); Securities Exchange Act Release No. 48365 (August 19, 2003), 68 FR 51314 (August 26, 2003) (Order Approving File No. SR–NYSE–98–14); and Securities Exchange Act Release No. 48133 (July 7, 2003), 68 FR 41672 (July 14, 2003) (Notice of Filing of File No. SR–NYSE–98–14) (''NYSE Notice of Filing'').

[21] *See* note 20, page 52261 of the NASD Order and page 41676 of NYSE Notice of Filing.

[22] 15 U.S.C. 78*o*–3(b)(6).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–2012–024 and should be submitted on or before June 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13698 Filed 6–5–12; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67090; File Nos. SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129]

Self-Regulatory Organizations; BATS Exchange, Inc.; BATS Y–Exchange, Inc.; NASDAQ OMX BX, Inc.; Chicago Board Options Exchange, Incorporated; C2 Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; The NASDAQ Stock Market LLC; New York Stock Exchange LLC; NYSE Amex LLC; NYSE Arca, Inc.; National Stock Exchange, Inc.; NASDAQ OMX PHLX LLC; Notice of Filing of Amendments No. 1 and Order Granting Accelerated Approval of Proposed Rule Changes as Modified by Amendments No. 1, Relating to Trading Halts Due to Extraordinary Market Volatility

May 31, 2012.

On September 27, 2011, each of BATS Exchange, Inc. (''BATS''), BATS Y–Exchange, Inc. (''BYX''), NASDAQ OMX BX, Inc. (''BX''), Chicago Board Options Exchange, Incorporated (''CBOE''), C2 Options Exchange, Incorporated (''C2''), Chicago Stock Exchange, Inc. (''CHX''), EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), International Securities Exchange LLC (''ISE''), The NASDAQ Stock Market LLC (''Nasdaq''), National Stock Exchange, Inc. (''NSX''), New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''), NYSE Arca, Inc. (''NYSE Arca''), NASDAQ OMX PHLX LLC (''Phlx'') (collectively, the ''Exchanges'') and the Financial Regulatory Industry Authority, Inc. (''FINRA'') (together, with the Exchanges, the ''SROs'') 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] proposed rule changes (the ''SRO Proposals'') to amend certain of their respective rules relating to trading halts due to extraordinary market volatility. The SRO Proposals were published for comment in the **Federal Register** on October 4, 2011.[3] The Commission received seven comment letters on the SRO Proposals.[4]

On November 17, 2011, the Commission extended the time period in which to approve the SRO Proposals, disapprove the SRO Proposals, or institute proceedings to determine whether to disapprove the SRO Proposals, to December 30, 2011.[5] On December 28, 2011, the Commission instituted proceedings to determine whether to disapprove the SRO Proposals.[6] The Commission thereafter received an additional three comment letters on the SRO Proposals.[7] On May 10, 2012, NYSE Euronext, on behalf of the three U.S. exchanges it operates, NYSE, NYSE Amex, and NYSE Arca, filed a response to comments (the ''Response'').[8]

On May 23, 2012 and May 24, 2012, the SROs each submitted Amendment No. 1 to their respective proposed rule change (the ''Amendments''). In the Amendments, the SROs propose to make the SRO Proposals operative on a pilot basis scheduled to end on the same date that the pilot period for the Limit Up-Limit Down Plan (as defined below) ends.[9] The Commission is publishing this notice to solicit comments on the SRO Proposals, as modified by the Amendments, from interested persons and is approving the SRO Proposals, as modified by the Amendments, on an accelerated basis.

I. Description of the Proposals

In the SRO Proposals, the Exchanges and FINRA propose to revise the existing market-wide circuit breakers, which halt trading in all NMS securities (as defined in Rule 600(b)(47) of Regulation NMS under the Act [10]) in the event of extraordinary market volatility, in order to make them more meaningful in today's high-speed electronic

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 65437 (September 28, 2011), 76 FR 61466 (October 4, 2011); 65428 (September 28, 2011), 76 FR 61453 (October 4, 2011); 65429 (September 28, 2011), 76 FR 61432 (October 4, 2011); 65433 (September 28, 2011), 76 FR 61453 (October 4, 2011); 65438 (September 28, 2011), 76 FR 61447 (October 4, 2011); 65426 (September 28, 2011), 76 FR 61460 (October 4, 2011); 65431 (September 28, 2011), 76 FR 61425 (May 12, 2011); 65440 (September 28, 2011), 76 FR 61444 (October 4, 2011); 65430 (September 28, 2011), 76 FR 61429 (October 4, 2011); 65425 (September 28, 2011), 76 FR 61438 (October 4, 2011); 65435 (May 6, 2011), 76 FR 61416 (October 4, 2011); 65436 (September 28, 2011), 76 FR 61450 (October 4, 2011); 65427 (September 28, 2011), 76 FR 61457 (October 4, 2011); 65432 (September 28, 2011), 76 FR 61422 (October 4, 2011); 65439 (September 28, 2011), 76 FR 61463 (October 4, 2011); 65434 (September 28, 2011), 76 FR 61419 (October 4, 2011) (collectively, the ''Notices'').

[4] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Ann L. Vlcek, Managing Director and Associate General Counsel, the Securities Industry and Financial Markets Association, dated October 27, 2011 (''SIFMA Letter I''); letter to Commission, from James J. Angel, Ph.D., CFA, Associate Professor of Finance, Georgetown University, McDonough School of Business, dated October 25, 2011 (''Angel Letter''); letter to Elizabeth M. Murphy, Secretary, Commission, from Craig S. Donohue, CME Group, Inc., dated October 25, 2011 (''CME Group Letter I''); letter to Elizabeth M. Murphy, Secretary, Commission, from Commissioner Bart Chilton, Commodity Futures Trading Commission, dated October 25, 2011 (''Commissioner Chilton Letter''); letter to Elizabeth M. Murphy, Secretary, Commission, from Richard H. Baker, President and CEO, Managed Funds Association, dated October 25, 2011 (''MFA Letter''); letter to Commission from Suzanne H. Shatto, dated October 20, 2011 (''Shatto Letter''); letter to Commission from Mark Roszak, dated October 4, 2011 (''Roszak Letter'').

[5] *See* Securities Exchange Act Release No. 65770 (November 17, 2011), 76 FR 72492 (November 23, 2011).

[6] *See* Securities Exchange Act Release No. 66065 (December 28, 2011), 77 FR 316 (January 4, 2012).

[7] *See* letters to Elizabeth Murphy, Secretary, Commission, from Timothy Quast, Managing Director, ModernIR, dated January 20, 2012 (''ModernIR Letter''); Craig S. Donohue, Chief Executive Officer, CME Group, Inc., dated January 25, 2012 (''CME Group Letter II''), and Ann L. Vlcek, Managing Director and Associate General Counsel, the Securities Industry and Financial Markets Association, dated February 7, 2012 (''SIFMA Letter II'').

[8] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, EVP & Corporate Secretary, General Counsel, NYSE Markets, dated May 10, 2012.

[9] *See, e.g.,* SR–NYSE–2011–48, Amendment No. 1. The text of proposed Amendment No. 1 is available on the NYSE's Web site at *http://www.nyse.com*, at the principal office of NYSE and at the Commission's Public Reference Room.

[10] 17 CFR 242.600(b)(47).

markets. In so doing, the exchanges took into account the events of May 6, 2010, where the markets experienced excessive volatility in a short period of time, as well as the recommendations of the Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (the ''Joint CFTC–SEC Advisory Committee'').

The existing market-wide circuit breakers provide for specified trading halts following certain ''Level 1,'' ''Level 2,'' and ''Level 3'' market declines.[11] The values of Levels 1, 2, and 3 are calculated at the beginning of each calendar quarter, using 10%, 20%, and 30%, respectively, of the average closing value of the Dow Jones Industrial Average (''DJIA'') for the month prior to the beginning of the quarter.[12] The existing Level 1, Level 2, and Level 3 circuit breakers operate as follows:

Level 1 Halt
- Before 2:00 p.m.—one hour;
- At or after 2:00 p.m. but before 2:30 p.m.—30 minutes;
- At or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt
- Before 1:00 p.m.—two hours;
- At or after 1:00 p.m. but before 2:00 p.m.—one hour;
- At or after 2:00 p.m.—trading shall halt and not resume for the rest of the day.

Level 3 Halt
- At any time—trading shall halt and not resume for the rest of the day.

As described in detail in the Notices, the SRO Proposals, among other things, would: (i) Replace the DJIA with the S&P 500® Index (''S&P 500'') as the reference index; (ii) recalculate the values of the triggers daily instead of each calendar quarter; (iii) reduce the 10%, 20%, and 30% market decline trigger percentages to 7%, 13%, and 20%; (iv) shorten the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be triggered. The proposed Level 1, Level 2, and Level 3 circuit breakers would operate as follows:

Level 1 Halt
- Before 3:25 p.m.—15 minutes;
- At or after 3:25 p.m.—trading shall continue, unless there is a Level 3 halt.

Level 2 Halt
- Before 3:25 p.m.—15 minutes;
- At or after 3:25 p.m.—trading shall continue, unless there is a Level 3 halt.

Level 3 Halt
- At any time—trading shall halt and not resume for the rest of the day.

[11] *See, e.g.,* NYSE Rule 80B.

[12] Each percentage calculation is rounded to the nearest 50 points and remains in effect until the next quarterly calculation.

II. Limit Up-Limit Down Plan

Separately, certain equities exchanges[13] and FINRA have proposed to establish a new mechanism to address extraordinary market volatility in individual securities, pursuant to a national market system plan filed under Rule 608 of Regulation NMS (the National Market System Plan to Address Extraordinary Market Volatility, or, the ''Limit Up-Limit Down Plan'').[14] The new Limit Up-Limit Down Plan, which would replace the existing single-stock circuit breaker mechanism,[15] would prevent trades in individual securities from occurring outside of a specified price band, and would be coupled with a trading pause mechanism to accommodate more fundamental price moves. In essence, a security would enter a ''limit state'' if its price moves a certain percentage—generally 5%, 10% or 20%, depending on the stock and the time of day—over a five-minute period. If the market does not naturally exit the limit state within 15 seconds, there would be a five-minute trading pause. The Commission also is approving today the Limit Up-Limit Down Plan on a pilot basis.[16]

As discussed below, the Commission, in the Notices for the SRO Proposals, specifically requested comment on how the proposed changes to the market-wide circuit breakers would interact with the Limit Up-Limit Down Plan for individual securities, if approved, and several commenters expressed views on this issue.[17]

III. Summary of Comments

The Commission received ten comment letters from eight commenters on the SRO Proposals.[18] The commenters generally supported the proposals and their goals, but several expressed concern with particular provisions or offered alternative suggestions.[19]

[13] These exchanges are BATS, BX, BYX, CBOE, CHX, EDGA, EDGX, Nasdaq, NSX, NYSE, NYSE MKT LLC (f/k/a NYSE Amex LLC), NYSE Arca, and Phlx.

[14] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[15] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (order approving the current single-stock circuit breaker mechanism). The single-stock circuit breaker mechanism, which was approved as a pilot program, is currently scheduled to expire on July 31, 2012. *See e.g.,* Securities Exchange Act Release No. 66136 (January 11, 2012), 77 FR 2589 (January 18, 2012) (SR–NYSE–2011–69).

[16] *See* Securities Exchange Act Release No. 67091 (May 31, 2012) (File No. 4–631).

[17] *See* Commissioner Chilton Letter, CME Group Letters I and II, and SIFMA Letters I and II.

[18] *See supra* notes 4 and 7.

[19] *See* SIFMA Letters I and II, MFA Letter, CME Group Letter I, Angel Letter, and Shatto Letter.

Some commenters expressed concern that the Level 2 circuit breaker would not apply after 3:25 p.m.[20] As explained in the Notices, the SROs adopted this approach to avoid disrupting the normal 4:00 p.m. market close. The Commission, however, specifically solicited comment on whether some provision should be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m., even if the decline is less than 20%. Some commenters believed that the proposal could leave the market vulnerable to a severe decline that occurs late in the trading day, and instead suggested that a Level 2 circuit breaker triggered at or after 3:25 p.m. halt trading for the remainder of the trading session.[21]

The Commission also specifically requested comment on how the proposed changes would interact with the single-stock circuit breaker pilot program or, if approved, the proposed Limit Up-Limit Down Plan for individual securities. The Commission further asked whether the market-wide circuit breaker should be triggered if a sufficient number of single-stock circuit breakers or price limits were triggered. One commenter believed that the market-wide circuit breaker should be triggered if a sufficient number of single-stock circuit breakers or price limits were triggered, given the potential difficulties of accurately calculating the value of the S&P 500 Index in such circumstances.[22] This commenter made some suggestions for this additional trigger, and encouraged Commission staff to assess empirical data to develop appropriate parameters in this area.[23] Two other commenters also expressed

Some commenters suggested the Commission instead focus on other market structure changes; those changes are outside the scope of the SRO Proposals. *See* Modern IR Letter (suggesting the Commission suspend core trading rules in the event of extraordinary volatility) and Roszak Letter (suggesting the Commission more vigorously regulate high-frequency traders such as by limiting connection speeds).

[20] *See* CME Group Letters I and II, Commissioner Chilton Letter, MFA Letter, and SIFMA Letter II.

[21] *See* CME Group Letters I and II, MFA Letter, and SIFMA Letter II.

[22] *See* SIFMA Letters I and II. SIFMA also believed it was critical to coordinate the market-wide circuit breakers with the options and futures markets. The Commission notes that the SRO Proposals have been developed in consultation with the options and futures markets. *See, e.g.,* Securities Exchange Act Release No. 65427, 76 FR at 61458.

[23] *See* SIFMA Letter II. For example, SIFMA suggested that there be an additional market-wide circuit breaker trigger when both (1) 5% (or 25) of the securities in the S&P 500 are in a limit down state or halted and (2) 10% of the market weighting of the SPX is in a limit down state or halted. As a simpler alternative, SIFMA also suggested there be an additional trigger if 10% of the securities in the S&P 100 are in a limit state or halted.

concern about the interaction of market-wide circuit breakers and single-stock circuit breakers, and the effect that might have on index calculations, particularly in macro-market events.[24]

Two commenters also expressed views on how market centers should treat pending orders in the event a market-wide circuit breaker is triggered. One commenter believed that orders pending with a market center at the time of a Level 1 or Level 2 circuit breaker should remain queued by the market center during the halt and be eligible for execution after the halt.[25] However, in the event of a Level 3 circuit breaker, that commenter was of the view that all pending orders should be cancelled, since trading will cease for the remainder of the day. The commenter reiterated these views in its subsequent comment letter.[26] Another commenter generally took the position that the SROs should not cancel pending orders during a trading halt, in order to preserve the queue priority of market participants.[27] These views were restated by the same commenter in its subsequent comment letter.[28]

The Commission also sought comment on whether a provision should be made for a closing auction in the event of a Level 3 circuit breaker decline. One commenter responded that allowing a closing auction under these extreme circumstances would risk greater market dislocations, and therefore was unadvisable,[29] but others believed there should be a closing process so that, among other things, options market participants can unwind hedges and mutual fund prices can be properly determined.[30] Another commenter recommended that the markets hold an end-of-day closing auction if the triggering of a Level 2 or Level 3 circuit breaker precluded a normal 4:00 p.m. close.[31]

The Commission also sought comment on whether the primary market should have a longer period (*e.g.* 30 minutes) to re-open trading following a Level 2 circuit breaker decline. One commenter responded that trading halts should be as short as operationally practicable, and was of the view that the 15-minute trading halt remained appropriate in this circumstance.[32]

Finally, commenters offered several other specific suggestions with respect to the SRO Proposals. Two commenters suggested that the market-wide circuit breakers apply after hours.[33] One believed the trigger thresholds should be recalculated weekly rather than daily as proposed.[34] Another commenter offered a variety of additional recommendations, including triggering the circuit breakers in the event of material issues with market data integrity or disruptions, triggering the circuit breakers based on opening prices rather than the previous day's close and using a velocity-based mechanism similar to the single-stock circuit breakers, maintaining the Level 1 circuit breaker at 10%, and not having a Level 3 circuit breaker close the markets for the remainder of the day.[35] Two commenters stressed the need to coordinate the market-wide circuit breakers with the futures markets.[36]

The Response addressed the main issues the commenters raised. With respect to the relationship between the Limit Up-Limit Down Plan and the market-wide circuit breakers, and specifically the suggestion that a market-wide trading halt be declared if a sufficient number of single-stock trading pauses or price limits were triggered, the Response argued that attempting to identify the appropriate correlation between individual securities in a trading pause or limit state and a related trigger for a market-wide circuit breaker at this stage is premature. Instead, the Response urged that the Commission use the pilot periods for both the SRO Proposals and Limit Up-Limit Down Plan to examine data and develop a better understanding of how the Limit Up-Limit Down Plan will operate in practice before determining whether any further revisions to the SRO Proposals should be made.[37]

The Response also addressed the suggestions by certain commenters that provision be made for a trading halt other than a Level 3 halt after 3:25 p.m. The Response recommended that the types of declines that should trigger a halt after 3:25 p.m. should continue to be explored during the pilot period, but that the SRO Proposals should be approved in their current form.[38] The Response expressed particular concern that a 15-minute market-wide halt after 3:25 p.m. would be disruptive to the fair and orderly closing of the markets at 4:00 p.m.

IV. Discussion and Commission Findings

After careful review of the SRO Proposals, as modified by the Amendments, and consideration of the comment letters and the Response, the Commission finds that the SRO Proposals relating to trading halts due to extraordinary market volatility are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and national securities association and, in particular, the requirements of Sections 6[39] and 15A[40] of the Act. Specifically, the Commission finds that the SRO Proposals are consistent with Sections 6(b)(5)[41] and 15A(b)(6)[42] of the Act, which, among other things, require that rules of a national securities exchange and national securities association be 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 to protect investors and the public interest.[43]

The Commission believes that the SRO Proposals are reasonably designed to update the existing market-wide circuit breakers to make them more meaningful and effective in today's high-speed electronic securities markets. The Exchanges and FINRA are amending, in a uniform manner, their rules that halt trading in all NMS securities in the event of extraordinary market volatility so that these circuit breakers would, among other things, be triggered by a smaller market-wide decline but last for a shorter period of time. In developing their proposals, the SROs took into account the events of May 6, 2010—where the markets experienced substantial volatility in a short period of time but at a level insufficient to trigger the existing market-wide circuit breakers—as well as the recommendations of the Joint CFTC–SEC Advisory Committee.

[24] *See* CME Group Letters I and II and Commissioner Chilton Letter. CME Group noted, among other things, that in a macro-market event, multiple constituent stocks in the S&P 500 index could be limited, halted, and reopened on staggered timelines, creating complexity and confusion in understanding the index calculation and in ascertaining the true value of the index. CME Group Letter I at 3.

[25] *See* SIFMA Letter I.

[26] *See* SIFMA Letter II.

[27] *See* CME Group Letter I.

[28] *See* CME Group Letter II.

[29] *See* CME Group Letter I.

[30] *See* SIFMA Letter II and Angel Letter.

[31] *See* SIMFA Letter II.

[32] *See* CME Group Letter I.

[33] *See* CME Group Letter I and Chilton Letter.

[34] *See* CME Group I Letter.

[35] *See* Angel Letter.

[36] *See* SIFMA Letters I and II and CME Group Letter I.

[37] *See* Response at 3.

[38] *Id.* at 4.

[39] 15 U.S.C. 78f.

[40] 15 U.S.C. 78*o*–3.

[41] 15 U.S.C. 78f(b)(5).

[42] 15 U.S.C. 78*o*–3(b)(6).

[43] Further, in approving the SRO Proposals, the Commission considered the SRO Proposals' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

As discussed above, the SRO Proposals would reduce the market decline percentage thresholds necessary to trigger a Level 1, 2, or 3 market-wide circuit breaker from 10%, 20% and 30% to 7%, 13% and 20%, respectively. In light of the fact that the market-wide circuit breakers were not triggered on May 6, 2010 when the markets experienced extraordinary market volatility, the SROs are of the view that somewhat lower percentage thresholds are appropriate so that the market-wide circuit breakers are more meaningful. However, given the highly-automated nature of today's markets and improvements in communication and connectivity, the SROs believe that a trading halt of shorter duration—15 minutes—would be sufficient to allow market participants an opportunity to assess a serious market decline and express their trading interest, with less disruption to the markets than the existing market-wide circuit breakers. The SROs also believe the broader-based S&P 500 is a more meaningful benchmark against which to assess a serious market-wide decline than the 30 listings that comprise the DJIA, and seek to improve the calibration and sensitivity of the circuit breaker mechanism by calculating the trigger values daily rather than quarterly.

Commenters generally supported these core elements of the SRO Proposals, but several expressed concern about the interaction of the updated market-wide circuit breakers with the mechanisms to moderate excessive volatility in individual securities set forth in the proposed Limit Up-Limit Down Plan. Concerns were expressed about the impact on index calculations of a significant number of individual securities being in a limit state or halted, and the effectiveness of the market-wide circuit breakers. Some interest was expressed in establishing an additional trigger for the market-wide circuit breakers if trading were limited or halted in a sufficient number of individual securities, and one commenter offered specific suggestions on how such a trigger might be established. The Commission notes that, in the Amendments, the SROs propose to establish the updated market-wide circuit breakers on a pilot basis, so that further thought could be given to this issue—as well as certain other issues raised by commenters—in light of the markets' experience with the new Limit Up-Limit Down mechanism for individual securities that is being approved today, and the further comment the Commission is seeking from market participants in this Order.

Several commenters also expressed concern with the fact that the SRO proposals only provide for a Level 3 circuit breaker after 3:25 p.m., so that the markets could experience up to a 20% decline during this period, and suggested instead that the Level 2 circuit breaker apply so as to leave the markets less vulnerable to a severe decline late in the trading day. Although a 13% decline after 3:25 p.m. would not halt trading under the SRO Proposals, the revised market-wide circuit breaker rules do maintain the 20% threshold that is currently in place as the minimum trigger level that would halt trading after 3:25 p.m. The Commission notes that it will continue to consider this issue during the pilot period, and is specifically seeking further comment from market participants on this issue.

Suggestions also were made with respect to certain other technical aspects of the SRO Proposals, such as providing for a closing auction in the event of a Level 3 circuit breaker,[44] applying the circuit breakers after hours, creating an additional trigger if there are material market data issues, and clarifying the treatment of pending orders during a market-wide circuit breaker halt.[45] The Response recommended that the Commission use the pilot periods contemplated in the SRO Proposals and Limit Up-Limit Down Plan to further consider all the concerns raised by the commenters.[46] The Commission will continue to consider these issues during the pilot period.

On balance, the Commission believes that the SRO Proposals are reasonably designed to improve the operation of the market-wide circuit breakers, in light of the changes to the trading markets since those rules were last amended and the lessons learned from the extraordinary volatility experienced on May 6, 2010. While the circuit breakers are likely to be triggered more frequently than before, the Commission believes this will continue to be a relatively rare event that is designed to address severe market declines.[47] In addition, the updated market-wide circuit breakers should be less disruptive to the markets, given their shorter duration, yet should still be able to accomplish their goals given the significant advances in communication and connectivity in recent years. The Commission, the SROs and market participants will have an opportunity to further consider issues raised by commenters with respect to certain aspects of the operation of the updated circuit breakers during the pilot period, and will further benefit from observing the operation of the Limit Up-Limit Down mechanism for individual securities, which is being approved separately by the Commission today, during that period.

In light of the foregoing, the Commission finds that the SRO Proposals, as modified by the Amendments, are consistent with the Act.

V. Solicitation of Comments

During the pilot period, the Commission encourages commenters to provide additional comments on the issues raised by commenters regarding certain aspects of the SRO Proposals or otherwise.

The Commission specifically requests further comment on the following:

- Should a Level 1 or Level 2 trigger result in a trading halt after 3:25 p.m., or do the SRO Proposals' provisions that only a Level 3 trigger will halt trading after 3:25 p.m. adequately balance the need for an orderly close against the potential market disruptions associated with absence of a Level 1 or Level 2 halt after 3:25 p.m.?
- Should the market-wide circuit breakers be triggered if trading is limited or halted in a sufficient number of individual securities and, if so, how should such additional trigger be designed? What are the tradeoffs associated with such a trigger regarding simplicity and the risk of unnecessary triggers?
- Should any other aspects of the market-wide circuit breakers be modified in light of the experience with the new Limit Up-Limit Down mechanism for individual securities?

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Commenters are encouraged to submit empirical evidence to support their arguments. Comments may be submitted by any of the following methods:

[44] Certain commenters believed there should be a closing process so that, among other things, options market participants can unwind hedges and mutual fund prices can be properly determined.

[45] Commenters also provided input on the duration of the trading halts, the application of market-wide circuit breakers in after hours trading, the frequency in which the trigger thresholds should be recalculated, the consideration of material issues with market data integrity or disruptions, and the use of opening prices rather than the previous day's close in calculating trigger thresholds. *See supra,* pp. 9–10.

[46] *See* Response at 3.

[47] Data show that, since 1962, there would have been 13 instances where at least a Level 1 circuit breaker decline would have been reached under the revised market-wide circuit breaker thresholds.

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 Numbers SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129. These file numbers 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 filings also will be available for inspection and copying at the principal offices of the exchanges and FINRA, respectively. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Numbers SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129 and should be submitted on or before June 27, 2012.

VI. Accelerated Approval of Proposed Rule Changes, as Modified by the Amendments

The Amendments revised the SRO Proposals to, among other things, specify that the proposed rule change will be operative on a pilot basis, beginning February 4, 2013, and continuing until February 4, 2014. The Amendments will allow the Commission, the SROs and market participants to further consider, during the pilot period, issues raised by commenters with respect to certain aspects of the SRO Proposals, and to benefit from the experience with the Limit Up-Limit Down mechanism for individual securities that also is being approved today on a pilot basis. Such further consideration will allow the Commission to consider whether modifications to the market-wide circuit breakers are warranted prior to any decision as to whether to approve them on a permanent basis. Accordingly, the Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[48] for approving the SRO Proposals, as modified by the Amendments, prior to the 30th day after the date of publication of notice in the **Federal Register**.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[49] that the proposed rule changes (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129), as modified by the Amendments, be, and hereby are, approved on an accelerated basis.

[48] 15 U.S.C. 78s(b)(2).

[49] 15 U.S.C. 78s(b)(2).

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–13652 Filed 6–5–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67087; File No. SR–ISE–2012–43]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Regulatory Fee

May 31, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 25, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 ISE proposes to increase its Options Regulatory Fee. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Options Regulatory Fee (''ORF'') to increase it from $0.0035 per contract to $0.0042 per contract in order to recoup increased regulatory expenses while also ensuring that the ORF will not exceed costs.

The ORF is assessed by the Exchange to each member for all options transactions executed or cleared by the member that are cleared by The Options Clearing Corporation (''OCC'') in the customer range, i.e., transactions that clear in the customer account of the member's clearing firm at OCC, regardless of the marketplace of execution. In other words, ISE imposes the ORF on all customer-range transactions executed by a member, even if the transactions do not take place on the Exchange.[3] The ORF also is charged for customer-range transactions that are not executed by an ISE member but are ultimately cleared by an ISE member. In the case where an ISE member executes a transaction and an ISE member clears the transaction, the ORF is assessed to the member who executed the transaction. In the case where a non-ISE member executes a transaction and an ISE member clears the transaction, the ORF is assessed to the ISE member who clears the transaction.

The dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange notes that its regulatory responsibilities with respect to member compliance with options sales practice rules have been allocated to FINRA under a 17d–2 agreement. The ORF is not designed to cover the cost of options sales practice regulation. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee filing change to the Commission. The Exchange has designated this proposal to be operative on June 1, 2012.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act[5] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The Exchange believes that the proposed fee change is reasonable because the Exchange's collection of the ORF has declined due to a decrease in industry volume and the adjustment would serve to provide the Exchange with additional ORF. The additional ORF will help offset regulatory expenses, but does not exceed regulatory costs.

The Exchange believes that the ORF is equitable and not unfairly discriminatory because it is objectively allocated to Exchange members in that it would continue to be charged to all members on all of their transactions that clear as customer at OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those member firms that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity. Surveillance and regulation of non-customer trading activity tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are anticipated to be higher than the costs associated with administering the non-customer component of its regulatory program. As such, the Exchange proposes assessing higher fees to those firms that will require more Exchange regulatory services based on the amount of customer options business they conduct. The ORF is not charged for orders that clear in categories other than the customer range (e.g., market maker orders) because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees which go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation.

As previously stated, OCC collects the ORF on behalf of ISE through each member's clearing firm. In addition, the ORF seeks to recover the costs of supervising and regulating members, including performing routine surveillances, investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee filing change to the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[6] 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

[3] Exchange rules require each member to submit trade information in order to allow the Exchange to properly prioritize and match orders and quotations and report resulting transactions to the OCC. *See* ISE Rule 712. The Exchange represents that it has surveillances in place to verify that members comply with the rule.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange 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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2012–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–43. 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–ISE–2012–43 and should be submitted on or before June 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13643 Filed 6–5–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67085; File No. SR–FINRA–2012–026]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Handling of Stop and Stop Limit Orders

May 31, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 24, 2012, 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. 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's rules relating to the handling of stop and stop limit orders.

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, the Proposed Rule Change

1. Purpose

FINRA Rule 6140(h) addresses the handling of stop orders in NMS stocks.[3] Specifically, the Rule provides that a member may, but is not obligated to, accept a stop order in a designated security.[4] The Rule further provides that a stop order becomes a market order (or a stop limit order becomes a limit order) when a transaction takes place at or above the stop price (in the case of a buy stop order) or at or below the stop price (in the case of a sell stop order).[5]

Although Rule 6140(h) provides that a stop order is triggered by a transaction, FINRA understands that certain firms and their customers prefer alternative triggers for activating a stop or stop limit order. For example, some members have noted that using quotations may be preferable because, for some securities, quotations serve as a better indicator of the current price than transactions. Thinly traded securities (*e.g.,* certain exchange-traded funds) have limited trading during the trading day, although quotations may be continuously updated and would serve as the better indicator of the current market price for these securities. As such, investors in these securities may prefer that their stop order be monitored against quotations instead of waiting for trades. Conversely, some members have indicated that customers could be disadvantaged by the triggering of a stop order on a quotation because doing so may result in an execution at a price that the stock had never traded at that day—an outcome that may be considered undesirable for an investor placing a stop order.[6]

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The requirements in Rule 6140(h) were initially adopted by NASD (and the national securities exchanges) in 1975. *See Notice to Members* 75–42 (June 10, 1975) (Rules Governing Reporting of Transactions to Consolidated Tape).

[4] Rule 6140(a) defines a ''designated security'' as any NMS stock as defined in Rule 600(b)(47) of SEC Regulation NMS.

[5] Stop buy orders generally are entered by investors with short positions to limit losses should the stock price increase. Stop sell orders generally are entered in a stock whose price has increased substantially in order to protect the investor's profits should the stock price decline.

[6] Other concerns with using quotations include that quotations may be more vulnerable to abuse because they can be manipulated to trigger stops and then withdrawn/changed. However, other members note that using transactions also could result in the improper triggering of a customer's stop order due to trades at prices outside of the

Continued

FINRA believes that, given the various risks and benefits of each triggering event, members and their customers should be permitted to consider these factors and determine which order type (and trigger) is appropriate. In this regard, FINRA previously proposed amendments to the Rule 6140(h) to delete the requirement that transactions at the stop price serve as the only triggering event for stop orders, thereby providing members and customers with the flexibility to tailor their order types. However, this proposal was not approved by the Commission based on concerns that the proposed rule did not promote the ability of investors to understand the key attributes of the order and make an informed choice as to whether to use a particular type of order.[7]

In light of the Commission's concerns, FINRA is proposing Rule 5350(a), which would retain the current transaction-based trigger for activating stop and stop limit orders and provide all investors placing a ''stop order'' or a ''stop limit order'' with certainty that their order will only be activated by a transaction at the stop price. At the same time, proposed Supplementary Material .01 to the rule would permit members to offer an alternative trigger to activate an order as a market or limit order, so long as such alternative order type is not labeled as a ''stop order'' or a ''stop limit order'' and is clearly distinguishable from a stop or stop limit order (*e.g.,* an alternative order type that triggers using a quotation at the stop price may be labeled a ''stop quotation order'').[8] In cases where the member offers an alternative order type that activates as a market or limit order using an event other than a transaction at the stop price, the member must disclose to the customer, in paper or electronic form, prior to the time the customer places the order (*e.g.,* at account opening), a description of the order type including the triggering event.[9]

FINRA believes that, by requiring that alternative-trigger order types be labeled something other than a ''stop'' or ''stop limit'' order and be clearly distinguishable from a stop or stop limit order, members and customers will share a uniform understanding as to what will serve as the triggering event for ''stop orders.'' To complement this approach, proposed Supplementary Material .02 to Rule 5350 also would require that, to the extent a member routes a customer stop or stop limit order to another broker-dealer or exchange for handling or execution, the member must take reasonable steps to ensure that the order is handled or executed by the other broker-dealer or exchange in accordance with Rule 5350(a). Similarly, a member that routes to another broker-dealer or exchange other order types using an alternative trigger in accordance with Supplementary Material .01 must take reasonable steps to ensure that the order is handled or executed by the other broker-dealer or exchange in accordance with the terms of the order as communicated to the customer placing the order.

Finally, the stop order definition is being relocated from Rule 6140(h) to new Rule 5350 to ensure that the existing and proposed stop order provisions apply uniformly to both OTC Equity Securities[10] and NMS stocks.

FINRA will announce the implementation date of the proposed rule change no later than 60 days following Commission approval. The implementation date will be no more than 150 days following Commission approval.

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. FINRA believes that adopting the proposed rule change will provide customers with certainty as to how their stop orders will be treated, while also providing members with the flexibility to determine whether offering additional order types with alternative triggers are appropriate for their business and customer base, without compromising investor protection.

FINRA believes that the proposed rule change advances the protection of investors and the public interest in that it would further a more uniform definition of ''stop order'' and ''stop limit order'' for all equity securities, thereby providing investors with certainty as to the handling of such orders by their broker-dealers. In addition, FINRA believes that the proposed changes will promote just and equitable principles of trade by providing customers and members with the flexibility to select and offer other triggering events for alternative order types in accordance with their investment objectives and business models, while requiring members to disclose a description of the order type, including the triggering event, prior to the time the customer places the order.

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.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

current market—whether intentional or erroneous trades.

[7] *See* Securities Exchange Act Release No. 63885 (February 10, 2011), 76 FR 9062 (February 16, 2011) (Order Disapproving File No. SR–FINRA–2010–055).

[8] The proposed rule would not apply to ''not held'' orders. *See* proposed Rule 5350(b). Generally, a ''not held'' order is an un-priced, discretionary order voluntarily categorized as such by the customer. As such, because the customer has given the member price and time discretion, the proposed requirements would not apply to a ''not held'' stop or stop limit order.

[9] A member that permits customers to engage in securities transactions online also must post the required disclosures on the member's Web site in a clear and conspicuous manner.

[10] FINRA Rule 6420(e) defines ''OTC Equity Security'' as any equity security that is not an ''NMS stock'' as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term ''OTC Equity Security'' shall not include any Restricted Equity Security.

[11] 15 U.S.C. 78*o*–3(b)(6).

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–2012–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–026. 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 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–2012–026, and should be submitted on or before June 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13642 Filed 6–5–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67082; File No. SR–FINRA–2012–018]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Approval of Proposed Rule Change as Modified by Amendment No. 1, To Amend NASD Rules 1012 (General Provisions) and 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) To Adopt Form CMA

May 31, 2012.

I. Introduction

On February 28, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 NASD Rules 1012 (General Provisions) and 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) and to adopt Form CMA (''Form''), a new standardized electronic form. The Form must be used by members who apply for approval of a change in ownership, control, or business operations consistent with Rule 1017. The proposed rule change was published for comment in the **Federal Register** on March 8, 2012.[3] The Commission received four comment letters on the proposed rule change.[4]

On May 8, 2012, FINRA filed Amendment No. 1 [5] and a letter in response to the comments.[6] The Commission is approving the proposed rule change as modified by Amendment No 1.[7]

II. Description of the Proposal

NASD Rule 1017 requires members, upon specified changes in ownership, control, or business operations, to file a continuing membership application and enumerates the information that must be provided to FINRA for FINRA to review. FINRA proposes to amend NASD Rules 1012 (General Provisions) and 1017 (Application for Approval of change in Ownership, Control, or Business Operations) to adopt the Form, a new standardized electronic form to be used by members subject to the continuing membership process. FINRA worked with an industry task force comprised of representatives from small and large firms to develop the Form. FINRA believes that the Form will reduce the administrative burden for applicants that must comply with the Rule and enable its staff to review the applications in more effective and efficient manner.

III. Summary of Comments

The Commission received four comment letters on the proposed rule change.[8] One commenter urged the Commission to approve the proposed rule change, stating the use of the Form will provide member firms with clarity and will streamline the process.[9] The remaining commenters raised the following issues:

The Form is Overbroad and Confusing

Three commenters expressed concern that the Form would impose new and unnecessary demands for information, adding to confusion and resulting in greater delays for most members.[10] One commenter expressed concern the Form would impose needless, burdensome requirements on both member firms and FINRA to sift through irrelevant information, adding unnecessarily to the time required for applicants to file, and for FINRA to review, an application pursuant to Rule 1017.[11] Another commenter said the amount of detail requested in the Form will have a negative effect on most members, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66508 (March 2, 2012), 77 FR 14052.

[4] *See* March 14, 2012 letter from Kevin A. Carreno, President, Experts Counsel Inc. (''EC Letter''); March 29, 2012 letter from David T. Bellaire, Esq., General Counsel and Director of Government Affairs, Financial Services Institute, to Elizabeth M. Murphy, Secretary (''Secretary''), Commission (''FSI Letter''); March 29, 2012 letter from Stephen H. Cohen, Partner, Loeb & Loeb LLP, to Secretary, Commission (''LL Letter''); March 29, 2012 letter from Howard Spindel, Senior Managing Director, Integrated Management Solutions, to Secretary, Commission (''IMS Letter'').

[5] Amendment No. 1 is technical in nature, and the Commission is not publishing it for public comment.

[6] *See* May 8, 2012, letter from Patricia Albrecht, Associate General Counsel, FINRA, to Secretary, Commission (''FINRA Letter'').

[7] On April 18, 2012, FINRA granted an extension of time until June 6, 2012, for the Commission to act on the filing.

[8] *See supra* note 4.

[9] FSI Letter at 3. Another commenter supported the proposed rule change, but expressed concern about ''problems embedded in the CMA process that puts [sic] smaller firms at a huge disadvantage.'' IMS Letter at 5.

[10] IMS Letter, LL Letter, EC Letter.

[11] LL Letter at 2. The commenter offered seven examples of how the Form is overbroad, confusing, and beyond the scope of a member firm's current obligations under Rule 1017. *Id.* at 3–4.

place an increased administrative burden on small firms.[12] Another commenter questioned whether the Form will require members to provide irrelevant data, given that members will have one basic application process that must serve the needs of all FINRA members, regardless of size and complexity.[13] The commenter expressed hope that indicating a negative response that maintains the status quo will result in an application process that is relatively short.[14] Additionally, the commenter stated FINRA staff should be allowed to exercise its judgment when determining the potential harm to the public and whether a closer analysis is warranted, depending on the size and complexity of operations of the firm.[15]

FINRA Should Conduct a More Comprehensive Review of the CMA Process and Shorten Timeframes for Approval of Rule 1017 Applications

One commenter stated that Rule 1017 has a disproportionate impact on small firms, and that FINRA staff ''has routinely used the 1017 process to delay potential business opportunities for small firms to the detriment of the firms [sic] shareholders, employees and clients.'' [16] The commenter asked the Commission to reject the proposed amendments, and to require FINRA to conduct a more comprehensive review of the Change of Membership process to allow for greater flexibility for small firms.[17]

Two commenters stated FINRA should reduce the timeframe for approval of Rule 1017 applications. One commenter suggested 60 days was appropriate.[18] Another commenter suggested that 30 days was adequate for a simple continuing membership application that has been accepted as substantially complete, and that 60 days should suffice for more complex applications.[19]

IV. FINRA's Response to Comments

FINRA disagreed that the Form employed a ''one size fits all'' approach, and that the Form would result in unnecessary burdens, delays, and confusion.[20] FINRA stated the Form is designed to gather basic information necessary for all applicants, with ''embedded flexibility'' to allow for differences among applicants, depending on the type of application being submitted.[21] FINRA noted that the Form uses pre-populating fields that contain information applicants previously provided to FINRA, as well as optional information fields that applicants may use to provide additional information, and that these features were designed to minimize the time required of applicants in filling out the Form, and to reduce the administrative burden on applicants.[22] FINRA stated the use of optional fields is also intended to accommodate the differences in structures among applicants and to allow applicants the ability to provide relevant information depending on their circumstances.[23]

FINRA does not believe that the Form will increase the administrative burden on small firm applicants.[24] Having worked with an industry task force comprised with a majority of representatives from small firms, FINRA stated it ''gained valuable insight regarding the potential impact of Form CMA on small firm applicants.'' [25] FINRA used this information ''to make changes intended to provide flexibility and reduce all applicants' administrative burdens'' when completing the Form.[26]

FINRA amended the proposed rule change in response to concerns raised by one commenter that FINRA should delete references to a business plan, pro forma financials, organization chart, and written supervisory procedures contained in NASD Rule 1017(b)(2) to avoid potential confusion. FINRA proposes to delete references to those items, and revised the proposed rule language to require an applicant to submit an application that includes a ''Form CMA that includes a detailed description of the change in ownership, control, or business operations.'' [27]

FINRA addressed a number of questions and comments raised by the commenters regarding the format of the Form, as well as content issues, by clarifying the scope of information that FINRA expects applicants to provide when completing the Form.[28] FINRA does not believe that the information requested in the Form is broader and beyond the scope of information that FINRA currently requests during the continuing membership application process.

With regard to the commenters' suggestions that FINRA reduce the 180-day timeframe provided in NASD Rule 1017 for approving a continuing membership application, FINRA believes these comments are beyond the scope of the proposed rule change.[29] However, FINRA ''continues to evaluate opportunities to streamline the application process or, where appropriate, consider revisions or amendments to FINRA's membership rules.'' [30]

V. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letters, and FINRA's response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, the requirements of 15A of the Act.[31] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) [32] of the Act, which, among other things, requires that rules of a national securities association be 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 to protect investors and the public interest.[33]

The Commission believes that the proposed rule change is reasonable, and specifically, that the Form and corresponding changes to NASD Rules 1012 and 1017 are reasonably designed to streamline the process for compliance with the continuing membership responsibilities of FINRA members. The Commission supports FINRA's efforts to improve the efficiency of the process and its desire to reduce the overall administrative burden shouldered by members who are subject to the continuing membership process of Rule 1017.

The Commission is not persuaded by the commenters' assertions that the proposal places undue burdens on small firms. The Commission believes that FINRA's efforts to address this issue are sufficient. The Commission notes that

[12] EC Letter (''* * * the amount of detail requested in over 45 pages in an electronic application will lead to much greater delays and confusion for most members. It will also significantly increase the administrative burden on small firms.'').

[13] IMS Letter at 1, 3.

[14] *Id.* at 3.

[15] *Id.*

[16] EC Letter.

[17] *Id.*

[18] EC Letter.

[19] IMS Letter at 5.

[20] FINRA Letter at 3.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.* at 3–4.

[26] *Id.* at 4.

[27] *Id.* at 4.

[28] *Id.,* generally, at 4–11.

[29] *Id.* at 11.

[30] *Id.*

[31] 15 U.S.C. 78*o*–3.

[32] 15.U.S.C. 78*o*–3(b)(6).

[33] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

FINRA solicited input from small firms in redesigning the continuing membership application process, and the Form is structured to allow for some degree of flexibility, so that each applicant may tailor its application appropriately. Furthermore, in FINRA's response to the comments, FINRA provided detailed guidance and clarification to help alleviate concerns and confusion generated by the proposal. The Commission supports FINRA's desire to continually examine its policies and procedures to reduce administrative burdens and increase efficiency with regard to continuing membership applications whenever possible. As FINRA undergoes this self-evaluation, the Commission believes FINRA will consider the commenters' suggestion that FINRA reevaluate the necessity of a 180-day approval period for continuing membership applications. In the interim, however, the Commission believes the proposed rule change is both reasonable and consistent with the Act.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–FINRA–2012–018), as modified by Amendment No. 1, be, and hereby is, approved.

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[34] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67084; File No. SR–CBOE–2012–042]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change To List and Trade CBOE S&P 500 AM/PM Basis Options

May 31, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 23, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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

Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to amend certain of its rules to provide for the listing and trading of cash-settled CBOE S&P 500 AM/PM Basis (''SPBAS'') options that will be P.M.-settled and have European-style exercise. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled CBOE S&P 500 AM/PM Basis (''SPBAS'') options, that will be P.M.-settled and will have European-style exercise.[3]

Design of the Product

SPBAS options reflect the difference between the Special Opening Quotation (''SOQ'') of the S&P 500 Index[4] and the closing level of the S&P 500 Index on the last trading day (which is typically the third Friday of the month) for SPBAS options. The options will allow investors to gain exposure to or hedge the basis risk between A.M.-Settled S&P 500 Index (''SPX'') options traded on CBOE and P.M.-Settled S&P 500 Index (''SPXPM'') options traded on the C2 Options Exchange, Incorporated (''C2'').[5]

At expiration, SPBAS options will settle against the following index calculation:

SPBAS = MAX (100 + (SOQ of S&P 500)—(Closing Value of S&P 500), 0)

In other words, SPBAS is the greater of (1) the SOQ of SPX minus the closing value of SPX plus 100 and (2) zero. This formulation ensures that the settlement value for SPBAS options can never be less than zero.

Due to the nature of SPBAS options (*e.g.,* settlement to the difference between the SOQ of the S&P 500 Index and the closing level of the S&P 500 Index on the third Friday of each month) an intraday value will not be disseminated. Rather, prior to the open on all trading days, other than the last trading day (which is typically the third Friday of the month) CBOE will disseminate a single value of 100 for SPBAS options through the Options Price Reporting Authority (''OPRA''), the Consolidated Tape Association (''CTA'') tape and/or the Market Data Index (''MDI'') feed. After the close of trading on the last trading day (*e.g.,* third Friday of the month), CBOE will disseminate the exercise settlement value (calculated as described above) for the expiring contract.

Options Trading

SPBAS options will be quoted in points and fractions and one point will equal $100. The contract multiplier will be $100. The minimum tick size for series trading below $3 will be 0.05 ($5.00) and above $3 will be 0.10 ($10.00). Exhibit 3 presents contract specifications for SPBAS options.

The Exchange is proposing to list series at $1 or greater where the strike price is $200 or less and $5 or greater where the strike price is greater than $200.[6] The Exchange believes that a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* proposed addition of SPBAS options to the list of European-style index options approved for trading on the Exchange contained in Rule 24.9(a)(3) (Terms of Index Options Contracts).

[4] The SOQ is calculated per normal index calculation procedures and uses the opening (first) reported sales price in the primary market of each component stock in the index on the last business day (usually a Friday) before the expiration date. If a stock in the index does not open on the day on which the exercise-settlement value is determined, the last reported sales price in the primary market is used to calculate the exercise-settlement value.

[5] *See* Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR–C2–2011–008) (order approving listing and trading of SPXPM options on C2 on a pilot basis).

[6] *See* proposed amendment to Rule 24.9.01(e) (Terms of Index Options Contracts). The Exchange also proposes to add new Interpretation and Policy .21 to Rule 5.5 (Series of Option Contracts Open for Trading), which will be an internal cross reference stating that the intervals between strike prices for SPBAS option series will be determined in accordance with Interpretation and Policy .01(e) to Rule 24.9.

Continued

granular strike price increment will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives.

As noted previously, the underlying interest for SPBAS options reflects the difference between the SOQ of the S&P 500 Index and the closing level of the S&P 500 Index on the last trading day for SPBAS options. As such, the Exchange believes that the exercise settlement value for SPBAS options will be constrained to a relatively narrow band of possible values. In fact, from January 1993 though [sic] February 2012, there have been 230 third-Friday expiration dates on which Standard & Poor's has reported a SOQ of the S&P 500 Index. The Exchange notes that on 131 of those dates (57%) the exercise settlement values for SPBAS options would have ranged between 95 and 105. On 187 of those dates (82%) the exercise settlement values for SPBAS options would have ranged between 90 and 110. The highest value during the sample period would have been 139.19, and the lowest value would have been 62.46. Accordingly, the Exchange believes that the proposed strike setting parameters (and demand for strikes) will be naturally bounded because of the limited range of settlement values.

Initially, the Exchange will list in-, at- and out-of-the-money strike prices (where the ''at-the-money'' strike price is 100) and may open for trading up to twelve near term expiration months.[7] New series will be added in accordance with Rule 29.4.01(d), which requires exercise prices to be reasonably related to the current value of the underlying index at the time new series are first opened for trading.

As to additional series, Rules 24.9.01(d) and 24.9.04 shall apply to the listing of additional series for SPBAS options; however, for purposes of those provisions the ''current index value'' shall be 100, since that is the single value for SPBAS option that CBOE will disseminate during the life of an option. Generally, Rule 24.9.04 bounds the listing of additional series to within 30% of the current index value. At this time, CBOE believes that this strike setting parameter will be sufficient to meet demand since the difference between the opening value of the S&P 500 and the closing value of the S&P 500 on third Fridays has typically fluctuated around 10 index points. Larger spreads between the opening and closing S&P 500 values have occurred in the past, for example in February 2000 (39 points), November 2008 (36.5 points) and May 2010 (37.5 points). In the event customer demand exists for strikes below 70 and above 130 exists [sic], Rule 24.9.04 provides CBOE with the flexibility to add strikes that would be more than 30% away from the current index value of 100 for SPBAS options. LEAPS may also be listed.[8]

As of the date of this filing, the Exchange intends to trade SPBAS options electronically on the Hybrid Platform with a Designated Market Maker appointed to the class. After receipt of Commission approval and prior to the product launch, the Exchange will issue a circular announcing the specific trading platform and other relevant trading information concerning SPBAS options.

Trading Hours, Exercise and Settlement

The proposed options will expire on the Saturday following the third Friday of the expiring month. The trading hours for SPBAS options will be from 8:30 a.m. (Chicago time) to 3:15 p.m. (Chicago time), except that trading in expiring SPBAS options will close at 3:00 p.m. (Chicago time) on their last trading day.[9] When the last trading day is moved because of an Exchange holiday (such as when CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Thursday.

Exercise will result in delivery of cash on the business day following expiration. The exercise-settlement amount will be equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by the contract multiplier ($100). SPBAS options will be P.M.-settled. The Exchange is proposing P.M.-settlement for SPBAS options because the exercise settlement value is based on the difference between the SOQ of the S&P 500 Index on the third Friday of the month and the closing value of the S&P 500 Index on the third Friday of the month. Since, one of the values needed to determine the exercise settlement value for SPBAS options will not be determined until the close of trading on the third Friday of the month, SPBAS options necessarily must be P.M.-settled.

If the exercise settlement value is not available or the normal settlement procedure cannot be utilized due to a trading disruption or other unusual circumstance, the settlement value will be determined in accordance with the rules and bylaws of the OCC.

Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in SPBAS options. The Exchange further represents that these surveillance procedures shall be adequate to monitor trading in options on these option products. For surveillance purposes, the Exchange will have access to information regarding trading activity in the pertinent underlying securities (*i.e.,* S&P 500 Index component securities). The Exchange accomplishes regulatory information sharing under the auspices of the Intermarket Surveillance Group Agreement.

Position Limits

The Exchange is not proposing to establish any position or exercise limits for SPBAS options.[10] Because the SPBAS value measures the difference between the opening and closing values of the S&P 500 Index on the third Friday of the month, the Exchange believes that the position and exercise limits for this new product (which is based on the S&P 500 Index) should be the same as those for SPX and SPXPM options, for which there are no position limits. SPBAS options will be subject to the same reporting and other requirements triggered for other options dealt in on the Exchange.[11]

Exchange Rules Applicable

Except as modified herein, the rules in Chapters I through XIX, XXIV,

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of $1 strikes (where the strike price is less than $200) for SPBAS options.

Similar $1 strike price setting provisions currently exist for options on: Units (exchange-traded notes) (Rule 5.5.08), Index Linked Securities (exchange-traded notes) (Rule 5.5.09), HOLDRS (Rule 5.5.17) and Volatility Indexes (Rule 24.9.01(l)).

[7] *See* proposed amendment to Rule 24.9(a)(2) (Terms of Index Options Contracts).

[8] While the Exchange does not anticipate listing LEAPS routinely, the Exchange believes that permitting LEAPS creates flexibility in the event the Exchange receives a customer request to list a LEAP. *See* Rule 24.9(b) (Long-Term Index Options Series (''LEAPS'')).

[9] *See* proposed Interpretation and Policy .03 to Rule 24.6 (Days and Hours of Business). Trading in expiring SPXPM options closes at 3:00 p.m. (Chicago time) on their last day of trading. The Exchange is proposing to match the trading hours of SPBAS options with SPXPM options. *See* Securities and Exchange Act Release No. 65630 (October 26, 2011), 76 FR 67510 (November 1, 2011) (SR–C2–2011–030) (notice of filing and immediate effectiveness of proposed rule change to close trading at 3 p.m. Chicago time on the last day of trading of expiring SPXPM options).

[10] *See* proposed amendments to Rules 24.4 (Position Limits for Broad-Based Index Options) and 24.5 (Exercise Limits).

[11] *See* Rule 4.13 (Reports Related to Position Limits).

XXIVA, and XXIVB will equally apply to SPBAS options.

SPBAS options will be margined as ''broad-based index'' options, and under CBOE rules, especially, Rule 12.3(c)(5)(A), the margin requirement for a short put or call shall be 100% of the current market value of the contract plus up to 15% of the aggregate contract value. Additional margin may be required pursuant to Exchange Rule 12.10.

The Exchange hereby designates SPBAS options as eligible for trading as Flexible Exchange Options as provided for in Chapters XXIVA (Flexible Exchange Options) and XXIVB (FLEX Hybrid Trading System).[12]

Capacity

CBOE has analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of new series that will result from the introduction of SPBAS options.

Technical Change

CBOE proposes to correct an erroneous cross-reference in Rule 24.9.01(d) that was unintentionally created. In SR–CBOE–2006–41, among other things, obsolete Interpretations and Policies to Rule 24.9 were deleted and renumbering changes were made.[13] Specifically, current Interpretation and Policy .04 to Rule 24.9 was formerly Interpretation and Policy .05 to Rule 24.9. A cross-reference in Rule 24.9.01(d) to former Interpretation and Policy .05 in Rule 24.9.01(d) should have been similarly renumbered (from .05 to .04) in SR–CBOE–2006–41; however, it was not. CBOE now proposes to update Rule 24.9.01(d) with the correct cross-reference to Interpretation and Policy .04 to Rule 24.9.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will permit trading in options based on the index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to gain exposure to or hedge the basis risk between SPX options traded on CBOE and SPXPM options traded on C2.

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2012–042 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–CBOE–2012–042.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–042 and should be submitted on or before June 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13641 Filed 6–5–12; 8:45 am]

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[12] *See* proposed amendments to Rules 24A.7 (Position Limits and Reporting Requirements), 24A.8 (Exercise Limits), 24B.7 (Position Limits and Reporting Requirements) and 24B.8 (Exercise Limits).

[13] *See* Securities Exchange Act Release No. 54000 (June 15, 2006), 71 FR 35961 (June 22, 2006) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto to Amend Obsolete, Outdated and/or Unnecessary Rules) (SR–CBOE–2006–41).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67083; File No. SR–ISE–2012–33]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Regarding Strike Price Intervals for Certain Option Classes

May 31, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 21, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 its rules to modify the Short Term Option Series Program (''STOS Program'') to permit, during the expiration week of an option class that is selected for the STOS Program, the strike price intervals for the related non-STOS options to be the same as the strike price interval for the STOS options. The Exchange also proposes to adopt a rule to open for trading Short Term Option Series at $0.50 strike price intervals for option classes that trade in one dollar increments and are in the STOS Program.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend ISE Rules 504 and 2009 regarding the STOS Program.[3] Specifically, the Exchange proposes to amend its rules to indicate that during the expiration week of an option class that is selected for the STOS Program, the strike price intervals for the related non-STOS option[4] shall be the same as the strike price interval for the STOS option. The purpose of this proposed rule change is also to adopt a rule to permit the Exchange to list Short Term Option Series at $0.50 strike price intervals for option classes that trade in one dollar increments and are in the STOS Program (''Eligible Option Classes''). As of April 13, 2012, there are 95 Eligible Option Classes.[5]

The STOS Program is codified in ISE Rules 504 and 2009. These rules state that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on no more than thirty option classes that expire on the Friday of the following business week that is a business day. In addition to the thirty-option class limitation, there is also a limitation that no more than twenty series for each expiration date in those classes that may be opened for trading.[6] Furthermore, the strike price of each short term option has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the short term options are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. The Exchange does not propose any changes to the current program limitations. The Exchange only proposes to specify that Eligible Option Classes can have interval prices of $0.50, as proposed under Supplementary Material .12 to Rule 504 and Supplementary Material .05 to Rule 2009.

The principal reason for the proposed interval pricing structure is market and customer demand. The Exchange has received numerous requests to list actively traded products, such as the Eligible Option Classes, in more granular strike price intervals, especially as they approach expiration to provide Members and their customers more trading opportunities for short term options.

In the almost two years since the inception of the STOS Program, it has steadily expanded to the point that in the 1st quarter of 2012, STOS options represented 9.0% of the total options volume on the Exchange and 9.2% of the total options volume in the United States. The STOS options volume becomes even more significant when the volume of an STOS option class is compared to the volume of the related non-STOS option class. As an example, in the first three months of 2012, on the Exchange there were 10,399,842 contracts of SPY STOS options traded and 18,354,779 contracts of SPY monthly options traded; and 1,319,580 contracts of AAPL STOS options traded and 3,975,896 contracts of AAPL monthly options traded. From the 4th quarter of 2010 to the 4th quarter of 2011, STOS options volume increased by more than 40%,[7] and the Exchange believes that STOS options volume will continue to rise as a percentage of overall activity in 2012.

Moreover, the Commission has previously approved the use of $0.50 strike price intervals. Numerous options products are listed (trade) on the Exchange at $0.50 strike price intervals. For example, pursuant to ISE Rule 504(h), there are six individual ETF options listed on the Exchange at $0.50 strike price intervals. There are approximately 53 options listed on the Exchange at $0.50 strike price intervals pursuant to the $0.50 Strike Program. The Exchange further notes that while there are more than 1,000 options listed on the Exchange with one dollar strike price intervals, under this proposed rule change, the Exchange would currently offer only 95 option classes in more granular strike intervals.[8]

[3] The Exchange adopted the STOS Program on a pilot basis in 2005. *See* Securities Exchange Act Release No. 52012 (July 12, 2005), 70 FR 41246 (July 18, 2005) (SR–ISE–2005–17). The STOS Program was approved on a permanent basis in 2010. *See* Securities Exchange Act Release No. 62444 (July 2, 2010), 75 FR 39595 (July 9, 2010) (SR–ISE–2010–72).

[4] The related non-STOS option will be the same option class as the STOS option but will have a longer expiration cycle (e.g., a SPY monthly option as compared to a SPY weekly option.)

[5] As of April 13, 2012, there are 141 option classes across all options exchanges that have STOS options expiring on April 13, 2012. Of these 141 option classes, only 95 would qualify to have series listed at $0.50 strikes because these 95 classes currently trade in one dollar increments and are selected to participate in the STOS Program.

[6] The Exchange may open up to 10 additional series for each option class that participates in the Short Term Option Series Program when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security. The Exchange may also open additional strike prices on Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market makers trading for their own account shall not be considered when determining customer interest under this provision. Supplementary Material .02(d) to Rule 504 and Supplementary Material .01(d) to Rule 2009.

[7] During the same time period, monthly options volume decreased by 8%.

[8] The Exchange notes that Supplementary Material .02(a) to ISE Rule 504 limits the Exchange's ability to list series unless another

The Exchange believes that there are substantial benefits to market participants in the ability to trade the Eligible Option Classes at more granular strike price intervals. The proposed interval for the Eligible Option Classes would allow traders and investors, and in particular public (retail) investors to more effectively and with greater precision consummate trading and hedging strategies on the Exchange. The Exchange believes that this precision is increasingly necessary, and in fact crucial, as traders and investors engage in trading and hedging strategies across various investment platforms (e.g., equity and ETF, index, derivatives, futures, foreign currency, and even commodities products); particularly when many of these platforms enjoy substantially smaller strike price differentiations (e.g., as low as $.05).[9]

The Exchange notes that this proposed rule change has the support of several ISE market makers. This proposal was developed in consultations with one such market-making firm. The ISE Board of Directors, which includes several major market makers, also voted in favor of this proposal.

Following is an example of how existing strike intervals in the Eligible Option Classes negatively impact trading and hedging opportunities. If an investor needs to purchase a call option in CSCO (03/26/12 closing price $20.84), the current one dollar strike interval would offer less opportunity and choice for an investor seeking to keep cash expenditures low. For example, an investor wishing to buy an in-the-money call option for less than a $2.50 investment per call purchase has only two strike prices that meet his criteria from which to choose: the 19 strike and the 20 strike. Such call options with five days until expiration might offer ''ask prices'' (option premiums) of $1.75 and $.75. However, if CSCO had $0.50 strike prices as proposed, the same investor would have a selection of March 18.50, 19.00, 19.50, 20.00, and the 20.50 strike call options that may have options premiums from approximately $2.25 down to approximately $.25. This expanded range of strikes, and commensurate option premiums, offers far more choice and a considerably lower cost of entry to the investor, thereby garnering the investor more than a 66% options premium savings. Lower intervals offer more trading and hedging opportunity at lower cost. Clearly, more efficient pricing is advantageous to all market participants, from retail to institutional investors. The changes proposed by the Exchange should allow execution of more trading and hedging strategies on the Exchange. The Exchange notes that in conformance with ISE Rules, the Exchange shall not list $0.50 strike price intervals on non-STOS options within five (5) days of expiration. For example, if a non-STO in an options class is set to expire on Friday, March 16, the Exchange could begin to trade $0.50 strike price intervals surrounding that non-STO on Monday, March 12, but no later.

The Exchange notes that liquidity levels at each individual option series could decrease as a result of listing short term options series at more granular strike increments. ISE, however, does not expect a significant change in liquidity, nor does the Exchange expect overall liquidity in these products to decline. Moreover, this proposal will result in more targeted liquidity being available for industry participants, allowing liquidity providers to better concentrate their efforts in parts of the markets where liquidity is most needed.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with trading Eligible Option Classes in narrower strike price intervals. Further, the Exchange notes that this proposal, if approved, would not increase the number of listed short-term series.

The Exchange also proposes that during the expiration week of an option class that is selected for the STOS Program, the strike price intervals for the related non-STOS option shall be the same as the strike price intervals for the STOS option. The Exchange proposes to make this change to ensure conformity between STOS options and non-STOS options that are in the same options class (e.g., weekly and monthly SPY options). The Exchange believes that not having such a conforming change would be counter-productive and not beneficial for trading and hedging purposes.[10]

The Exchange believes that listing $0.50 strike prices in a handful of option classes has provided investors with greater trading opportunities and the ability to more closely tailor their investment and risk management strategies and decisions. However, due to limitations imposed by ISE's rules, the Exchange has had to reject trading requests to list more option classes in narrower strike prices. The Exchange believes a gradual expansion of strike price intervals, as proposed herein, and limiting it to the Eligible Option Classes will provide investors with better and more choices for investment, trading and risk management purposes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934[11] (the ''Act'') in general, and furthers the objectives of Section 6(b)(5) of the Act[12] 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 providing strike prices of $0.50 in the Eligible Option Classes is reasonable because doing so will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions in a greater number of securities. The Exchange also believes it is reasonable to provide the same strike price intervals for option classes that are in the STOS Program and for the related non-STOS option during expiration week because doing so will ensure conformity between STOS options and non-STOS options that are in the same options class. While the proposed rule change will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to a fixed number of classes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

exchange lists a similar series at $0.50 strike interval. In other words, if another exchange opens a $40 strike in an Eligible Option Class, and ISE lists that $40 strike pursuant to Supplementary Material .02(a), ISE would not therefore be permitted to open strikes of $39.50 or $40.50 in that class of option.

[9] As an example, per the CME Group Web site, *http://www.cmegroup.com/trading/metals/precious/ProductOverride/SO-silver-options.html*, strike prices for options on futures may be at an interval of $.05 and $.25 per specified parameters.

[10] Moreover, the Exchange notes that STOS options are not listed and traded during the expiration week of the related non-STOS options. During this week, the non-STOS options are materially and financially equivalent to the STOS options. The proposed change would allow traders and hedgers to have the noted benefits of the STOS Program during each week in a month.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the publication date of this notice or within such longer period (1) as the Commission may designate up to 45 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (2) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such Proposed Rule Change; or

(B) institute proceedings to determine whether the Proposed Rule Change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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–ISE–2012–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–33. 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. The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.* Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–33 and should be submitted on or before June 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13640 Filed 6–5–12; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes extensions and one revision of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Director at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*;

(SSA), Social Security Administration, DCRDP, Attn: Reports Clearance Director, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OPLM.RCO@ssa.gov.*

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than August 6, 2012. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Request for Internet Services—Authentication; Automated Telephone Speech Technology—Knowledge-Based Authentication (RISA)—20 CFR 401.45—0960–0596. RISA, one of SSA's authentication methods, allows individuals to access their personal information through our Internet and Automated Telephone Services. SSA asks individuals and third parties who seek personal information from SSA records, or who register to participate in SSA's online business services, to provide certain identifying information. As an extra measure of protection, SSA asks requestors who use the Internet and telephone services to provide additional identifying information unique to those services so SSA can authenticate their identities before releasing personal information. The respondents are current beneficiaries who are requesting personal information from SSA, and individuals and third parties who are registering for SSA's online business services.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Internet Requestors	7,929,336	1	2.5	330,389

[13] 17 CFR 200.30–3(a)(12).

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Telephone Requestors	8,123,835	1	4.5	609,288
*Screen Splash (on hold)	1			1
Totals	16,053,172			939,678

*We are reducing the burden to a one-hour placeholder burden because we are placing the Screen Splash application on hold.

2. Application for Special Benefits for World War II Veterans—20 CFR 408, Subparts B, C, and D—0960–0615. Title VIII of the Social Security Act (Special Benefits for Certain World War II Veterans) allows qualified World War II veterans residing outside the United States to receive special monthly payments. These regulations establish the requirements individuals need to qualify for and become entitled to Special Veterans Benefits (SVB). SSA uses Form SSA–2000–F6 to elicit the information we need to determine entitlement to SVB.

This Information Collection Request comprises the relevant regulations and Form SSA–2006–F6. The respondents are individuals applying for SVB under title VIII of the Social Security Act.

Type of Request: Revision of an OMB-approved information collection.

Regulations Section and Collection Instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
§ 408.202(d); § 408.210; § 408.230(a); § 408.305; §§ 408.310–.315 (SSA–2000–F6).	100	1	20	33
§ 408.420(a), (b)	71	1	15	18
§§ 408.430 & .432	66	1	30	33
§ 408.435(a), (b), (c)	71	1	15	18
Totals	308			102

3. Integrated Registration Services (IRES) System—20 CFR 401.45—0960–0626. The IRES System verifies the identity of individuals, businesses, organizations, entities, and government agencies seeking to use SSA's eService Internet and telephone applications. Individuals need this verification to electronically request and exchange business data with SSA. Requestors provide SSA the information needed to establish their identities. Once SSA verifies identity, the IRES system issues the requestor a user identification number (User ID) and a password to conduct business with SSA.

Respondents are employers and third party submitters of wage data, business entities providing taxpayer identification information, and data exchange partners conducting business in support of SSA programs.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
IRES Internet Registrations	724,581	1	5	60,382
IRES Internet Requestors	7,987,763	1	2	266,259
IRES CS (CSA) Registrations	25,221	1	11	4,624
Totals	8,737,565			331,265

Dated: May 31, 2012.

Naomi R. Sipple,

Management Analyst, Office of Regulations and Reports Clearance, Social Security Administration.

[FR Doc. 2012–13598 Filed 6–5–12; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2012–0015]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Centers for Medicare and Medicaid Services (CMS))—Match Number 1094

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new computer matching program that will expire on January 31, 2014.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new computer matching program that we will conduct with CMS.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget

(OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 Public Law (Pub. L.) 100–503, amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Daniel F. Callahan,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA with the Centers for Medicare and Medicaid Services (CMS)

A. Participating Agencies

SSA and CMS.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the terms, conditions, and safeguards under which CMS will disclose to us Medicare identifying and non-utilization information for our title II beneficiaries aged 90 and above.

CMS identifies Medicare enrollees whose records have been inactive for three or more years. We will use this data as an indicator to select and prioritize cases for review to determine continued eligibility to title II benefits. We will contact these individuals to verify ongoing eligibility. We refer individual cases of suspected fraud, waste, or abuse to the Office of the Inspector General for investigation.

C. Authority for Conducting the Matching Program

Legal authority for the disclosures under this agreement is:

1. Section 202 of the Social Security Act (Act) (42 U.S.C. 402), which outlines the requirements for eligibility to receive Old-Age Survivors and Disability Insurance Benefits under title II. Section 205(c) of the Act (42 U.S.C. 405) directs our Commissioner to verify the eligibility of a beneficiary.

2. Section 1631(f) of the Act (42 U.S.C. 1383(f)) provides that ''[t]he head of any Federal agency shall provide such information as the Commissioner of Social Security needs for purposes of determining eligibility for or amount of benefits or verifying other information with respect thereto.''

3. This matching program employs systems containing Protected Health Information (PHI) as defined by Health and Human Services regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR 160 and 164 (65 FR 82462, Parts A and E (Dec. 28, 2000)). PHI authorized by the routine uses may only be disclosed if, and as permitted or required by the ''Standard for Privacy of Individually Identifiable Health Information'' (45 CFR 164.512(d)).

D. Categories of Records and Persons Covered by the Matching Program

We will disclose to CMS information from Master Beneficiary Record (MBR) (60–0090) published on January 11, 2006 at 71 FR 1826. Routine use 23 permits disclosure of this information to Federal, State, or local agencies for administering income maintenance or health maintenance programs, including programs under the Act.

CMS will disclose to us information from National Claims History (NCH) (09–70–0558) published on November 20, 2006 at 71 FR 67137. Routine use 2 permits disclosure of this information to other Federal, State, or local agencies for administering income maintenance or health maintenance programs.

CMS will disclose to us information from Enrollment Data Base (EDB) (09–70–0502) published on February 26, 2008 at 73 FR 10249. Routine use 2 permits disclosure of this information to other Federal, State, or local agencies for administering income maintenance or health maintenance programs.

Specified Data Elements

We provide CMS with the following information for each individual in the finder file:

- Title II Claim Account Number (CAN),
- Title II Beneficiary Identification Code (BIC),
- Name, and
- Date of birth.

CMS provides us with the following information for each individual in the response file:

- Name,
- Date of birth,
- Social Security number,
- Date of death,
- CMS file number (equivalent to SSA's title II CAN & BIC),
- Beneficiary Group Health Organization start date,
- Beneficiary Group Health Organization disenrollment date, and
- HMO provider name and code.

E. Inclusive Dates of the Matching Program

The effective date of this matching program is August 1, 2012; if the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2012–13701 Filed 6–5–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7914]

30-Day Notice of Proposed Information Collection: Form DS–7002, Training/Internship Placement Plan, OMB Control Number 1405–0170

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Training/Internship Placement Plan.
- *OMB Control Number:* 1405–0170.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, ECA/EC.
- *Form Number:* Form DS–7002.
- *Respondents:* Entities designated by the Department of State as sponsors of exchange visitor programs in the trainee or intern categories and U.S. businesses that provide the training or internship opportunity.
- *Estimated Number of Respondents:* 160.
- *Estimated Number of Responses:* 30,000.
- *Average Hours per Response:* 2 hours.
- *Total Estimated Burden:* 60,000 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from June 6, 2012.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Robin J. Lerner, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA–5, 2200 C Street NW., Floor 5, Washington, DC 20522; or email at *jexchanges@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond,

Abstract of proposed collection: The collection is the continuation of information collected and needed by the Bureau of Educational and Cultural Affairs in administering the Exchange Visitor Program (J–Visa) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended. Trainee/Internship Placement Plans are to be completed by designated program sponsors. A Training/Internship Placement Plan is required for each trainee or intern participant. It will set forth the training or internship program to be followed and includes the skills the trainee or intern will obtain, whether the trainee or intern will receive any remuneration for housing and living expenses (and if so, the amount), and estimates the living expenses and other costs the trainees or interns are likely to incur while in the United States. The Plan must be signed by the trainee or intern, a sponsor official, and the third party placement organization, if a third party organization is used in the conduct of the training or internship.

Methodology: The collection will be submitted to the Department by mail or fax as requested by DoS during the review of a program sponsor's file, redesignation of a sponsor organization, or during the investigation of a complaint or incident.

Dated: May 22, 2012.

Robin J. Lerner,

Deputy Assistant Secretary for Private Sector Exchange, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–13708 Filed 6–5–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs; Fixed Residential Moving Cost Schedule

Correction

In notice document 2012–12380 appearing on pages 30586 through 30588, in the issue of May 23, 2012, make the following correction:

The table beginning on page 30587 and ending on page 30588 is being reprinted in its entirety.

The payments listed in the table below apply on a state-by state basis. Two exceptions and limitations apply to all States and Territories. Payment is limited to $100.00 if either of the following conditions apply:

(a) A person has minimal possessions and occupies a dormitory style room, or

(b) A person's residential move is performed by an agency at no cost to the person.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970, AS AMENDED—FIXED RESIDENTIAL MOVING COST SCHEDULE (2012)

State	Occupant owns furniture									Occupant does not own furniture	
	Number of rooms of furniture								addt'l room	1 room/ no furn.	addt'l room no furn.
	1 room	2 rooms	3 rooms	4 rooms	5 rooms	6 rooms	7 rooms	8 rooms			
Alabama	600	750	900	1050	1200	1350	1500	1650	150	400	50
Alaska	700	900	1125	1350	1550	1725	1900	2075	300	500	200
American Samoa	282	395	508	621	706	790	875	960	85	226	28
Arizona	700	800	900	1000	1100	1200	1300	1400	100	395	60
Arkansas	550	825	1100	1350	1600	1825	2050	2275	200	300	70

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970, AS AMENDED—FIXED RESIDENTIAL MOVING COST SCHEDULE (2012)—Continued

State	Occupant owns furniture									Occupant does not own furniture	
	Number of rooms of furniture								addt'l room	1 room/ no furn.	addt'l room no furn.
	1 room	2 rooms	3 rooms	4 rooms	5 rooms	6 rooms	7 rooms	8 rooms			
California	685	880	1100	1295	1570	1815	2090	2365	250	450	85
Colorado	600	800	1000	1150	1300	1450	1600	1750	150	350	50
Connecticut	620	810	1000	1180	1425	1670	1910	2150	150	225	60
Delaware	500	710	880	1110	1260	1410	1560	1710	160	400	60
DC	500	650	800	950	1100	1250	1400	1650	150	300	50
Florida	550	700	875	1050	1200	1350	1500	1650	200	450	125
Georgia	600	975	1300	1600	1875	2125	2325	2525	200	375	100
Guam	450	800	1150	1450	1750	2000	2250	2500	100	200	0
Hawaii	550	900	1250	1550	1850	2100	2350	2600	200	300	100
Idaho	500	650	800	950	1100	1200	1300	1400	100	300	50
Illinois	700	850	1000	1100	1250	1450	1600	1900	300	500	75
Indiana	500	700	900	1100	1300	1500	1700	1900	200	400	100
Iowa	550	700	800	900	1000	1100	1225	1350	125	500	50
Kansas	400	600	800	1000	1200	1400	1600	1800	200	250	50
Kentucky	500	700	900	1100	1300	1500	1700	1900	200	350	50
Louisiana	500	700	900	1100	1300	1500	1700	1900	200	375	60
Maine	650	900	1150	1400	1650	1900	2150	2400	250	400	100
Maryland	650	850	1050	1250	1450	1650	1850	2050	200	500	100
Massachusetts	700	850	1000	1150	1300	1450	1600	1750	200	400	100
Michigan	700	950	1150	1300	1450	1600	1750	1900	300	500	200
Minnesota	550	700	900	1100	1300	1500	1700	1900	250	425	100
Mississippi	750	850	1000	1200	1400	1550	1700	1850	300	400	100
Missouri	800	900	1000	1100	1200	1300	1400	1500	200	400	100
Montana	500	700	800	900	1100	1300	1500	1700	200	350	50
Nebraska	390	545	700	855	970	1075	1205	1325	120	310	40
Nevada	500	700	900	1100	1300	1500	1700	1900	200	350	60
New Hampshire	500	700	900	1100	1300	1500	1700	1900	200	200	150
New Jersey	625	725	825	975	1125	1275	1375	1525	250	300	50
New Mexico	650	850	1050	1250	1450	1650	1850	2050	200	400	60
New York	600	800	1000	1200	1400	1600	1800	2000	200	350	100
North Carolina	550	750	1050	1200	1350	1600	1700	1900	150	350	50
North Dakota	465	670	845	1015	1190	1330	1420	1595	175	405	60
N. Mariana Is.	282	395	508	621	706	790	875	960	85	226	28
Ohio	600	800	1000	1150	1300	1450	1600	1750	150	400	100
Oklahoma	600	750	900	1100	1250	1450	1650	1850	175	300	50
Oregon	600	800	1000	1200	1400	1600	1800	2000	200	350	100
Pennsylvania	500	750	1000	1200	1400	1600	1800	2000	200	400	70
Puerto Rico	500	700	850	950	1150	1300	1450	1600	150	425	100
Rhode Island	450	625	800	900	1000	1200	1350	1500	150	300	50
South Carolina	685	790	1075	1260	1575	1735	1890	2075	225	500	75
South Dakota	500	650	800	950	1050	1200	1400	1600	200	300	40
Tennessee	500	750	1000	1250	1500	1750	2000	2250	250	400	100
Texas	600	800	1000	1200	1400	1600	1750	1900	150	400	50
Utah	600	750	900	1050	1200	1350	1500	1650	150	500	100
Vermont	400	550	650	850	1000	1100	1200	1300	150	300	75
Virgin Islands	500	700	850	950	1150	1300	1450	1600	150	425	100
Virginia	600	800	1000	1200	1400	1600	1800	2000	200	400	75
Washington	600	800	1000	1200	1400	1600	1800	2000	200	300	50
West Virginia	750	900	1050	1200	1350	1500	1650	1800	150	350	50
Wisconsin	550	700	900	1100	1300	1500	1700	1900	250	425	100
Wyoming	480	590	750	910	1070	1180	1400	1500	160	300	50

[FR Doc. C1–2012–12380 Filed 6–5–12; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0108]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption.

SUMMARY: FMCSA announces receipt of applications from 23 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before July 6, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0108 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf*.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 23 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Larry J. Anderson

Mr. Anderson, age 60, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Anderson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Anderson meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Kevin J. Blue

Mr. Blue, 52, has had ITDM since 2007. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Blue understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Blue meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Illinois.

Wade D. Calvin

Mr. Calvin, 48, has had ITDM since 1993. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Calvin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Calvin meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Washington.

Carl A. Candelaria

Mr. Candelaria, 30, has had ITDM since 1985. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that

occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Candelaria understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Candelaria meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New Mexico.

Owen R. Dossett

Mr. Dossett, 43, has had ITDM since 2003. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dossett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dossett meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Mississippi.

David K. Dylak

Mr. Dylak, 49, has had ITDM since 1977. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dylak understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dylak meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Jennifer A. Ferguson

Ms. Ferguson, 32, has had ITDM since 2011. Her endocrinologist examined her in 2011 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Ferguson understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Ferguson meets the vision requirements of 49 CFR 391.41(b)(10). Her optometrist examined her in 2012 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from South Carolina.

Michael E. Fritz

Mr. Fritz, 53, has had ITDM since 1986. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fritz understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fritz meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Minnesota.

Jason W. Griffith

Mr. Griffith, 34, has had ITDM since 2009. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Griffith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Griffith meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Lee A. Haerterich

Mr. Haerterich, 56, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Haerterich understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Haerterich meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Eric W. Holland

Mr. Holland, 31, has had ITDM since 2001. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Holland understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Holland meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class R operator's license from Colorado.

Richard P. Holmen

Mr. Holmen, 57, has had ITDM since 2006. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Holmen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Holmen meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Edward Jones

Mr. Jones, 67, has had ITDM since 2008. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the

assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jones understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jones meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from New Jersey.

Paul A. Lacina

Mr. Lacina, 62, has had ITDM since 1972. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lacina understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lacina meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from North Dakota.

Robert L. Lawson

Mr. Lawson, 33, has had ITDM since 1987. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lawson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lawson meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from South Carolina.

Richard N. Listro

Mr. Listro, 54, has had ITDM since 1988. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Listro understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Listro meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class E operator's license from Florida.

Bradley J. Moore

Mr. Moore, 56, has had ITDM since 1998. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Moore understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Moore meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Jeremy T. Newton

Mr. Newton, 24, has had ITDM since 1997. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Newton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Newton meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class F operator's license from Missouri.

Ross W. Petermann

Mr. Petermann, 48, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Petermann understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Petermann meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Minnesota.

James W. Pickard, Jr.

Mr. Pickard, 61, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pickard understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pickard meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Colorado.

Robert G. Shane

Mr. Shane, 54, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shane understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shane meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Randall J. Tatum

Mr. Tatum, 58, has had ITDM since 2011. His endocrinologist examined him

in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tatum understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tatum meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Massachusetts.

Curtis J. Young

Mr. Young, 55, has had ITDM since 2009. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Young understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Young meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Florida.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: May 29, 2012.

Larry W. Minor,

Associate Administration for Policy.

[FR Doc. 2012–13656 Filed 6–5–12; 8:45 am]

BILLING CODE P

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0109]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 22 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before July 6, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0109 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA,

Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 22 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Jack D. Alt

Mr. Alt, age 39, has had ITDM since 1991. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Alt understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Alt meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from New Hampshire.

Hallie L. Ayers

Ms. Ayers, 60, has had ITDM since 2008. Her endocrinologist examined her in 2012 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Ayers understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Ayers meets the vision requirements of 49 CFR 391.41(b)(10). Her optometrist examined her in 2012 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from Arkansas.

Tony O. Billman

Mr. Billman, 41, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Billman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Billman meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

Tracy M. Dowton

Mr. Dowton, 45, has had ITDM since 1985. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dowton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dowton meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has mild stable nonproliferative diabetic retinopathy. He holds a Class A CDL license from Montana.

Anil D. Gharmalkar

Mr. Gharmalkar, 33, has had ITDM since 2010. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gharmalkar understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gharmalkar meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Larry A. Hamilton

Mr. Hamilton, 43, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hamilton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hamilton meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Gregory S. Heun

Mr. Heun, 23, has had ITDM since 2001. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Heun understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Heun meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Oklahoma.

Irene M. Howard

Ms. Howard, 60, has had ITDM since 2005. Her endocrinologist examined her in 2011 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5

years. Her endocrinologist certifies that Ms. Howard understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Howard meets the vision requirements of 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2011 and certified that she does not have diabetic retinopathy. She holds a Class A operator's license from Utah.

Allen K. Kates

Mr. Kates, 55, has had ITDM since 2005. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kates understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kates meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

Andrew L. Lyman

Mr. Lyman, 37, has had ITDM since 2006. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lyman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lyman meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

Franklin L. Oberender

Mr. Oberender, 61, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Oberender understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Oberender meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Iowa.

Nancy A. Plunk

Ms. Plunk, 42, has had ITDM since 2007. Her endocrinologist examined her in 2012 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Plunk understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Plunk meets the vision requirements of 49 CFR 391.41(b)(10). Her optometrist examined her in 2011 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from Missouri.

Victor C. Port

Mr. Port, 50, has had ITDM since 1973. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Port understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Port meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from North Dakota.

Scott D. Roles

Mr. Roles, 50, has had ITDM since 2008. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Roles understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Roles meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D CDL from Minnesota.

Jeffrey A. Ryan

Mr. Ryan, 44, has had ITDM since 1971. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ryan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ryan meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from Iowa.

Keith A. Siekmeier

Mr. Siekmeier, 53, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Siekmeier understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Siekmeier meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Alaska.

Tom L. Simmons

Mr. Simmons, 60, has had ITDM since 2010. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or

resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Simmons understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Simmons meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

James H. Stichberry, Jr.

Mr. Stichberry, 68, has had ITDM since 2010. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stitchberry understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stichberry meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maryland.

Loyd J. Wagner

Mr. Wagner, 65, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wagner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wagner meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

John F. Watson

Mr. Watson, 55, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Watson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Watson meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Melvin E. Welch

Mr. Welch, 59, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Welch understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Welch meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

Leroy R. Wille

Mr. Wille, 63, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wille understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wille meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: May 29, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–13663 Filed 6–5–12; 8:45 am]

BILLING CODE 4910–EX–P

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0040]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt ten individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective June 6, 2012. The exemptions expire on June 6, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202)-366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On April 20, 2012, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (77 FR 23779). That notice listed ten applicants' case histories. The ten individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the ten applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The ten exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, macular degeneration, retinal scarring, staphyloma, Coat's disease and prosthesis. In most cases, their eye conditions were not recently developed. Nine of the applicants were either born with their vision impairments or have had them since childhood. The individual that sustained a vision condition as an adult has had it for a period of four and a half years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these ten drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 2 to 57 years. In the past 3 years, one of the drivers was involved in a crash, and one was convicted of a moving violation in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the April 20, 2012 notice (77 FR 23799).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the ten applicants, one of the drivers was involved in a crash and one was convicted of a moving violation in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the ten applicants listed in the notice of April 20, 2012 (77 FR 23799).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the ten individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the ten exemption applications, FMCSA exempts Rudolph P. Bisschop (MA), Richard Doroba (IL), Dennis E. Fisher (NY), Charles W. Gajefski (CO), Steven M. Martin (IL), Charles A. Padgett (FL), Joseph L. Ruff (GA), Tommy Thomas (CA), Malcom J. Tilghman, Sr. (DE), and William S. Willis, Jr. (MD) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: May 29, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–13662 Filed 6–5–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35627]

Southwest Pennsylvania Railroad Company—Acquisition Exemption—Laurel Hill Development Corporation

Southwest Pennsylvania Railroad Company (SPRC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire a 0.66-mile line of railroad owned by Laurel Hill Development Corporation (LHDC) (formerly Fay Penn Industrial Development Corporation) (Fay Penn).[1] The trackage to be acquired by SPRC is known as the Redstone Branch, extending between Rail Valuation Stations 874+34 and 839+30 in Uniontown, Pa., and more particularly described on Valuation Maps V. 23.24/16+17, containing 12.21 acres. SPRC, the current operator of the line, states that it intends to expand and upgrade wye track facilities and branch line tracks to improve operational efficiencies and to better serve its customers.

SPRC certifies that its projected annual revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

The transaction may be consummated on or after June 20, 2012, the effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than June 13, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35627, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard R. Wilson, 518 N. Center Street, Ste. 1, Ebensburg, PA 15931.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: June 1, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Clearance Clerk,

Raina White.

[FR Doc. 2012–13658 Filed 6–5–12; 8:45 am]

BILLING CODE 4915–01–P

[1] In *Fay Penn Industrial Development Corporation—Acquisition Exemption—CSX Transportation, Inc.,* FD 33051 (STB served Oct. 4, 1996), Fay Penn was authorized to acquire certain rail lines extending between specified points in Pennsylvania, and in *Southwest Pennsylvania Railroad Company—Operation Exemption—CSX Transportation, Inc.,* FD 33051 (Sub-No. 1) (STB served Oct. 4, 1996), SPRC was authorized to operate the lines acquired by Fay Penn and also was authorized to acquire four miles of incidental trackage rights. In *CSX Transportation, Inc.—Abandonment Exemption—in Fayette and Westmoreland Counties, Pa.,* AB 55 (Sub-No. 420X) (ICC served Nov. 28, 1994), Fay Penn, successor in interest to Fay-Penn Land Trust, obtained authority as the designee of the Commonwealth of Pennsylvania, along with the Westmoreland County Industrial Development Corporation, to acquire a rail line between specified points in Fayette and Westmoreland Counties, Pa., under the agency's offer of financial assistance procedures. In *Southwest Pennsylvania Railroad Company—Lease and Operation Exemption—Lines of Westmoreland County Industrial Development Corporation and Fay-Penn Land Trust,* FD 32737 (ICC served July 21, 1995), SPRC was authorized to lease and operate that rail line. Most recently, in *Southwest Pennsylvania Railroad Company—Acquisition Exemption—Laurel Hill Development Corporation,* FD 35584 (STB served Jan. 13, 2012), SPRC was authorized to acquire a number of rail lines totaling 29.09 miles in length from LHDC extending generally between Everson and Broadford, Pa., and between Greene Junction and Smithfield, Pa., including Bowest Yard and various branch lines.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35628]

Woodland Rail, LLC—Acquisition and Operation Exemption—Line of Maine Central Railroad Co.

Woodland Rail, LLC (Woodland Rail), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate a rail line known as the Calais Industrial Track (the Line) from Maine Central Railroad Co. The Line is approximately 11.83 track miles in length, with approximately 6.75 track miles located in Maine, and approximately 5.08 track miles located in New Brunswick, Canada. As Woodland Rail acknowledges in its notice, the jurisdiction of the Board only extends to the acquisition of the portions of the Line within the United States. The end points of the Line are at engineering station 64+17 in Baileyville and engineering station 6978+84 in Calais, in Washington County, Me. The transaction includes a spur track between Woodland Junction, Me., which is engineering station 363+45, and engineering station 393+37, and another spur track at St. Croix Junction, Me., which is engineering station 6817+12.[1]

The earliest this transaction may be consummated is June 20, 2012, the effective date of the exemption.

Woodland Rail certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than June 13, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35628, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on James E. Howard, 1 Thompson Square, Suite 201, Charlestown, MA 02129.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: June 1, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2012–13702 Filed 6–5–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35629]

Eastern Maine Railway Company—Trackage Rights Exemption—Woodland Rail, LLC

Pursuant to a written trackage rights agreement dated April 30, 2012, Woodland Rail, LLC (Woodland Rail) has agreed to grant limited, nonexclusive trackage rights to Eastern Maine Railway Company (EMR) over a rail line known as the Calais Industrial Track (the Line). The Line is approximately 11.83 track miles in length, with approximately 6.75 track miles located in Maine and

[1] In a related transaction, Woodland Rail has agreed to grant trackage rights to Eastern Maine Railway Co. (EMR) to enable EMR to serve a pulp mill owned and operated by Woodland Pulp, LLC. *See E. Me. Ry.—Trackage Rights Exemption—Woodland Rail, LLC,* FD 35629 (STB served June 6, 2012).

approximately 5.08 track miles located in New Brunswick, Canada. As EMR acknowledges in its notice, the jurisdiction of the Board only extends to the portions of the Line within the United States. The end points of the Line are at engineering station 64+17 in Baileyville and engineering station 6978+84 in Calais, in Washington County, Me. The transaction includes a spur track between Woodland Junction, Me., which is engineering station 363+45, and engineering station 393+37 and another spur track at St. Croix Junction, Me., which is engineering station 6817+12.[1]

The transaction is scheduled to be consummated on June 21, 2012, the effective date of the exemption (30 days after the exemption was filed).

The purpose of the transaction is to permit EMR to directly serve a pulp mill owned by Woodland Pulp, LLC in Baileyville. EMR will be able to serve the mill with both inbound and outbound traffic, and EMR will also have all rights needed to interchange or provide run-through service with New Brunswick Southern Railway. Other than direct service to the mill, EMR's rights on the Line will be overhead only, and EMR will be prohibited from serving any other locations or shippers on the Line.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by June 14, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35629, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David E. Benz; Thompson Hine LLP; Suite 700; 1919 M Street NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: June 1, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2012–13699 Filed 6–5–12; 8:45 am]

BILLING CODE 4915–01–P

[1] In a related transaction, Woodland Rail has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate the Line from Maine Central Railroad Co. *See Woodland Rail, LLC—Acquis. & Operation Exemption—Line of Me. Cent. R.R.,* FD 35628 (STB served June 6, 2012).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of the individuals and entities whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers''.

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the individuals and entities identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on May 24, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The foreign persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State: (a) to play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On May 24, 2012, the Director of OFAC removed from the SDN List the individuals and entities listed below, whose property and interests in property were blocked pursuant to the Order:

Individuals

1. AGUILAR ROJAS, Luz Elena, c/o PARQUE INDUSTRIAL PROGRESO S.A., Yumbo, Colombia; c/o GEOPLASTICOS S.A., Cali, Colombia; DOB 14 Mar 1966; POB Cali, Valle, Colombia; Cedula No. 31940893 (Colombia); Passport 31940893 (Colombia) (individual) [SDNT]

2. LARES RANGEL, Jose Luis, c/o GRUPO C.L.P. CONSTRUCTORA S.A. DE C.V.; Calle Lopez Cotilla 2032, Piso 10, Colonia Americana, Guadalajara, Jalisco, Mexico; Ignacio Ramos Praslow 640, Guadalajara, Jalisco, Mexico; DOB 18 Apr 1942; POB Ciudad Guzman, Jalisco, Mexico; citizen Mexico; nationality Mexico; C.U.R.P. LARL420418HJCRNS01 (Mexico) (individual) [SDNT]

Entities

1. CORPORACION CLUB DEPORTIVO TULUA (a.k.a. CORTULUA), Carrera 26 No. 32–70 B. Salesiano, Tulua, Valle, Colombia; NIT # 800097185–2 (Colombia) [SDNT]

2. GRUPO C.L.P. CONSTRUCTORA S.A. DE C.V., Calle San Uriel 690, Interior 10, Piso 4, Colonia Chapalita, Guadalajara, Jalisco, Mexico [SDNT]

Dated: May 24, 2012.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2012–13709 Filed 6–5–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to the Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury 's Office of Foreign Assets Control (''OFAC'') is publishing the names of individuals and entities whose property and interests in property have been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. Sections 1901–1908, 8 U.S.C. Section 1182).

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the individuals and entities identified in this notice whose property and interests in property were blocked pursuant to the Kingpin Act, is effective on May 24, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site at *www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

On December 3, 1999, the Kingpin Act was signed into law by the President of the United States. The Kingpin Act provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. persons and entities.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property or interests in property, subject to U.S. jurisdiction, of persons or entities found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; and/or (3) playing a significant role in international narcotics trafficking.

On May 24, 2012, the Director of OFAC removed from the SDN List the individuals and entities listed below, whose property and interests in property were blocked pursuant to the Kingpin Act:

Individuals

1. GONZALEZ MUNOZ, Daniel, c/o MEGA DOLAR, S.A. DE C.V., Tijuana, Baja California, Mexico; Blvd. Cuahutemoc 1499 L C 7BI, Colonia Zona Rio, Tijuana, Baja California, Mexico; Calle Carrasco 3895 No. 2, Chapultepec, Tijuana, Baja California, Mexico; c/o MULTISERVICIOS BRAVIO, S.A. DE C.V., Tijuana, Baja California, Mexico; c/o MULTISERVICIOS DEL NOROESTE DE MEXICO, S.A. DE C.V., Tijuana, Baja California, Mexico; DOB 20 Jun 1958; POB Ensenada, Baja California, Mexico; R.F.C. GOMD–580620–SX9 (Mexico) (individual) [SDNTK]

2. ROBLEDO CORONEL, Baldemar, c/o COMERCIALIZADORA BRIMAR'S, S.A. DE. C.V., Culiacan, Sinaloa, Mexico; Prol. Sta. Tecla No. 51, Casa 12. Cond. Viole, Los Reyes, Coyoacan, Mexico; Blvd. FCO I Madero Pte. No. 650, Col. Centro, Culiacan, Sinaloa, Mexico; c/o COMERCIAL JOANA, S.A. DE C.V., Guadalajara, Jalisco, Mexico; DOB 27 Jan 1974; POB Santiago Papasquiaro, Durango, Mexico; citizen Mexico; nationality Mexico; C.U.R.P. ROCB740127HDGBRL07 (Mexico); Passport 420005453 (Mexico); R.F.C. ROCB740127KZ0 (Mexico) (individual) [SDNTK]

3. VILLALOBOS ALVARADO, Juan Pablo, c/o PV STAR, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; Calle Cedro No. 804, Chihuahua, Chihuahua, Mexico; DOB 14 Mar 1960; POB Chihuahua, Chihuahua, Mexico; citizen Mexico; nationality Mexico; C.U.R.P. VIAJ600314HCHLLN00 (Mexico) (individual) [SDNTK]

Entities

1. MEGA DOLAR, S.A. DE C.V. (a.k.a. MEGA DOLAR MULTISERVICIOS), Local C–25 Plaza Rio, Colonia Zona Rio, Tijuana, Baja California, Mexico; Av. Via Rapida 25–E, Colonia Zona Rio, Tijuana, Baja California, Mexico; R.F.C. MDO–940316–RTA (Mexico) [SDNTK]

2. MULTISERVICIOS BRAVIO, S.A. DE C.V. (a.k.a. BRAVIO ARMORED GROUP), Local C–25 Plaza Rio, Colonia Zona Rio, Tijuana, Baja California, Mexico; Av. Via Rapida 26, Colonia Zona Rio, Tijuana, Baja California, Mexico; R.F.C. MBR–961115–4M6 (Mexico) [SDNTK]

3. MULTISERVICIOS DEL NOROESTE DE MEXICO, S.A. DE C.V., Tijuana, Baja California, Mexico [SDNTK]

4. PV STAR, S.A. DE C.V., Ohio No. 4123, Col. Quintas Del Sol, Chihuahua, Chihuahua 31214, Mexico; R.F.C. PST98081 (Mexico) [SDNTK]

Dated: May 24, 2012.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2012–13710 Filed 6–5–12; 8:45 am]

BILLING CODE 4811–AL–P

FEDERAL REGISTER

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Part II

Department of Education

Applications for New Awards; Comprehensive Centers Program; Notice

DEPARTMENT OF EDUCATION

Applications for New Awards; Comprehensive Centers Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

Overview Information: Comprehensive Centers Program; Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number 84.283B.

DATES: *Applications Available:* June 6, 2012.

Deadline for Notice of Intent to Apply: June 26, 2012.

Dates of Pre-Application Briefings:

Applicants for Regional Centers: June 19, 2012 and June 22, 2012.

Applicants for Content Centers: June 20, 2012 and June 22, 2012.

Deadline for Transmittal of Applications: August 6, 2012.

Deadline for Intergovernmental Review: October 4, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Comprehensive Centers program supports the establishment of no fewer than 20 comprehensive technical assistance centers to provide technical assistance to State educational agencies (SEAs) that builds their capacity to support local educational agencies (LEAs or districts) and schools, especially low-performing districts and schools; improve educational outcomes for all students; close achievement gaps; and improve the quality of instruction.

Regional Advisory Committees: To help inform the Secretary's priorities for the centers funded under this program, the Secretary (in accordance with section 206 of the Education Technical Assistance Act of 2002 (ETAA)) established Regional Advisory Committees (RACs) and charged them with conducting educational needs assessments within the geographic regions served by the 10 Regional Educational Laboratories (RELs) and making recommendations for how those needs might be addressed. The RACs conducted their needs assessments from June 2011 to August 2011 and submitted their reports on regional needs and recommendations for how to address those needs to the Secretary on November 15, 2011. The full RAC reports are available at: *http://www2.ed.gov/programs/newccp/resources.html.*

Potential applicants for the centers are encouraged to consider the results of these needs assessments and the recommendations contained in the RAC reports when preparing their applications.

Priorities: These priorities are from the notice of final priorities, requirements, and selection criteria for this program, published elsewhere in this issue of the **Federal Register.**

Absolute Priorities: This competition contains two sets of absolute priorities: Absolute Priority for Regional Centers (priority one) and Absolute Priorities for Content Centers (priorities two through eight). Under 34 CFR 75.105(c)(3) we consider only applications that meet one of these priorities.

Note: If an eligible entity wants to apply for funding for more than one center, it must submit separate applications for each center.

These priorities are:

Priority for Regional Centers

Priority 1: Regional Centers.

Each Regional Center must provide high-quality technical assistance that focuses on key initiatives, aligns with the work of the Content Centers (see Priorities 2–8), and builds the capacity of SEAs to implement, support, scale up, and sustain initiatives statewide and to lead and support their LEAs and schools in improving student outcomes. Key initiatives include: (1) Implementing college- and career-ready standards and aligned, high-quality assessments for all students; (2) identifying, recruiting, developing, and retaining highly effective teachers and leaders; (3) turning around the lowest-performing schools; (4) ensuring the school readiness and success of preschool-age children and their successful transition to kindergarten; (5) building rigorous instructional pathways that support the successful transition of all students from secondary education to college without the need for remediation, and careers; (6) identifying and scaling up innovative approaches to teaching and learning that significantly improve student outcomes; and (7) using data-based decision-making to improve instructional practices, policies, and student outcomes.

Priorities for Content Centers

Priority 2: Center on Standards and Assessments Implementation.

The Center on Standards and Assessments Implementation must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will lead to the increased capacity of SEAs to support their districts and schools in implementing rigorous college- and career-ready standards and aligned high-quality assessments.

Priority 3: Center on Great Teachers and Leaders.

The Center on Great Teachers and Leaders must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will lead to the increased capacity of SEAs to support their districts and schools in improving student outcomes by supporting effective instruction and leadership.

Priority 4: Center on School Turnaround.

The Center on School Turnaround must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will lead to the increased capacity of SEAs to support their districts and schools in turning around their lowest-performing schools.

Priority 5: Center on Enhancing Early Learning Outcomes.

The Center on Enhancing Early Learning Outcomes must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will lead to the increased capacity of SEAs to implement comprehensive and aligned early learning systems in order to increase the number of children from birth through third grade who are prepared to succeed in school.

Priority 6: Center on College and Career Readiness and Success.

The Center on College and Career Readiness and Success must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will lead to the increased capacity of SEAs to support districts and schools in implementing comprehensive strategies that promote college- and career-readiness for students in kindergarten through grade 12 (K–12) and ensure the successful transition of all students from high school graduation to postsecondary education and the workforce.

Priority 7: Center on Building State Capacity and Productivity.

The Center on Building State Capacity and Productivity must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will increase the capacity of SEAs to implement their key initiatives statewide and support district- and

school-level implementation of effective practices to improve student outcomes.

Priority 8: Center on Innovations in Learning.

The Center on Innovations in Learning must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will lead to the increased capacity of SEAs to identify and scale up innovative approaches that significantly improve, or have the potential to significantly improve, student outcomes.

Invitational Priority: For FY 2012, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Cost-Sharing or Matching.

The Secretary is particularly interested in applications that provide evidence in the application of a commitment from a partner or partners from one or more entities or organizations in the public or private sector, which may include philanthropic organizations, of non-Federal funds or an in-kind match, or both, that totals at least 15 percent of the total grant budget. The Secretary's interest is in applications in which evidence of the commitment of the financial or in-kind matching contribution includes the full amount and source of the matching contribution, and the date that the funds or in-kind contributions will be received. Examples of such evidence include funding agreements with a public or private-sector entity, or other signed documents such as commitment letters. The evidence should not include contingencies that raise concerns about the funding commitment other than that the applicant must be awarded a Comprehensive Centers grant award.

Program Authority: 20 U.S.C. 9602 through 9606.

Applicable Regulations: (a) The Education Department General Administration Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The notice of final priorities, requirements, and selection criteria published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: Eighteen of the 22 Centers proposed for funding under this competition will be supported entirely with funds from the Comprehensive Centers program, authorized under the ETAA. One Content Center, the Center on Great Teachers and Leaders, will be supported with funds appropriated for the Comprehensive Centers program; the Special Education Technical Assistance and Dissemination (TA&D) program, which is authorized under section 663 of the Individuals with Disabilities Education Act, as amended; and the Career and Technical Education (CTE) National Activities program, which is authorized under section 114 of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act).

Three Regional Centers—South-Central, Northwest, and West—will be supported with funds appropriated for the Comprehensive Centers program and funds appropriated for the Indian Education National Activities program, which is authorized under section 7131 of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

The estimated total amount of funds available from the Comprehensive Centers program for FY 2012 is $50 million. Of that amount, an estimated $40 million will be used to fund Regional Centers and an estimated $10 million will be used to fund the Content Centers. FY 2012 funds will support awards for the first budget period of the project, which is the first 12 months of the project period. Funding for the subsequent budget periods for years two through five (FY 2013 through FY 2017) is contingent on appropriation levels.

The estimated total amount of funds available from the Special Education TA&D program for FY 2012 is $750,000 to provide partial support for the Center on Great Teachers and Leaders for the first budget period of the project. Depending on appropriation levels, up to $750,000 from the TA&D program may be awarded to this center in each subsequent budget period. Because a proportion of the funding for the Center on Great Teachers and Leaders comes from the Special Education TA&D program, an applicant's plan of activities must provide for an amount of technical assistance benefitting students with disabilities that is consistent with this proportion of funding. Applicants must propose a proportionate amount of technical assistance services to SEAs and Regional Centers that will lead to the increased capacity of SEAs to support their districts and schools in improving outcomes of students with disabilities (e.g., developing the knowledge and skills of special education teachers; strategies to ensure the equitable distribution of effective special education teachers; strategies to recruit, reward, retain, and support effective special education teachers; and developing and implementing human capital management systems, including the evaluation of special education teachers).

The estimated total amount of funds available from the CTE program for FY 2012 is $300,000 to provide partial support for the Center on Great Teachers and Leaders for the first budget period of the project. Depending on appropriation levels, up to $300,000 from the CTE program may be awarded to this center in each subsequent budget period. Because a proportion of funding for the Center on Great Teachers and Leaders comes from the CTE program, an applicant's plan of activities must provide for an amount of technical assistance benefitting career and technical education students that is consistent with this proportion of funding. Applicants must propose a proportionate amount of technical assistance services to SEAs and Regional Centers that will lead to the increased capacity of SEAs to support their districts and schools in improving student outcomes by supporting effective instruction and leadership in career and technical education, particularly in developing the knowledge and skills of career and technical education teachers to help all students meet college-and career-ready standards.

The Department anticipates that the Comprehensive Centers program will provide an estimated 60 percent, the TA&D program will provide an estimated 30 percent, and the CTE program will provide an estimated 10 percent of the annual funding for the Center on Great Teachers and Leaders.

The estimated total amount of funds available from the Indian Education National Activities program for FY 2012 is $993,000 to provide partial support ($331,000) to each of three Regional Centers—Northwest, SouthCentral, and West—that serve States with the largest populations of American Indian/Alaska Native (AI/AN) students. Depending on appropriation levels, up to $331,000 may be made available to each of these Regional Centers from the Indian Education National Activities program

for awards in each subsequent budget period.

Because a proportion of the funding for these centers comes from the Indian Education National Activities program, an applicant's plan of activities must provide for an amount of technical assistance benefitting AI/AN students that is consistent with this proportion of funding. Applicants for each of these Regional Centers must propose a proportionate amount of technical assistance services to SEAs and Regional Centers that will lead to the increased capacity of SEAs to lead and support their districts and schools in improving outcomes for AI/AN students.

The Department anticipates that the Comprehensive Centers program will provide an estimated 85 percent of the annual funding for the Northwest, South Central and West Regional Centers, and that the Indian Education National Activities program will provide an estimated 15 percent.

Estimated Range of Awards: For Regional Centers:

$825,000 to $4,895,053. Estimated awards for each Regional Center:

Appalachia	$2,418,862
California	4,895,053
Central	1,586,384
Florida and Islands	3,091,817
Great Lakes	3,541,077
Mid-Atlantic	2,979,430
Midwest	3,064,970
North Central	825,000
Northeast	3,612,181
Northwest	1,888,091
Pacific	825,000
South Central	2,189,099
Southeast	4,371,361
Texas	3,875,556
West	1,931,332

For Content Centers: $1,428,571 to $2,478,571. Estimated awards for each Content Center:

Center on Standards and Assessments Implementation	$1,428,571
Center on Great Teachers and Leaders	2,478,571
Center on School Turnaround	1,428,571
Center on Enhancing Early Learning Outcomes	1,428,571
Center on College and Career Readiness and Success	1,428,571
Center on Building State Capacity and Productivity	1,428,571
Center on Innovations in Learning.	1,428,571

Estimated Number of Awards: The Secretary intends to make 22 awards under this competition. Fifteen awards will support Regional Centers to serve States within defined geographic boundaries that align with the REL regions. One or two Regional Centers will be located in each of the 10 REL regions. The States and territories to be served by each Regional Center are as follows:

Appalachia: Kentucky, Tennessee, Virginia, and West Virginia.

California: California.

Central: Colorado, Kansas, and Missouri.

Florida and Islands: Florida, Puerto Rico, and the Virgin Islands.

Great Lakes: Indiana, Michigan, and Ohio.

Mid-Atlantic: Delaware, District of Columbia, Maryland, New Jersey, and Pennsylvania.

Midwest: Illinois, Iowa, Minnesota, and Wisconsin.

North Central: Nebraska, North Dakota, South Dakota, and Wyoming.

Northeast: Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.

Northwest: Alaska, Idaho, Montana, Oregon, and Washington.

Pacific: American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Hawaii, and the Republic of Palau.

South Central: Arkansas, Louisiana, New Mexico, and Oklahoma.

Southeast: Alabama, Georgia, North Carolina, Mississippi, and South Carolina.

Texas: Texas.

West: Arizona, Nevada, and Utah.

Seven awards will support Content Centers, each having a specific content expertise and focus. These seven Content Centers are: The Center on Standards and Assessments Implementation, the Center on Great Teachers and Leaders, the Center on School Turnaround, the Center on Enhancing Early Learning Outcomes, the Center on College and Career Readiness and Success, the Center on Building State Capacity and Productivity, and the Center on Innovations in Learning. The functions and activities for each of the seven Content Centers are described in the notice of final priorities, requirements, and selection criteria published elsewhere in this issue of the **Federal Register**.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Research organizations, institutions, agencies, institutions of higher education, or partnerships among such entities, or individuals, with the demonstrated ability or capacity to carry out the activities described in this notice.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching. However, as indicated in the invitational priority in this notice, the Secretary is particularly interested in applications that provide evidence of a commitment from a partner or partners from one or more entities or organizations in the public or private sector, which may include philanthropic organizations, of funds or an in-kind match, or both, that totals at least 15 percent of the total grant budget.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.Grants.gov.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.283B.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program. Requirements governing each of the priorities in this notice are in the notice of final priorities, requirements, and selection criteria for this program, published elsewhere in this issue of the **Federal Register** and in the application package for this notice.

Notice of Intent to Apply: We will be able to develop a more efficient process for reviewing grant applications if we have an understanding of the number of applications we are likely to receive. Therefore, we strongly encourage each potential applicant to send an email notice of its intent to apply for funding to the following address: *OESE.compcenters@ed.gov.* The notice of intent to apply is optional and should

not include information about the potential applicant's proposal. Applicants that do not provide us with the notice of intent to apply may still submit an application.

Pre-application briefings: We will conduct briefings on this competition via conference calls to clarify the purposes of the program and the selection criteria and application process. Please email Fran Walter at *fran.walter@ed.gov* to register for a call date and time and to obtain the conference call number.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We strongly suggest that you limit the narrative portion of your application to 150 pages and suggest that you use the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the suggested page limit does apply to all of the application narrative section.

3. *Submission Dates and Times:*

Applications Available: June 6, 2012.

Deadline for Notice of Intent to Apply: June 26, 2012.

Dates of Pre-Application Briefings:

Applicants for Regional Centers: June 19, 2012 and June 22, 2012.

Applicants for Content Centers: June 20, 2012 and June 22, 2012.

Deadline for Transmittal of Applications: August 6, 2012.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: October 4, 2012.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements.*

Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Comprehensive Centers program, CFDA number 84.283B, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Comprehensive Centers program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.283, not 84.383B).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and

submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov*.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Fran Walter, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W115, Washington, DC 20202. FAX: (202)205–5870.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.283B) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.283B) 550 12th Street, SW, Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The section criteria for this competition are from the notice of final priorities, requirements, and selection criteria published elsewhere in this issue of the **Federal Register**. The selection criteria for this program are as follows:

A. Technical Assistance Plan

1. *Overall quality of the technical assistance plan* (15 points). In determining the overall quality of the technical assistance plan for the proposed center and the likelihood of the center contributing to improved State outcomes, the Secretary considers—

a. The extent to which the proposed technical assistance plan presents an exceptional approach that will likely result in building SEA capacity to implement State-level initiatives and support district- and school-level initiatives that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction;

b. The potential contribution of the center to increasing the knowledge and understanding of effective strategies in the center's area of expertise; and

c. The extent to which the proposed technical assistance plan presents an approach that will result in the sharing of high-quality, relevant, useful information, materials, and other applicable resources across SEAs, districts, and schools, within and outside of a region.

d. In the case of an applicant for a Regional Center, the extent to which the proposed technical assistance plan presents an approach that is likely to secure an SEA's commitment to devote the time, leadership, and personnel needed to implement the work plan and achieve the specific goals, which may include a memorandum of understanding or similar agreement that contains timelines and benchmarks to ensure that the work stays on track to achieve these goals.

2. *Quality of the Project Design (25 points).* In determining the quality of the project design of the proposed center for which the applicant is applying, the Secretary considers—

a. The extent to which the applicant's technical assistance plan proposes an exceptional approach to meeting the requirements for all centers, which includes—

i. Providing high-quality technical assistance that is based on up-to-date knowledge and understanding of research-based practices and emerging promising practices; is highly relevant and useful to SEAs, LEAs, and school policymakers and practitioners; and is delivered in a timely, cost-efficient manner;

ii. Focusing technical assistance on helping SEAs build capacity to implement State-level initiatives and support district- and school-level initiatives that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction; and

iii. Coordinating and collaborating with national experts and technical assistance providers to ensure that the technical assistance is informed by leading-edge research and innovative approaches and avoids duplicating efforts;

b. In the case of an applicant for a Regional Center, the extent to which the applicant's technical assistance plan proposes an exceptional approach to meeting the requirements for all Regional Centers; and

c. In the case of an applicant for a Content Center, the extent to which the applicant's technical assistance plan proposes an exceptional approach to meeting the requirements for all Content Centers, as well as the requirements for the specific Content Center for which the applicant is applying.

3. *Knowledge of State Technical Assistance Needs (10 points).* In determining the applicant's ability to meet State technical assistance needs, the Secretary considers the extent to which the proposed technical assistance plan provides strategies that address the technical assistance needs of States in key areas, as evidenced by in-depth knowledge and understanding of—

a. In the case of an applicant for a Regional Center, the specific educational goals and priorities of the States to be served by the applicant, including emerging priorities based on State-led reform efforts;

b. In the case of an applicant for a Regional Center, the applicable State and regional demographics, policy contexts, and other factors and their relevance to improving student outcomes, closing achievement gaps, and improving instruction; and

c. In the case of an applicant for a Content Center, State technical assistance needs, and research-based practices and emerging promising practices related to the Content Center for which the applicant is applying.

B. Subject-Matter and Technical Expertise

Quality of Key Project Personnel (25 points). In determining the subject-matter and technical expertise of key project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers—

1. The knowledge, understanding, and experience of key project personnel as outlined under the subject-matter and

technical expertise requirements for all centers;

2. In the case of an applicant for a Regional Center, in addition to the knowledge, understanding, and experience outlined under subject-matter and technical expertise requirements for all centers, the subject-matter and technical expertise of key personnel outlined under the requirements for Regional Centers;

3. In the case of an applicant for a Content Center, in addition to the knowledge, understanding, and experience outlined under subject-matter and technical expertise requirements for all centers, the subject-matter and technical expertise of key personnel outlined under the requirements for the specific Content Center for which the applicant is applying;

4. The extent to which the applicant has demonstrated experience providing high-quality technical assistance to SEAs or multiple districts;

5. The extent to which the applicant has demonstrated the ability to develop ongoing partnerships with leading experts and organizations nationwide that inform high-quality technical assistance and subject-matter expertise; and

6. The extent to which the applicant has prior relevant experience operating a project of the scope required for the purposes of the center being proposed.

C. Management and Evaluation Plans

1. *Quality of the Management Plan (15 points).* In determining the quality of the management plan for the proposed center, the Secretary considers—

a. The adequacy of the management plan to achieve the objectives of the project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks;

b. The extent to which the time commitments of the project director and other key project personnel, including any partners or consultants, are appropriate and adequate to meet the objectives of the proposed project;

c. The extent to which resources are allocated within a region for Regional Centers, and across regions for Content Centers, in a manner that reflects the need for technical assistance; and

d. The adequacy of the resources for the proposed project, including whether the applicant proposes facilities and equipment to successfully carry out the purposes and activities of the proposed center.

2. *Quality of the Project Evaluation Plan (10 points).* In determining the quality of the evaluation plan, the Secretary considers—

a. The extent to which the applicant demonstrates a strong capacity to provide reliable formative and summative data on performance measures;

b. The extent to which the performance goals and objectives for the project are clearly specified and measurable in terms of the project activities to be accomplished and their stated outcomes;

c. The extent to which the methods for monitoring performance and evaluating the effectiveness of project strategies in terms of outcomes for SEAs, districts, and schools are thorough, feasible, and appropriate to the objectives and outcomes of the proposed project;

d. The extent to which the methods of evaluation will provide continuous performance feedback and encourage the continuous assessment of progress toward achieving intended outcomes; and

e. The extent to which the applicant has a high-quality plan to use both formative and summative data from evaluations to inform and improve service delivery over the course of the grant.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Additional factors we consider in selecting an application for an award are as follows:

Geographic distribution: The ETAA requires that the Secretary ensure that not less than one Comprehensive Center is established in each of the 10 geographic regions served by the RELs. Elsewhere in this notice we identify the 15 regions in which we intend to establish Regional Centers. One to two Regional Centers will be established in each of the 10 REL regions. Applications for Regional Centers will be scored and ranked against other applications from the same region.

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of the Comprehensive Center program, the Department will use three performance

measures to assess the quality, relevance, and usefulness of center activities funded under this competition. These measures, adapted from a set of common measures developed to help assess performance across the Department's technical assistance programs, are: (1) The percentage of all Comprehensive Centers' products and services that are deemed to be of high quality by qualified experts or individuals with appropriate expertise to review the substantive content of the products and services; (2) the percentage of all Comprehensive Centers' products and services that are deemed to be of high relevance to educational policy or practice by target audiences; and (3) the percentage of all Comprehensive Centers' products and services that are deemed to be of high usefulness to educational policy or practice by target audiences.

All grantees will be expected to submit, as part of their performance reports, quantitative data documenting their progress with regard to these performance measures.

5. *Advisory Board:* Under section 203(g) of the ETAA, each Comprehensive Center must establish an advisory board that supports the priorities of the center. In the first year of the grant, each center will be expected to submit information demonstrating that it has met the statutory requirement to establish the advisory board.

6. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Fran Walter, U.S. Department of Education, 400 Maryland Avenue SW., room 3W115, Washington, DC 20202–0001 or by email: *fran.walter@ed.gov*.

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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

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

Dated: June 1, 2012.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–13735 Filed 6–5–12; 8:45 am]

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FEDERAL REGISTER

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No. 109 June 6, 2012

Part III

Department of Education

Final Priorities, Requirements, and Selection Criteria—Comprehensive Centers Program (CFDA Number: 84.283B); Notice

DEPARTMENT OF EDUCATION

[Docket ID ED–2012–OESE–0004]

RIN 1810–AB14

Final Priorities, Requirements, and Selection Criteria—Comprehensive Centers Program (CFDA Number: 84.283B)

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education announces priorities, requirements, and selection criteria under the Comprehensive Centers Program. The Assistant Secretary may use one or more of these priorities, requirements, and selection criteria for competitions in fiscal year (FY) 2012 and later years. We take this action to focus Federal technical assistance on identified State-led reforms. We intend these priorities, requirements, and selection criteria to increase the relevance and usefulness of Comprehensive Center technical assistance.

DATES: *Effective Date:* These priorities, requirements, and selection criteria are effective July 6, 2012.

FOR FURTHER INFORMATION CONTACT: Fran Walter, U.S. Department of Education, 400 Maryland Avenue SW., room 3W115, Washington, DC 20202, Telephone: (202) 205–9198 or by email: *fran.walter@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Purpose of Program: The Comprehensive Centers program supports the establishment of no fewer than 20 comprehensive technical assistance centers to provide technical assistance to State educational agencies (SEAs) that builds their capacity to support local educational agencies (LEAs or districts) and schools, especially low-performing districts and schools, improve educational outcomes for all students, close achievements gaps, and improve the quality of instruction.

Program Authority: Title II, section 203, of the Education Technical Assistance Act of 2002 (ETAA).

We published a notice of proposed priorities, requirements, and selection criteria (NPP) for this program in the **Federal Register** on January 23, 2012 (77 FR 3242). The NPP contained background information and our reasons for proposing the particular priorities, requirements, and selection criteria.

Public Comment: In response to our invitation in the NPP, 59 parties submitted comments on the proposed priorities, requirements, and selection criteria. We used these comments to revise, improve, and clarify the priorities, requirements, and selection criteria. We group major issues according to subject and discuss other substantive issues under the title of the item to which they pertain. Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raised concerns not directly related to the proposed priorities, requirements, or selection criteria.

Analysis of Comments and Changes: An analysis of the comments received, and any changes to the priorities, requirements, and selection criteria since publication of the NPP, follows.

General

Comment: One commenter recommended that the U.S. Department of Education (the Department) increase teacher awareness of culturally and linguistically gifted students by using the Comprehensive Centers to develop a cadre of teacher trainers with expertise in culturally relevant gifted education practices.

Discussion: While we do not identify specific initiatives related to gifted students, the requirements for both the Regional Centers and the Content Centers focus on increasing the capacity of SEAs to support their LEAs and schools in improving outcomes for all students. For this reason, we do not believe it is necessary to specifically identify initiatives for gifted students in the final priorities.

Changes: None.

Comment: One commenter suggested that in order to meet the educational needs of all students and achieve better outcomes, our overall strategy should focus on removing barriers for students and teachers and moving from what the commenter characterized as a deficit-based instructional system toward one based on student growth.

Discussion: We have committed the resources of the Comprehensive Centers program to help SEAs build their capacity to implement State-level initiatives and support district- and school-level initiatives that will close achievement gaps and improve the quality of instruction. Further, in the requirements for all centers, we specify that the centers will help SEAs build organizational capacity to support district- and school-level implementation of effective practices to improve student outcomes. For example, the centers will help SEAs work collaboratively and productively with districts and schools, identify and implement a continuum of support and interventions to address districts' and schools' specific needs, and support the implementation and scaling up of innovative and effective strategies. We believe these capacity-building approaches will contribute to removing barriers to learning for both students and teachers. A center's support for the implementation and scaling up of innovative and effective strategies could include support for strengths-based instruction, which focuses on student potential and growth.

Changes: None.

Comment: One commenter recommended that we support States' data collection efforts, specifically in the management and use of longitudinal data systems and the Integrated Postsecondary Education Data System.

Discussion: We agree with the commenter and support States' efforts to effectively collect and use data. As stated in this notice, all Regional Centers are required to work with SEAs to build their capacity to use data-based decision-making to improve instructional practices, policies, and student outcomes and to address the demands of implementing their longitudinal data systems. In addition, the Center on Innovations in Learning will provide technical assistance to Regional Centers and SEAs that focuses on using State and local data systems to identify specific areas of student need and evaluate the effectiveness of specific strategies that support innovations in learning. These efforts will support the States' management and use of their statewide longitudinal data systems and other data sets as appropriate.

Changes: None.

Comment: One commenter requested that the final notice include the funding available for each Center.

Discussion: In the notice inviting applications (NIA) published elsewhere in this issue of the **Federal Register,** we identify the funding available for each of the Regional and Content Centers.

Changes: None.

Comment: One commenter was concerned that the Comprehensive Centers program may violate State law, contract law, privacy rights, and the right of citizens to vote on governance and tax issues.

Discussion: The ETAA authorizes awards to Comprehensive Centers to provide training, technical assistance, and professional development to SEAs, LEAs, regional educational agencies,

and schools in the administration and implementation of programs under the Elementary and Secondary Education Act of 1965 (ESEA). The priorities, requirements, and selection criteria in this notice are consistent with the ETAA and, in adopting them, the Department followed the laws and regulations that govern rulemaking. We do not believe that the Comprehensive Centers program violates Federal or State law, and nothing in this notice requires grantees to act contrary to the law or usurps the rights of citizens to vote on governance or tax issues. Additionally, all Federal and State privacy and contract laws apply to potential Comprehensive Center grantees.

Changes: None.

Comment: One commenter noted that although the Department's oversight for the Comprehensive Centers program is essential, States might be uncomfortable providing adequate feedback to inform that oversight. The commenter suggested that we provide support for States to work through a common entity to identify and share challenges and routinely communicate with the Department to ensure that Federal oversight of the Comprehensive Centers is effective and focused on the right issues.

Discussion: Although we strongly agree with the commenter about the importance of State feedback to the Department on the Comprehensive Center program, we decline the suggestion to establish an entity to serve as an intermediary between States and the Department. As part of the Department's grant monitoring and oversight activities, we review feedback from SEA staff provided in each grantee's annual performance report and annual evaluation. We also welcome direct feedback from SEA staff.

As described in the application requirements, all applicants must provide a plan to assess the progress and performance of the center in meeting the educational and capacity-building needs of SEAs. The plan must include a description of the methods that will be used to monitor progress and make mid-course corrections as needed. Each applicant must also provide a plan to collect and use formative and summative data throughout the grant period to inform and improve service delivery. Finally, the ETAA requires ongoing independent evaluations of the Comprehensive Centers program by the Institute of Education Science's National Center for Education Evaluation and Regional Assistance. We believe these established processes and requirements ensure adequate feedback from States on the progress and performance of the centers.

We also have established an option to allow an SEA flexibility to indicate to the Department in the second fiscal year of the cooperative agreement, and in each subsequent fiscal year, its desire to affiliate with a different Regional Center, regardless of the location of that center. Together with our program-monitoring efforts, we believe that the requirements and flexibility described in this notice will ensure effective oversight of the program.

Changes: None.

Comment: One commenter, while strongly supporting the Department's focus on State-led reforms, urged us to ensure that the centers respond to the full range of State-led reforms, some of which were not mentioned in the NPP.

Discussion: The priority for Regional Centers identifies seven key State-led reform areas within which the centers will work to build State capacity. The priority is clear that this is a non-exhaustive list and does not preclude a center from working with SEAs on initiatives in other key State-led reform areas. Further, in partnership with the SEAs, Regional Centers are required to develop a plan of technical assistance based on each SEA's unique context, challenges, and current capacity, which will address specific State-led reform initiatives. Content Centers will work to increase State capacity in identified key topic areas.

Changes: None.

Comment: One commenter noted that the Center on School Turnaround would focus its attention on issues related to the most persistently low-achieving schools, even though SEAs are responsible for the improvement of all of their districts and schools. The commenter expressed concern that no center would be devoted to providing assistance to SEAs in managing differentiated supports and interventions for the larger number of districts and schools in need of improvement that are not the lowest-performing districts or schools.

Discussion: While there is not a specific center that focuses on providing assistance to SEAs in managing differentiated supports and interventions for districts or schools in need of improvement, the purpose of the Comprehensive Centers program is to provide technical assistance to SEAs that builds their capacity to support districts and schools, especially low-performing districts and schools; improve educational outcomes for all students; close achievement gaps; and improve the quality of instruction. We believe the centers described in this notice focus to a significant extent on students in districts and schools in need of improvement and decline to make any change.

Changes: None.

Comment: A few commenters noted that increasing the number of Content Centers without additional funding for the program will lead to a reduction in the resources available for all centers, at a time when the centers are likely to receive increased requests for services from States experiencing budget reductions. One commenter also noted the increased cost to Regional Centers of coordinating and collaborating with a larger number of Content Centers.

Discussion: We currently support 16 Regional Centers and 5 Content Centers; we plan to support 15 Regional Centers and 7 Content Centers under the Comprehensive Centers 2012 competition. We acknowledge that at current funding levels, increasing the total number of Comprehensive Centers by one will decrease the amount of funding available for each center. We also recognize the value of the Regional Centers, as evidenced in our expectations for their work.

However, we believe that the benefit of establishing two additional Content Centers to help the Regional Centers address challenging and high-priority topics outweighs the minimal reduction in funds to the other Comprehensive Centers. Five of the Content Centers will help build SEA capacity in key reform areas where work in many States is already underway: Creating and implementing high-quality standards and assessments, ensuring college- and career-readiness and success for students, addressing early learning, ensuring great teachers and leaders, and turning around the lowest-performing schools. The two additional centers will help SEAs and Regional Centers focus specifically on improving SEA infrastructures, management processes, and innovative approaches to teaching and learning that we believe will support the achievement of the identified reforms.

Changes: None.

Comment: Some commenters were concerned that reducing the number of Regional Centers would result in less service for smaller, more rural States if they are placed in a larger region with more densely populated States.

Discussion: We currently support 16 Regional Centers and 5 Content Centers; we plan to support 15 Regional Centers and 7 Content Centers under the Comprehensive Centers 2012 competition. We recognize an opportunity with this competition to foster strong collaborative relationships

between Regional Centers and the Institute for Education Sciences' Regional Education Labs (RELs) by aligning the geographical areas served by both, since both work with States to address their needs. Therefore, in the NIA published elsewhere in this issue of the **Federal Register**, we establish one to two Regional Centers in each REL region. This structural change is designed to increase both the coherence of the Department's technical assistance and collaboration between Comprehensive Centers and RELs. It will better use resources to benefit States, including smaller, more rural States.

Changes: None.

Priorities

Priorities—General

Comment: Two commenters asked that the Department give priority consideration to small businesses or unemployed educators as Comprehensive Center applicants.

Discussion: Entities eligible to apply for Comprehensive Center grants, as identified in the ETAA, include research organizations, institutions, agencies, institutions of higher education, or partnerships among such entities, or individuals, with the demonstrated ability or capacity to carry out required activities. We encourage all eligible applicants to apply, including small businesses and educators with the demonstrated ability or capacity to carry out the requirements and activities of the program, but the statute does not provide priority consideration for them. Therefore, we decline to provide priority consideration as requested.

Changes: None.

Priorities for All Centers

Comment: One commenter suggested an absolute priority requiring communication and collaboration across the Content Centers and the RELs, and across priority areas, to support a comprehensive approach to technical assistance. The commenter further suggested that the Department support a national organization to facilitate this communication and supplement the needs identified by individual States with a national perspective.

Discussion: We do not agree that there is a need for an absolute priority requiring communication and collaboration or to support a national organization to facilitate communication. We believe the statutory requirements under section 203(f)(2) of the ETAA and the requirement that all centers coordinate and collaborate with other Comprehensive Centers (as described under the heading ''Requirements for all Centers'' in this notice), other Department-funded technical assistance providers, and other technical assistance providers to address SEA needs sufficiently address the importance of communication and collaboration among the States and centers. Additionally, all Content Centers are required to address national needs as well as the needs of individual regions and States. For these reasons, we decline to take the suggestions.

Changes: None.

Comment: Commenters supported our proposal that all Regional and Content Centers address the needs of special populations, including English Learners and students with disabilities. One commenter urged the Department to include all subgroups defined in the ESEA as priorities for the Regional and Content Centers. The commenter recommended adding racial and ethnic minorities and students in poverty into each of the sections in the notice where categories of students are identified.

Discussion: We appreciate the support of the commenters and strongly agree that the needs of all students must be addressed through the work of the Comprehensive Centers program. To be clear about our interest in addressing the needs of all students, including multiple subgroups of students, we have revised the language in the requirements, where applicable, to use the term ''high-need children and high-need students,'' and we have included its definition from the Department's notice of final supplemental priorities and definitions published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637). Under this definition, ''high-need children and high-need students'' mean children and students at risk of educational failure, such as children and students who are living in poverty, who are English Learners, who are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities.

Changes: We have revised the language in paragraphs II(B)(1)(e); II(C)(1)(c); II(F)(4); and II(G)(1) of the requirements section to include the term ''high-need children and high-need students,'' as applicable. We have also revised the requirements to specify the definition of this term.

Comment: Some commenters were concerned that school climate issues facing lesbian, gay, bisexual, transgender, and questioning (LGBTQ) students and teachers were not identified as priorities for the Comprehensive Centers.

Discussion: We are committed to making sure all students feel safe and secure in school, and are collaborating with other Federal agencies in an effort to combat harassment and promote supportive and welcoming school climates. Since 2010, the Department has issued two ''Dear Colleague'' letters that clarify for SEAs and LEAs their civil rights obligations and their responsibilities under the Equal Access Act as they relate to LGBTQ students. These two guidance documents explain that when students are subjected to harassment on the basis of their sexual orientation or gender identity, they may also be subjected to forms of sex discrimination prohibited under Title IX. The guidance documents also clarify that gay-straight alliances, which can play an important role in creating safer, more welcoming school environments for LGBTQ students, must be afforded the same opportunities as other non-curricular student organizations to form, to convene on school grounds, and to access resources.

In addition to this legal guidance, we currently fund two technical assistance centers, the Safe and Supportive Schools Technical Assistance Center (SSSTAC), and the Technical Assistance Center on Positive Behavioral Interventions and Supports (PBIS) in addition to 10 Equity Assistance Centers that provide educators with the tools to improve school climate, support student mental health, and prevent and reduce harassment. SSSTAC provides training, tools, and resources to help educators assess risk and protective factors influencing student health and safety within school settings and to develop strategies to improve outcomes. More information about the SSSTAC is available at *http://safesupportiveschools.ed.gov.* PBIS provides schools with capacity-building information and technical assistance for identifying, adapting, and sustaining effective school-wide disciplinary practices. More information about PBIS is available at *http://www.pbis.org.*

The 10 regional Equity Assistance Centers focus more specifically on civil rights issues, including the elimination of harassment or bias based on race, sex, or ethnicity. These centers respond to requests for assistance from schools,

districts, and States and provide at no charge training, resources, and materials specifically tailored to the needs of the requester. More information about the Equity Assistance Centers is available at *http://www2.ed.gov/programs/equitycenters/index.html.* Because we currently fund centers that provide States with the support they need to create safe school environments for LGBTQ students, we have not added a priority that specifically focuses on LGBTQ issues.

Changes: None.

Comment: A few commenters recommended that school safety be a priority for the Comprehensive Centers program. One commenter stressed that classroom management and safety can negatively affect student engagement and instructional opportunities for all students. Another commenter recommended including a firm anti-bullying focus.

Discussion: We agree that a safe, well-managed school environment, free from bullying and violence, is a critical foundation for providing every student the opportunity to graduate ready for college and a career. Further, when educators do not have sufficient capacity and expertise to effectively promote positive behavior, student academic and health outcomes suffer. Students face a higher likelihood of victimization or are deterred from learning by frequent classroom disruptions by their peers.

We have revised the requirements for the Center on Great Teachers and Leaders to include a technical assistance focus on building teacher and leader capacity to create safe, productive school environments and increase academic engagement for all students. It is our intent to strengthen educator capacity to preserve instructional time by addressing student behavior in the classroom, and, in doing so, encourage the use of effective alternatives to disciplinary practices that remove students from the classroom but do not resolve their disruptive or threatening behavior (e.g., suspension, expulsion, and school-based arrests).

With regard to bullying prevention in particular, the Department has worked with several Federal agencies to develop a Web site, *www.stopbullying.gov,* to provide students, parents, and educators with useful information and approaches to address bullying in their communities. In addition, as previously discussed, we fund the SSSTAC and 10 Equity Assistance Centers, which provide educators with tools to improve school climates and prevent and reduce harassment. Because we currently fund centers that provide States with the critical support they need to create safe school environments, we decline to make the suggested change.

Changes: We have added a requirement to the Center on Great Teachers and Leaders to provide technical assistance to Regional Centers and SEAs that focuses on building teacher and leader capacity to create safe, productive school environments and increase academic engagement for all students.

Comment: One commenter noted that if effective Science, Technology, Engineering, and Mathematics (STEM) education is a priority need in the United States, then STEM should be articulated specifically in each priority. The commenter states that high-quality STEM education must begin early, as early as pre-K and elementary grades.

Discussion: We agree that STEM education is of primary importance and have included in the requirements for the Center for College and Career Readiness and Success that it will provide to Regional Centers and SEAs technical assistance that focuses on high-quality STEM instruction. Although we have not chosen to require technical assistance on STEM for other Content Centers or the Regional Centers, nothing in the requirements or the priority language will preclude other centers from working with SEAs on specific initiatives related to STEM. While we would encourage this work, we believe it is important to allow centers the flexibility to be responsive to State needs.

Changes: None.

Priorities for Regional Centers

Comment: A number of commenters, noting States' accomplishments in working with the current Regional Centers, asserted that developing and maintaining strong relationships and successful partnerships with their SEAs should be a top priority for Regional Centers. One suggested that the requirements be revised to better reflect the value of a partnership approach. Others urged us to take current partnerships into account in evaluating and scoring new proposals or, at a minimum, to require applicants to describe how they intend to develop an understanding of, and establish continuity with, work currently being done.

Discussion: We appreciate the support expressed for the work of the Regional Centers and agree that productive partnerships between center and SEA staff are crucial to the success of their efforts. We believe the priority and requirements for the Regional Centers will foster a partnership approach and reflect the value of such an approach.

For additional clarity, we have strengthened the Regional Center requirements to emphasize the importance of partnerships between Centers and SEAs by now requiring the Center to work to ensure a mutual commitment by both SEAs and Regional Centers to devote the necessary time, leadership, and personnel to achieve specific goals.

Further, Regional Centers are required to assess State needs and, in partnership with the SEAs in their regions, develop an annual work plan that addresses the needs of each SEA based on its unique context, challenges, and current capacity. This requirement is intended to ensure that the Regional Center understands each State's priorities, which might include a desire to continue work that began with the current Comprehensive Centers.

Our goal is to provide SEAs with the highest quality technical assistance possible by selecting high-quality grantees. The Department's discretionary grant competition process is structured to ensure that each application is reviewed and scored based on the strength of its written proposal. We did not choose to propose a competitive priority or other preferential treatment for current grantees because providing additional points to current grantees could unfairly advantage them in a new competition. Therefore, we decline the suggestion that these relationships be taken into account when considering applications.

Changes: We have modified the Regional Center application requirements to require that applicants articulate an approach to securing an SEA's commitment to devote the time, leadership, and personnel needed to achieve specific goals, which may include a memorandum of understanding or similar agreement that contains timelines and benchmarks to ensure that the work stays on track to achieve these goals. We have also added the response to this requirement as a consideration under the selection criterion that addresses the overall quality of the technical assistance plan.

Comment: One commenter asked for clarification of the proposed priority for Regional Centers. Specifically, the commenter expressed concern that these centers will be expected to track student outcomes.

Discussion: We do not expect centers to track student outcomes. The priority and requirements for all Regional Centers address the provision of high-quality technical assistance that focuses on key initiatives and builds the

capacity of SEAs to implement, support, scale up, and sustain initiatives statewide and to lead and support their LEAs and schools in improving school outcomes.

Changes: None.

Comment: One commenter expressed support for the proposed priority for the Regional Centers but stated that literacy should be mentioned specifically.

Discussion: The priority for the Regional Centers states that they will provide capacity-building technical assistance that helps States implement, support, scale up, and sustain key initiatives aimed at improving student outcomes. While we agree that literacy is essential to students' success in school, we think that literacy instruction is encompassed within this priority and do not believe that specific mention of literacy is necessary.

Changes: None.

Content Centers—General

Comment: Several commenters recommended that the Department place a greater emphasis on parent, family, and community engagement, suggesting that there be a Content Center specifically devoted to this topic.

Discussion: We agree that strong family and community engagement is important in the education of all students. All centers will be required to provide SEAs with high-quality technical assistance that increases SEA capacity to support their LEAs and schools in improving student outcomes. Building organizational capacity might include helping SEAs develop ways to involve key stakeholders—including parents—in State-, district-, and school-level decision-making that affects the schooling of their children. While we would encourage a focus on family and community engagement, we believe it is important to allow centers flexibility to be responsive to State needs. Therefore, we have not proposed an additional Content Center to specifically address parent, family, and community engagement.

Changes: None.

Priority for Center on Enhancing Early Learning Outcomes

Comment: One commenter suggested that we define preschool ages and suggested that the priority explicitly define ''preschool'' as ''birth through grade three'' to be consistent with the emerging emphasis on continuity across the early childhood span.

Discussion: We do not define the term ''preschool'' in this notice because the term is used in different Federal and State programs to encompass varying age ranges. However, the priority for this center expressly states that the center is to help SEAs increase the number of children from birth to third grade who are prepared to succeed in school. While we decline the suggestion to specify an age range with respect to preschool education, we are revising the priority to describe early learning systems generally rather than as ''preschool to third grade'' systems.

Changes: We have revised the priority to reflect a recognition that early learning systems may encompass a broad range of ages by deleting the phrase ''preschool to third grade early learning systems'' and replacing it with the phrase ''early learning systems.''

Priority for Center on Great Teachers and Leaders

Comment: One commenter encouraged the Department to recognize the unique roles and responsibilities of pupil and related-service providers, such as speech-language pathologists and audiologists. The commenter suggested including these educators in the center's efforts to support effective instruction and leadership.

Discussion: As described in the priority, the Center on Great Teachers and Leaders will provide technical assistance that will help SEAs support their districts and schools in improving student outcomes by supporting effective instruction and leadership. We agree that all educators and leaders, including related-service providers, play important roles in this effort. While we do not explicitly mention these educators in the priority or requirements, the Center on Great Teachers and Leaders will work with SEAs and Regional Centers seeking technical assistance to support effective instruction and leadership of all educators. However, as there are many educators within schools who are integral to raising student achievement, we decline the suggestion to identify specific types of educators in the priority.

Changes: None.

Priority for Center on Building State Capacity and Productivity

Comment: One commenter expressed the opinion that the description of the Center on Building State Capacity and Productivity lacked a clear purpose and was focused too narrowly on implementing and scaling up practices rather than addressing all important aspects of SEA work to support districts and schools. The commenter also stated that building SEA capacity should be the job of all the centers in the Comprehensive Centers program, not one.

Discussion: Under the program requirements for all centers, each center must provide technical assistance to help SEAs build their capacity to implement State-level initiatives and support district- and school-level initiatives that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction. Additionally, the Center on Building State Capacity and Productivity will, like other Content Centers, provide technical assistance in its specific area of expertise to Regional Centers and SEAs. We do not agree that the requirements and expertise of the Center on Building State Capacity and Productivity are vague or too narrow. We believe that there are components of SEA capacity-building that require specialized knowledge and expertise, and we have identified those areas in the requirements for the Center on Building State Capacity and Productivity.

Changes: None.

Requirements

Requirements for All Centers

Comment: Two commenters asked the Department to clarify the client base for the Comprehensive Centers. Specifically, the commenter requested clarification about whether centers could work only with SEAs or whether they could also work directly with school districts, schools, and other State agencies.

Discussion: The primary clients for the Regional Centers are the SEAs. The centers help build the capacity of the SEAs to better support their districts and schools. We expect that center staff will at times work alongside the SEA staff to assist in addressing district and school issues, but the center's efforts should enhance and not replace those of the SEA. Therefore, any work with individual school districts and schools must involve a high leverage strategy (reach a large number or proportion of districts or schools; respond to a need identified by the SEA; and be planned, coordinated, and executed in concert with the SEA). The centers are not required to, but may, interact with other State agencies but only to support their work with SEAs.

Changes: None.

Comment: One commenter requested clarification about whether the proposed requirement that all centers use a common online portal to share and exchange information meant the online portal would replace individual center Web sites.

Discussion: It does not. Coordination and collaboration among technical

assistance providers are important and we require both activities for all centers. A key component of this coordination is providing easy and efficient access to technical assistance expertise, materials and other resources to a variety of potential users. We intend to facilitate the sharing of information by maintaining a common portal, but this does not preclude an individual center from establishing and maintaining its own Web site. Detailed requirements for the use of the portal by the Comprehensive Centers will be established in the centers' cooperative agreements with the Department.

Changes: None.

Comment: One commenter requested clarification of the requirement that all centers make their materials and products freely available.

Discussion: All Comprehensive Centers are required to make all training materials, rubrics, manuals, presentations, and other materials developed during the grant period available to the public at no cost through the online portal described in paragraph II(A)(3) of the requirements section of this notice. Centers may also publish materials and products on their own Web sites or through other means.

Changes: None.

Comment: One commenter requested clarification of the requirement that centers identify, track, and assess innovative approaches and promising practices. Specifically, the commenter requested clarification on how and in what ways the Content Centers will be able to assess the value of the promising practices and innovative approaches that they will be expected to identify, synthesize, and disseminate.

Discussion: We encourage applicants, when identifying and assessing the value of promising practices, to look, for example, to the evidence standard of a reasonable hypothesis as used in the Department's Investing in Innovation program. Relying on the reasonable hypothesis standard, the approach or reported practice should suggest the potential for efficacy for at least some participants and settings. The center should consider whether the proposed practice, strategy, or program, or one similar to it, has been attempted previously, albeit on a limited scale or in a limited setting, and yielded promising results that suggest that more formal and systematic study is warranted. The center should also consider whether there is a rationale for the proposed practice, strategy, or program that is based on research findings or reasonable hypotheses.

Changes: None.

Comment: One commenter supported the focal areas for the proposed Content Centers but wanted to ensure that all of the centers focus on students.

Discussion: The purpose of both Regional and Content Centers is to help build the capacity of States to better lead and support their LEAs and schools in improving student outcomes. We believe the priorities, requirements, and selection criteria are consistent with this purpose and thus will ensure that all of the centers focus on students.

Changes: None.

Comment: None.

Discussion: In order to clarify that all Comprehensive Centers must establish an advisory board, the Department has added a specific reference to the statutory citation.

Changes: Under the requirements for all centers to coordinate and collaborate, the Department has added a specific reference to section 203(g) of the ETAA and its requirement that all Comprehensive Centers establish an advisory board.

Requirements for All Regional Centers

Comment: One commenter proposed amending the language of the priority and requirements for all Regional Centers so as to require those centers to identify related-service providers in addition to teachers and leaders when discussing Regional Center technical assistance to SEAs. Doing this would ensure that these providers are included in overall efforts related to education professionals.

Discussion: We agree that related-service providers play a key role in supporting student achievement and that schools and districts face many of the same issues in recruiting, developing, and retaining related-service providers as they do for classroom teachers and other school professionals, such as guidance counselors and librarians. While we do not explicitly mention these educators in the priority or requirements, the Regional Centers have the flexibility to work with SEAs seeking technical assistance to support effective instruction and leadership of all educators. Therefore, we decline the suggestion to identify specific categories of educators in the priority or requirements for the Regional Centers.

Changes: None.

Comment: One commenter suggested that all Regional Centers should possess the same knowledge and understanding that is required of applicants for the Center on Building State Capacity and Productivity, asserting that Regional Centers able to draw on their own expertise in this area will have a significant advantage over those that will need to rely entirely on this Content Center. The commenter suggested revising the requirements for all Regional Centers to clarify that a grantee must provide technical assistance that draws on the expertise of the Center on Building State Capacity and Productivity as well as on its own research and experience conducted in non-education sectors and industries.

Discussion: We agree that the work of building SEA capacity must be the responsibility of all Comprehensive Centers and acknowledge that experience in providing this type of technical assistance is valuable. Applicants for Regional and Content Centers must have knowledge and understanding of research-based practices, emerging promising practices, and specific expertise in providing high-quality, relevant technical assistance to States or multiple districts. We believe that possessing this knowledge and expertise will enable an applicant to provide high-quality technical assistance specifically related to building SEA capacity. Therefore, we decline to include an additional requirement for Regional Center applicants as suggested in the comment.

Changes: None.

Requirements for All Content Centers

Comment: One commenter inquired whether the Content Centers could develop new content, noting that Regional Centers may not.

Discussion: The Content Centers are expected to develop high-quality publications, tools, and other resources as described in the Requirements for All Content Centers section of this notice.

Changes: None.

Comment: One commenter noted that it appeared that of all of the Content Centers, only applicants for the Center on School Turnaround would be required to address any of the affective dimensions related to student outcomes. The commenter suggested that applicants for every center should be required to specify how they will assure that relevant equity issues are addressed.

Discussion: As stated previously, the purpose of the Comprehensive Centers is to provide technical assistance in identified priority areas to help SEAs build their capacity to improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction. Nothing in this notice would prevent a Regional or Content Center from working with an SEA to address the affective dimensions of student achievement including

relevant equity issues in order to address one of these priority areas.

Changes: None.

Requirements for Center on Enhancing Early Learning Outcomes

Comment: One commenter recommended that the center be required to address the needs of at-risk young children and to work on strengthening the transitions, cross-sector collaborative care, and education of pre-school children.

Discussion: As described in the program requirements, the Center on Enhancing Early Learning Outcomes will provide technical assistance to Regional Centers and SEAs that supports coordinated statewide systems that promote young children's success in school and helps SEAs align policies and resources to increase the successful transitions of children and to close the achievement gap, particularly for high-need children as they enter kindergarten. As these suggestions are reflected in the original language, we decline to make the recommended changes.

Changes: None.

Comment: One commenter, while expressing support for the creation of a Center on Enhancing Early Learning Outcomes, recommended expanding the intended audiences for the center's technical assistance beyond SEAs, to include agencies that oversee early learning programs in the States, such as Early Learning Councils and Head Start Collaboration Offices. The commenter stated that this expansion would be especially important in States with new agencies that oversee early learning and where the SEA does not have major responsibilities for early learning programs.

Discussion: The ETAA authorizes the Comprehensive Centers to provide training, technical assistance, and professional development to SEAs, LEAs, regional educational agencies, and schools only. We therefore cannot expand the types of entities receiving services under this program. However, the Center on Enhancing Early Learning Outcomes may interact with other State agencies, such as those mentioned by the commenters, where appropriate to support their work with SEAs.

Changes: None.

Comment: One commenter suggested that the Center on Enhancing Early Learning Outcomes specifically assist those States that have received Race to the Top-Early Learning Challenge (RTT–ELC) funds and those that have successfully developed plans to increase access to high-quality early learning systems, especially for high-need children. The commenter also recommended including additional requirements for this center that are aligned with the RTT–ELC program and that focus on addressing effective instructional practices, developmentally appropriate learning environments, State capacity to use data, and effective governance structures.

Discussion: By statute, grantees under the Comprehensive Centers program must provide technical assistance to all States. Therefore, we are requiring this center to support all States, including States that have received RTT–ELC grants. Under the requirements in this notice, the Center on Enhancing Early Learning Outcomes must provide technical assistance on using assessment data and other information to improve the quality of instruction in early learning programs and to increase the capacity of SEAs to implement comprehensive and aligned early learning systems. This technical assistance may include the areas suggested by the commenter.

Changes: None.

Comment: A number of commenters suggested a variety of additional areas deserving the attention of the Center for Enhancing Early Learning Outcomes: Addressing the needs of young English Learners, implementing STEM curricula and instructional strategies, supporting the extension of standards related to multiple domains of child development, analyzing costs of alternative policies and practices, ensuring that parents and caregivers understand data, and providing quality pre-service and in-service professional development for teachers and related service providers.

Discussion: We agree that there are many topics that the Center for Enhancing Early Learning Outcomes could address in order to help increase the number of children who are prepared to succeed in school. We note that while the requirements for this center do not list each of the areas identified above, they also do not limit the early learning issues that might be addressed in the work plans developed by the center in collaboration with Regional Centers and SEAs. Again, we believe it is important to allow centers flexibility to be responsive to State needs.

Changes: None.

Comment: One commenter recommended that the center's first priority should be expanding existing programming and increasing access for more students.

Discussion: We strongly agree that increasing young children's access to high-quality early learning environments is critical. In this regard, the Center on Enhancing Early Learning Outcomes will help SEAs increase the quality of early learning systems and thereby provide more opportunities for children to learn in high-quality environments. However, the purpose of the Comprehensive Centers program, consistent with the ETAA, is to provide technical assistance to SEAs, not to take actions that directly result in expanded programming or increased participation in early learning programs.

Changes: None.

Comment: One commenter asked the Department to clarify how the center will coordinate and collaborate with other federally funded early childhood technical assistance centers to avoid duplication of effort.

Discussion: All centers will be required to collaborate with other technical assistance providers to address SEA needs and to develop strong relationships and partnerships with leading experts and organizations nationwide, including other federally funded technical assistance centers. The Center on Enhancing Early Learning Outcomes must provide technical assistance to Regional Centers and SEAs that focuses on integrating and aligning resources and policies across State agencies and programs in order to support a coordinated statewide system that promotes young children's success in school.

Changes: None.

Requirements for the Center on School Turnaround

Comment: One commenter suggested modifying the requirements for the Center on School Turnaround to require an emphasis on parent support, including on helping parents understand data on low-performing schools.

Discussion: The Center on School Turnaround must provide technical assistance to help increase the capacity of SEAs to support their districts and schools in turning around their low-performing schools, and these turnaround efforts often include increasing parent and family involvement. The overwhelming majority of schools identified under the School Improvement Grants program are implementing turnaround models that include engagement activities such as increasing the involvement and contributions of parents and community partners. All centers may provide technical assistance that builds the capacity of SEAs to improve family and community engagement, if SEAs identify this as a high-priority need. For these reasons, we have decided that it is not necessary to add an additional

requirement for the Center on School Turnaround.

Changes: None.

Comment: One commenter suggested amending the requirements for the Center on School Turnaround to recognize the communication needs of students with disabilities as a non-academic factor that affects student achievement.

Discussion: We recognize the need for the lowest performing schools to meet the needs of all students by addressing both academic and non-academic factors that affect student achievement. While we identify some non-academic factors (social, emotional, and health needs) in the requirements for the Center on School Turnaround, we do not present them as an exhaustive list. Our identifying certain non-academic factors will not preclude the center from addressing additional non-academic factors with SEAs, and we don't believe that attempting to identify all those factors is necessary. Therefore, we decline to amend the requirement.

Changes: None.

Requirements for the Center on Innovations in Learning

Comment: A number of commenters recommended that the Center on Innovations in Learning focus on Universal Design for Learning (UDL) and cited the need for technical assistance in UDL for SEAs and Regional Centers and professional development in UDL for educators.

Discussion: The purpose of the Center on Innovations in Learning is to provide technical assistance to help SEAs identify and implement a broad array of policies, strategies, and practices that significantly improve, or have the potential to significantly improve, student outcomes. These strategies may include UDL, which is an effective framework for engaging learners with different abilities, backgrounds, and motivations. However we decline to require the inclusion of UDL because we believe it is important to allow centers flexibility to be responsive to State needs.

Changes: None.

Comment: One commenter proposed amending the requirements for the Center on Innovations in Learning to specify classroom amplification systems as an example of technologies that support the personalization of learning.

Discussion: While recognizing the value of classroom amplification systems for certain students, the requirement to help SEAs select and implement technologies that support the personalization of learning is intended to apply to all students, whether or not they have hearing impairments. The Center is required to help SEAs identify and implement policies, strategies, and practices that encourage the identification and scaling up of new teaching and learning strategies, approaches, processes, or tools that have the potential to significantly improve student outcomes. Classroom amplification systems may be essential to meeting the learning needs of some students, and, if so, those requirements would be detailed in that student's Individualized Education Program. Therefore, we decline to make the requested change.

Changes: None.

Requirements for the Center on College and Career Readiness and Success

Comment: One commenter asked for clarification of how the Center on College and Career Readiness and Success will work with the Regional Centers on its areas of focus.

Discussion: The Content Centers will work to increase the depth of knowledge and expertise available to Regional Centers and SEAs on key topic areas and complement the work of the Regional Centers by providing information, publications, tools, and specialized technical assistance based on research-based practices and emerging promising-practices. The Content Centers will identify, organize, and communicate key research and best practices through publications, tools, and direct technical assistance. They may also create opportunities for SEAs and Regional Centers to learn from researchers and other experts about practical strategies for implementing reforms related to their focal areas. The Center on College and Career Readiness and Success will engage in these tasks in its area of focus as described in the priority and program requirements.

Changes: None.

Comment: One commenter requested clarification regarding the extent to which the Center on College and Career Readiness and Success could collaborate directly with institutions of higher education (IHEs) and systems or facilitate SEA collaboration with them.

Discussion: We acknowledge that some technical assistance activities listed under the requirements for the Center on College and Career Readiness and Success, such as implementing accelerated learning strategies or developing rigorous career and technical education programs, might necessitate substantive collaboration between SEAs and IHEs. However, other areas of activity might not. However, in order to provide technical assistance on some of the activities, we acknowledge that the Center might facilitate SEA collaboration with IHEs. We choose not to define a minimum or maximum level of SEA collaboration with IHEs. We will instead rely on the center to meet the requirements through varying levels of collaboration between SEAs and IHEs, as appropriate.

Changes: None.

Comment: One commenter requested clarification on the requirement of experience working with K–12 and postsecondary education systems for the Center on College and Career Readiness and Success. The commenter questioned whether this requirement would address State and district K–12 systems, public and private postsecondary systems, and the systems of individual institutions.

Discussion: We expect that grantees will have the experience and knowledge necessary to successfully provide technical assistance as described in the program requirements. Applicants are required to provide evidence of (1) working with SEAs or multiple districts to design and implement systemic, comprehensive strategies to improve student transitions from high school to postsecondary degree or credential programs, and (2) working with K–12 and postsecondary education systems to align policies and practices in order to improve student transitions from high school to postsecondary degree or credential programs. This experience and knowledge could be gained in a variety of ways. However, we do not require applicants to have experience with specific types of higher education institutions.

Changes: None.

Comment: To help develop rigorous career and technical education programs, one commenter suggested including additional examples to the list of possible activities for the Center on College and Career Readiness and Success. These could include support for collaboration with labor unions and for enrollment in apprenticeship programs.

Discussion: The Center on College and Career Readiness and Success must provide technical assistance to Regional Centers and SEAs that focuses on SEA development and scaling up of statewide rigorous career and technical education (CTE) programs that align with college- and career-ready standards and lead to an industry-recognized credential or postsecondary certificate or degree. We provide some examples of how that might be accomplished and recognize that many others could be included. Nothing in the language of this notice precludes the center from working with SEAs and Regional

Centers on the activities recommended by the commenter.

Changes: None.

Requirements for Center on Great Teachers and Leaders

Comment: One commenter suggested requiring that the Center on Great Teachers and Leaders provide technical assistance focused on supporting a positive school culture, high expectations, family and community involvement, and community leadership development.

Discussion: The Center on Great Teachers and Leaders will provide technical assistance to help SEAs and Regional Centers support effective instruction and leadership; improve student outcomes; and identify, synthesize, and disseminate research-based practices and emerging promising practices. The requirements for this Center identify a number of issues that must be addressed, including improving instructional practices; ensuring the equitable distribution of effective teachers; and developing strategies to recruit, reward, retain, and support effective teachers and leaders. To the degree that the issues mentioned by the commenter are related to these requirements and the Center's priority, and to the extent that the SEA seeks assistance in addressing them, this Center could provide needed technical assistance. Therefore, we decline to add the suggested requirements.

Changes: None.

Requirements for the Center on Building State Capacity and Productivity

Comment: One commenter suggested that the Center on Building State Capacity and Productivity provide technical assistance to help SEAs hold their LEAs accountable.

Discussion: The purpose of the Center on Building State Capacity and Productivity is to provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will increase the capacity of SEAs to implement their key initiatives statewide and support district and school-level implementation of effective practices to improve student outcomes. Therefore, nothing precludes this center from working with an SEA on approaches for holding its LEAs accountable when the work is related to implementing statewide initiatives to improve student outcomes.

Changes: None.

Comment: One commenter suggested that the Center on Building State Capacity and Productivity help SEAs identify supports and interventions to address not only the needs of districts and schools but also the needs of parents and caregivers.

Discussion: Under the requirements for this Center, grantees are expected to provide technical assistance that builds the capacity of SEAs to better support their districts and schools. This support includes helping districts and schools communicate more effectively with parents and caregivers. Nothing in the priority or requirements for this center would prevent the Center from working with the SEA to address this issue to the extent that the SEA identifies it as an area in which it could benefit from the Center's capacity-building technical assistance. Therefore, we do not think it necessary to add to the requirements.

Changes: None.

Application Requirements

General

Comment: One commenter recommended that in addition to demonstrating the capacity and experience of key staff, applicants be required to demonstrate corporate capacity and experience. The commenter also suggested that experience providing technical assistance for a variety of education constituencies through vehicles other than the Comprehensive Centers be given consideration equal to that given for work conducted through the Comprehensive Centers.

Discussion: In the application requirements, we identify the subject-matter and technical expertise that applicants must demonstrate. We assume that the expertise of key staff reflects the corporate capacities and experience of the applicant that proposes them. Additionally, the selection criteria state that we will evaluate not only key personnel but also the quality of the proposed technical assistance plan, project design, and management plan. When reviewing applications, we will consider all relevant experience. We will not award additional points or give special consideration to applicants that demonstrate experience conducting technical assistance through a Comprehensive Center.

Changes: None.

Comment: Two commenters requested clarification of the application requirement that centers engage the services of an external evaluator.

Discussion: Upon further review and consideration, we have revised the evaluation requirements. We have removed the requirement for a third party evaluation. However, we do believe that evaluation and continuous assessment of the Centers' performance are important parts of providing useful and relevant technical assistance to SEAs. Therefore, we still require each applicant to include in the application a plan to assess its own progress and performance. Additionally, to ensure that the evaluations are of high quality, measurable, and comparable for all centers, we are revising the title of this subsection to include the word ''performance'' and to require that the plan include results-based outcomes.

Changes: In paragraph II(A)(4) of the Requirements for all Centers section, we have revised the title of the subsection to read ''Performance and Evaluation'' and deleted the requirement that a third party perform an evaluation of the program. Additionally, in section III(K)(4) of the Application Requirements, we have revised the title of the subsection to read ''Performance and Evaluation Plan,'' deleted the reference to a third-party evaluator, and included clarifying language regarding the plan requirements. We specify that the plan must include a set of performance objectives the project intends to achieve and performance measures for each performance objective, which must include results-based outcomes; explain the qualitative and quantitative methods that will be used to collect, analyze, and report performance data; and describe the methods that will be used to monitor progress and make mid-course corrections as needed.

Center on Enhancing Early Learning Outcomes

Comment: A few commenters recommended adding requirements to the subject-matter and technical-expertise requirements for the Center on Enhancing Early Learning Outcomes. One commenter advised that in addition to the experience we proposed, grantees would need experience with professional development for early childhood educators, Head Start, and child care. A few commenters recommended additional expertise requirements, including participation in early childhood collaborative efforts, participation in projects focused on at-risk young children, and knowledge of the developmental and learning needs of young children. Another commenter recommended that consideration be given to requiring applicants to demonstrate capacity to produce substantive change in policy and practice.

Discussion: We agree that in order to provide high-quality technical assistance that will help SEAs increase

their capacity to implement comprehensive and aligned early learning systems, grantees should have additional areas of expertise. Therefore, we are revising the application requirements for the Center on Enhancing Early Learning Outcomes to include additional requirements. We note that the subject-matter and technical expertise requirements for all centers include the expectations that an applicant demonstrate experience in building collaborative relationships and that an applicant provide evidence of the effect of its technical assistance on improving student outcomes.

Changes: We have added two requirements to applications for the Center on Enhancing Early Learning Outcomes. An applicant must provide evidence demonstrating that it possesses knowledge and understanding of developmentally appropriate practices for early learning and of State early learning systems, and an applicant must demonstrate that the proposed center staff have experience in working with publicly funded early learning programs, such as State-funded preschool, Head Start, programs funded under section 619 of part B of IDEA and part C of IDEA; programs funded under Title I of the ESEA; and programs receiving funds from the State's Child Care Development Fund (CCDF).

Flexibility and Requirements for Regional Center Assignments

Comment: Many commenters were concerned about the proposed flexibility requirements for Regional Center assignments. Commenters noted that the flexibility may deter collaboration and communication among Regional and Content Centers. Specifically, they were concerned that the flexibility would create a competitive dynamic that would hinder cross-center and cross-State collaboration.

Commenters agreed that SEAs unhappy with the level of service by their assigned Regional Center should have mechanisms for obtaining quality service. However, commenters were concerned that reassigning States to certain centers two years into a grant would be difficult to implement and affect the continuity of State work.

They noted that an SEA changing affiliation would have to invest additional time in developing relationships with the new center, possibly creating gaps in service. Commenters were also concerned that other States in the region might experience gaps in service while the Regional Center takes on the work of the additional SEA. They noted that the flexibility could create difficulties in the planning and staffing of Regional Centers. Finally, commenters were concerned that centers with large marketing budgets might have an advantage in promoting their services to SEAs. One commenter, however, supported our proposal, noting that flexibility would strengthen incentives to provide relevant and high-quality service and would allow States to maximize their ability to collaborate with peer States that share their reform goals and strategies.

Discussion: We appreciate the concerns raised by the commenters and acknowledge that the flexibility may create a competitive dynamic among centers. However, we believe that the best way to implement a customer-centered, performance-focused technical assistance network is to allow States to create a demand-driven market for services. We disagree that this flexibility will deter collaboration and communication among Regional and Content Centers. In order to provide quality technical assistance sought after by States, centers must continue to collaborate and take advantage of the expertise of both Content and Regional Centers. Regional Centers that collaborate with other centers across regional boundaries are often better able to provide technical assistance to their States. Therefore, it will be in the best interest of every center to work with other centers to improve the quality of technical assistance across the country.

We acknowledge that there may be implementation challenges when a State requests reassignment. We agree that SEAs unsatisfied with their current center should have more than one mechanism for obtaining quality service. For these reasons, the Department has added clarifying information about how and when a State may request reassignment. In addition, once a State has requested reassignment, the current Regional Center will have time to work with the State to resolve any quality-of-service issues prior to the Department considering the request for reassignment.

We also acknowledge that there may be a temporary gap in services when a State is assigned to a different Regional Center. However, prior to requesting reassignment, the State must obtain documentation from the new Regional Center indicating its willingness and capacity to serve the additional State. As a result of this process, the new Regional Center should already be effectively planning and working with the State to develop a strategy for continuing services to the State while maintaining the same level of service for all of its current States.

Finally, we disagree with those commenters suggesting that Regional Centers with larger marketing budgets have an advantage over centers with smaller budgets. States are likely to request reassignment in order to seek services that they believe will best meet their needs, regardless of location or marketing initiatives. Further, we agree with the comment that supports this flexibility because it would allow States to maximize their ability to collaborate with peer States that share their reform goals and strategies.

Changes: We have clarified the process for a State to request reassignment to a different Regional Center. In its request, an SEA must provide its specific reasons for requesting reassignment. The Department will notify the current Regional Center immediately after receiving the request for reassignment. We have also added time to the process of requesting reassignment to allow the current Regional Center time to work with the State to resolve any quality-of-service issues prior to the Department considering the request for reassignment.

Cost Sharing or In-Kind Match

Comment: A number of commenters objected to the proposal to establish a competitive preference priority for applicants that provide evidence of a commitment of funds or an in-kind match, or both, that totals at least 15 percent of the total grant budget. The commenters expressed a number of concerns.

They stated that external funders would expect to have a significant voice in Center decision-making, especially as the rate of cost-sharing increased. Commenters were also concerned that the complexity of tracking separate sources of funds would pose a significant burden. Commenters noted that the current economic climate in general has increased the difficulty of obtaining funds and that applicants could find themselves in competition with States for the limited available funds. Commenters also stated that large foundations would be more inclined to fund projects with national scope and a tangible potential product and less likely to fund regional technical assistance. Finally, commenters voiced concern that applicants with an already established relationship with philanthropic organizations might have an unfair advantage. One commenter stated that the Department did not present a strong justification explaining

why the program would benefit from this priority.

Discussion: The Comprehensive Centers program represents a significant investment in technical assistance to SEAs. We are committed to supporting SEAs, districts, and schools as they work to implement their reform priorities. Because of the importance of these technical assistance efforts, we believe that there is significant value in securing additional funding to support SEA capacity-building. Combining the Department's efforts and resources with external efforts and resources provides an opportunity to increase and extend the reach of the Comprehensive Centers program. For these reasons, we remain committed to providing incentives for additional investments in the work of the centers.

However, we also acknowledge the challenges of securing matching funds and managing multiple partnerships. Therefore, for the FY 2012 competition, we will use this priority only as an invitational priority. We indicate this in the notice inviting applications published elsewhere in this issue of the **Federal Register**. We also remove the ''competitive preference'' designation from the priority and in this notice of final priorities, requirements, and selection criteria (NFP). Not designating it as absolute, competitive preference, or invitational in the NFP will allow the Department flexibility in using the priority in future competitions.

Changes: We have revised the priority for cost-sharing or matching to remove the competitive preference designation.

Selection Criteria

Comment: One commenter suggested that we add to the selection criteria a criterion on the demonstrated ability to provide analytically based technical assistance. The commenter cited the usefulness of technical assistance that improves the analytic capacity of the SEA and its contribution to data-based decision-making.

Discussion: We acknowledge the usefulness of technical assistance that improves the analytic capacity of SEAs and contributes to their skill in making data-based decisions. Regional Centers will be required to provide technical assistance that builds SEA capacity to implement, support, scale up, and sustain initiatives that address the use of data-based decision-making to improve instructional practices, policies, and student outcomes. In addition, the requirements for the Center on Building State Capacity and Productivity include helping SEAs identify research-based practices and emerging promising practices in such areas as human capital management, financial data systems, and return-on-investment analyses that can inform decision-making and help improve SEA productivity. We will use the selection criteria to determine the extent to which applicants meet these requirements. Therefore, we do not believe it is necessary to add an additional selection criterion.

Changes: None.

Comment: One commenter asked whether the criterion that requires that Content Centers demonstrate evidence of in-depth knowledge and understanding of State technical assistance needs means that a center must have a broad view of the kinds of needs that all or many States have, or an in-depth understanding of the needs of each State.

Discussion: As described in the requirements in this notice for all Content Centers, each Center must both assess national needs and take into account the needs of SEAs and Regional Centers in its area of expertise.

Changes: None.

FINAL PRIORITIES:

I. Priorities

This notice contains eight priorities. The Assistant Secretary may use one or more of these priorities for the FY 2012 Comprehensive Centers program competition or for any subsequent competitions.

PRIORITY FOR REGIONAL CENTERS:

Priority 1: Regional Centers. Each Regional Center must provide high-quality technical assistance that focuses on key initiatives, aligns with the work of the Content Centers, and builds the capacity of SEAs to implement, support, scale up, and sustain initiatives statewide and to lead and support their LEAs and schools in improving student outcomes. Key initiatives include: (1) Implementing college- and career-ready standards and aligned, high-quality assessments for all students; (2) identifying, recruiting, developing, and retaining highly effective teachers and leaders; (3) turning around the lowest-performing schools; (4) ensuring the school readiness and success of preschool-age children and their successful transition to kindergarten; (5) building rigorous instructional pathways that support the successful transition of all students from secondary education to college without the need for remediation, and careers; (6) identifying and scaling up innovative approaches to teaching and learning that significantly improve student outcomes; and (7) using data-based decision-making to improve instructional practices, policies, and student outcomes.

PRIORITIES FOR CONTENT CENTERS:

Priority 2: Center on Standards and Assessments Implementation. The Center on Standards and Assessments Implementation must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will lead to the increased capacity of SEAs to support their districts and schools in implementing rigorous college- and career-ready standards and aligned high-quality assessments.

Priority 3: Center on Great Teachers and Leaders. The Center on Great Teachers and Leaders must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will lead to the increased capacity of SEAs to support their districts and schools in improving student outcomes by supporting effective instruction and leadership.

Priority 4: Center on School Turnaround. The Center on School Turnaround must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will lead to the increased capacity of SEAs to support their districts and schools in turning around their lowest-performing schools.

Priority 5: Center on Enhancing Early Learning Outcomes. The Center on Enhancing Early Learning Outcomes must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will lead to the increased capacity of SEAs to implement comprehensive and aligned early learning systems in order to increase the number of children from birth through third grade who are prepared to succeed in school.

Priority 6: Center on College and Career Readiness and Success. The Center on College and Career Readiness and Success must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will lead to the increased capacity of SEAs to support districts and schools in implementing comprehensive strategies that promote college- and career-readiness for students in kindergarten through grade 12 (K–12) and ensure the successful transition of all students from high school graduation to postsecondary education and the workforce.

Priority 7: Center on Building State Capacity and Productivity. The Center on Building State Capacity and

Productivity must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will increase the capacity of SEAs to implement their key initiatives statewide and support district- and school-level implementation of effective practices to improve student outcomes.

Priority 8: Center on Innovations in Learning. The Center on Innovations in Learning must provide technical assistance and identify, synthesize, and disseminate research-based practices and emerging promising practices that will lead to the increased capacity of SEAs to identify and scale up innovative approaches that significantly improve, or have the potential to significantly improve, student outcomes.

PRIORITY FOR ALL CENTERS:

Priority: Cost-Sharing or Matching. Applications that provide evidence in the application of a commitment from one or more entities or organizations in the public or private sector, which may include philanthropic organizations, of funds or an in-kind match, or both, that totals at least 15 percent of the total grant budget meet this priority. The entire amount of the matching contribution must be non-Federal funds. See 34 CFR 80.24. Evidence of the commitment of the financial or in-kind matching contribution must include the full amount and source of the matching contribution and the date that the funds or in-kind contributions will be received. Examples of such evidence include funding agreements with a public or private-sector entity or other signed documents such as commitment letters. The evidence should not include contingencies that raise concerns about the funding commitment other than that the applicant must be awarded a Comprehensive Centers grant award.

If the Department chooses to designate this priority as competitive in a notice inviting applications, we may provide additional points for applicants that provide evidence of matching funds or in-kind contributions in excess of 15 percent of its grant budget. Additional points may be awarded to the extent that the applicant provides evidence of a committed financial or in-kind matching contribution up to 100 percent of its grant budget. The Department would also specify in the notice inviting applications the number of points to be awarded for specific ranges of matching amounts.

Types of Priorities: When inviting applications for a competition using one or more priorities, and unless already established as a specific type of priority through regulation, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

II. Comprehensive Center Requirements

The Assistant Secretary of Elementary and Secondary Education establishes the following requirements.[1]

A. *Requirements for All Centers.*

1. *Provide high-quality technical assistance.* Each center must deliver technical assistance that is based on research-based practices and emerging promising practices; highly relevant and useful to SEAs, LEAs, and school policymakers and practitioners; timely; and cost efficient.

2. *Provide technical assistance to build State capacity.* Each center must provide technical assistance to help SEAs build their capacity to implement State-level initiatives and support district- and school-level initiatives that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction.

For the purposes of this notice, the process of ''building capacity'' includes helping SEAs—

a. Build internal organizational strength through such activities as creating sustainable organizational structures and effective performance management systems, building staff expertise within those structures to ensure that districts and schools are provided high-quality services and supports, and better aligning programs and policies through strengthening connections (e.g., communication, collaboration) among different work streams (e.g., divisions, grant programs); and

b. Build organizational capacity to support district- and school-level implementation of effective practices to improve student outcomes—for example, by working collaboratively and productively with districts and schools; identifying and implementing a continuum of supports and interventions to address the needs of districts and schools; supporting the implementation and scaling up of innovative and effective strategies; sustaining effective practices; engaging effective external service providers; and involving key stakeholders, including parents, in decision-making.

3. *Coordination and Collaboration.* In addition to the statutory requirement under section 203(f)(2) and (g) of the ETAA to collaborate with the Department and other entities and to establish an advisory board, each center must collaborate with other Comprehensive Centers funded under this program; the Institute of Education Sciences (IES), including the What Works Clearinghouse and the RELs; technical assistance centers funded under other Department programs; and other technical assistance providers to address SEA needs. Each center must—

a. Develop strong, ongoing relationships and partnerships with leading experts and organizations nationwide to supplement and enhance, as appropriate, center staff's expertise, skills, and experience and to ensure that technical assistance is informed by research-based practices and emerging promising practices;

b. Coordinate center activities with the work of other technical assistance providers to make the best use of available knowledge and resources and avoid duplicating efforts; and

c. Participate in sharing and exchanging information through a common online portal administered by a center funded by the Department for the purpose of sharing technical assistance expertise, materials, and other applicable resources across Comprehensive Centers, other Department-funded technical assistance providers, SEAs, districts, and schools.

4. *Performance and Evaluation.* Each center must develop a plan to assess the

[1] As used in these requirements, the term ''high-need children and high-need students'' means children and students at risk of educational failure, such as children and students who are living in poverty, who are English Learners, who are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities.

progress and performance of the center in meeting the educational and capacity-building needs of the center's clients.

B. *Requirements for All Regional Centers.* In addition to the requirements for all centers described in this notice, each Regional Center must—

1. Assess each State's needs and develop an annual work plan in partnership with each SEA in its region and the Content Centers, as appropriate, that—

a. Provides technical assistance to build SEA capacity to implement, support, scale up, and sustain initiatives that address the following key areas: (1) Implementing college- and career-ready standards and aligned, high-quality assessments for all students; (2) identifying, recruiting, developing, and retaining highly effective teachers and leaders; (3) turning around the lowest-performing schools; (4) ensuring the school-readiness and success of preschool-age children and their successful transition to kindergarten through third grade learning; (5) building rigorous instructional pathways that support the successful transition of all students from secondary education to college, without the need for remediation, and to careers; (6) identifying and scaling up innovative approaches to teaching and learning that significantly improve, or have potential to significantly improve, student outcomes; and (7) using data-based decision-making to improve instructional practices, policies, and student outcomes;

b. Addresses the needs of each SEA in the region based on the SEA's unique context, challenges, and current capacity;

c. Articulates an approach to secure an SEA's commitment to devote time, leadership, and personnel needed to implement the work plan and achieve specific goals, which may include a memorandum of understanding or similar agreement that contains timelines and benchmarks to ensure that the work stays on track to achieve these goals.

d. Addresses the demands of implementing integrated State longitudinal data systems and using data from these systems and other sources to improve student outcomes, in collaboration with RELs, as appropriate; and

e. Addresses the needs of all students, including English Learners, students with disabilities, and high-need students;

2. Deliver high-quality intensive technical assistance to SEAs that—

a. Provides regular virtual and on-site support and coaching at a frequency appropriate to ensuring high-quality implementation of the work plan;

b. Facilitates collaborative activities and strategies for evaluating and continuously improving organizational structures and processes;

c. Draws on the expertise of the Center on Building State Capacity and Productivity;

d. Facilitates productive SEA interactions with LEAs and other stakeholders to support implementation of key initiatives focused on improving student outcomes;

e. Helps SEAs implement researched-based practices and emerging promising practices identified by the Content Centers and other leading experts and organizations nationwide; and

f. Provides opportunities for SEAs to meet with and learn from researchers, experts, and each other about practical and effective strategies for implementing key initiatives, including by, for example, organizing or facilitating SEA participation in communities of practice; and

3. Make all training materials, rubrics, manuals, presentations, and other materials developed during the grant period publicly and freely available through the online portal described in the coordination and collaboration requirement for all centers.

Note: The requirements for all Regional Centers do not support the development of new content. A Regional Center applicant will not satisfy these requirements if it proposes a technical assistance plan that includes development work, such as designing or developing curricula or instructional materials for use in classrooms, developing educational programs, or conducting research, monitoring, or program evaluations for an SEA. A Regional Center may propose to create materials to be used in capacity-building activities with the SEA, such as decision matrices, written responses to information requests, self-assessment rubrics, or presentation materials. In addition, to the extent that an applicant proposes to work with individual school districts or schools, the applicant must propose technical assistance that reaches a large number or proportion of districts or schools in the State, responds to a need identified by an SEA, and is planned, coordinated, and executed in concert with the SEA.

C. *Requirements for All Content Centers.* In addition to the requirements for all centers described in this notice, each Content Center must

1. Assess national needs and develop an annual work plan that—

a. Takes into account the needs of SEAs and Regional Centers in its area of expertise;

b. Addresses its specific area of expertise; and

c. Addresses the needs of all students, including English Learners, students with disabilities, and high-need students;

2. Deliver high-quality technical assistance to Regional Centers and SEAs in its area of expertise that—

a. Reflects collaboration with Regional Centers to address identified needs of SEAs;

b. Provides opportunities for SEAs to learn from researchers, experts, and each other by, for example, participating in, organizing, or facilitating SEA participation in communities of practice; and

c. Differentiates the delivery of technical assistance based on the current capacity and needs of the Regional Centers and SEAs;

3. Translate expertise, research-based practices and emerging promising practices into high-quality publications, tools, and services appropriate for SEAs, LEAs, and school policymakers and practitioners; and

4. Make all training materials, rubrics, manuals, presentations, and other materials developed during the grant period publicly and freely available through the online portal described in the coordination and collaboration requirement for all centers.

D. *Requirements for the Center on Standards and Assessments Implementation.* In addition to the requirements for all centers and for all Content Centers described in this notice, the Center on Standards and Assessments Implementation must provide technical assistance to Regional Centers and SEAs that focuses on—

1. State implementation of college- and career-ready standards for students and schools statewide, as well as State development and administration of aligned high-quality assessments such as those under development by the Race to the Top Assessment program grantees (*http://www2.ed.gov/programs/racetothetop-assessment/index.html*) and by General Supervision Enhancement Grants (GSEG) program grantees, who are developing alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities;

2. The instructional implications of transitioning to new standards, including the need for aligned, high-quality instructional materials and high-quality professional development and other supports to prepare teachers to teach all students, including English Learners, students with disabilities, and

low-achieving students, to college- and career-ready standards;

3. Integrating new standards and assessments with State accountability systems and State, district, and school teacher and leader support and evaluation systems; and

4. Using assessment data and other measures of student performance to inform instruction, differentiate school performance levels, and evaluate district and school improvement policies and activities.

E. *Requirements for the Center on Great Teachers and Leaders.* In addition to the requirements for all centers and for all Content Centers described in this notice, the Center on Great Teachers and Leaders must provide technical assistance to Regional Centers and SEAs that focuses on—

1. Developing the knowledge and skills of teachers and leaders, with emphasis on improving instructional practices that help students meet college- and career-ready standards;

2. Strategies to ensure the equitable distribution of effective teachers and to meet demand in hard-to-staff schools and subjects and in rural areas;

3. Strategies to recruit, reward, retain, and support effective teachers and leaders by, for example, offering opportunities for career advancement;

4. Developing and implementing teacher and leader human capital management systems (*e.g.,* systems related to recruiting, evaluating, developing, rewarding, and retaining teachers and leaders), including teacher and leader evaluation and support systems that use multiple valid measures of effectiveness (including student growth and other measures of professional performance), differentiate performance levels, inform professional development needs, and focus on continuously improving instruction for teachers in both tested and non-tested grades and subjects, including teachers of English Learners and students with disabilities; and

5. Using human capital strategies, which may include professional development and evaluation, that build teacher and leader capacity to create safe, productive school environments and increase academic engagement for all students through positive behavior management and appropriate discipline.

6. Using data from human capital management systems, State longitudinal data systems, and other sources to guide professional development and improve instruction.

F. *Requirements for the Center on School Turnaround.* In addition to the requirements for all centers and for all Content Centers described in this notice, the Center on School Turnaround must provide technical assistance to Regional Centers and SEAs that focuses on—

1. Developing and strengthening organizational systems and structures that promote and sustain comprehensive district and school reforms that lead to significant gains in student outcomes and close achievement gaps in the lowest-performing schools;

2. Developing effective tools, processes, and policies for States to monitor and support district and school efforts to turn around the lowest-performing schools; the tools, processes, and policies could include ways to select and monitor external providers, support and develop turnaround leaders, and analyze and use data;

3. Collecting and disseminating information and resources on successful school turnaround models;

4. Collecting and disseminating information and resources on promising and emerging State, district, and school approaches to: (a) Improving student outcomes and closing achievement gaps, (b) addressing non-academic factors that impact student achievement, such as students' social, emotional, and health needs, and (c) sustaining improvements across a broad spectrum (e.g., urban, rural, high-poverty) of the lowest-performing schools and across student populations (e.g., English Learners, students with disabilities, high-need students); these approaches may include extending learning time; and

4. Facilitating support networks and ongoing learning opportunities for SEAs, LEAs, and school policymakers and practitioners serving the lowest-performing schools, which may include managing and supporting an online community of practice.

G. *Requirements for the Center on Enhancing Early Learning Outcomes.* In addition to the requirements for all centers and for all Content Centers, the Center on Enhancing Early Learning Outcomes must provide technical assistance to Regional Centers and SEAs that focuses on—

1. Aligning preschool and kindergarten-through-third-grade education policies and systems in order to increase the number of children who transition successfully to kindergarten and to close the achievement gap, particularly for high-need children;

2. Increasing knowledge and expertise among SEA staff and among State-level early learning program staff in understanding the purposes and uses of a full range of early learning assessment strategies and instruments and in selecting assessment instruments and approaches that are appropriate for all children, including English Learners, students with disabilities, and low-achieving students;

3. Using assessment data and other information to improve the quality of instruction in early learning programs;

4. Increasing the effectiveness of the early learning workforce—for example, by assisting SEAs in developing and implementing statewide workforce knowledge and competency frameworks designed to support children's learning and development and improve outcomes; supporting more robust early childhood educator preparation and professional development efforts; and developing a common, statewide progression of teaching credentials and degrees aligned with the State frameworks; and

5. Working to integrate and align resources and policies across State agencies and programs to support a coordinated statewide system that promotes children's success in school.

H. *Requirements for the Center on College and Career Readiness and Success.* In addition to the requirements for all centers and for all Content Centers described in this notice, the Center on College and Career Readiness and Success must provide technical assistance to Regional Centers and SEAs that focuses on—

1. Policies and practices that—

a. Support the successful transition of all students from secondary education to college, without the need for remediation, and to careers; and

b. Increase postsecondary enrollment, persistence, and completion—for example, by assisting SEAs in aligning secondary and postsecondary learning expectations, strengthening the rigor of high school courses and pathways, and providing college counseling;

2. SEA development and scaling up of statewide rigorous career and technical education (CTE) programs that align with college- and career-ready standards and lead to an industry-recognized credential or postsecondary certificate or degree—for example, by implementing high-quality, academically rigorous CTE programs and courses; providing high school credits for work-based learning opportunities; providing college credit for secondary school academic and technical courses through statewide secondary-postsecondary articulation agreements; implementing career counseling services that incorporate the most up-to-date information on existing and emerging in-demand industry sectors and occupations; and aligning CTE programs and priorities with State and local economic development strategies, industry standards in existing

and emerging in-demand industry sectors and occupations, and job growth data;

3. High-quality science, technology, engineering, and mathematics (STEM) instruction that supports and challenges students through a progression of STEM courses and the transition to postsecondary degree and certificate programs in STEM fields;

4. Implementing accelerated learning strategies such as dual-credit and early college options, General Educational Development (GED)-to-college pathways, competency-based pathways, and other programs designed to encourage and support the successful transition of all students, especially disadvantaged and first-generation college-going students, dropouts who re-enter school, and students with disabilities, from secondary school into postsecondary education or training programs; and

5. Effectively using data—for example, using early warning and college- and career-readiness indicators to identify secondary school students needing additional support, or implementing approaches, consistent with Federal, State, and local privacy laws and regulations, to allow data to be shared between LEAs and postsecondary institutions to improve student transitions.

I. *Requirements for the Center on Building State Capacity and Productivity.* In addition to the requirements for all centers and for all Content Centers described in this notice, the Center on Building State Capacity and Productivity must provide technical assistance to Regional Centers and SEAS that focuses on—

1. Building the internal organizational capacity of SEAs by—

a. Supporting the implementation of sustainable organizational structures and effective performance management systems that help SEAs support key education initiatives and set priorities for using their resources;

b. Helping SEAs build their staffs' leadership skills and expertise so that staff can effectively lead and support education initiatives and ensure that districts and schools are provided with high-quality services and supports;

c. Helping SEAs strengthen information sharing across organizational units within SEAs in order to facilitate cross-cutting work that increases the success of State- and district-level initiatives designed to improve student outcomes and that enhances the sustainability of these initiatives;

d. Helping SEAs make more efficient use of scarce resources—for example, by measuring and comparing the costs of similar systems, processes, programs, and products; and

e. Identifying State- and district-level research-based practices and emerging promising practices in such areas as human capital management, financial data systems, and return-on-investment analyses that can inform decision-making and help SEAs improve productivity and reduce costs across classrooms, schools, districts, and States; and

2. Building the organizational capacity of SEAs to support district- and school-level implementation of initiatives designed to improve student outcomes by helping SEAs—

a. Build collaborative and productive relationships with their LEAs; provide technical assistance that builds the capacity of its LEAs; facilitate the sharing of research-based practices, emerging promising practices, and problem-solving strategies among LEAs; and identify ways in which the SEA can help its LEAs scale up effective practices;

b. Identify and implement a continuum of supports and interventions to address the needs of districts and schools;

c. Develop processes to identify and select effective external partners and monitor their progress in achieving stated goals and objectives; and

d. Engage and provide information to key stakeholders, including parents, on the implementation of key initiatives.

J. *Requirements for the Center on Innovations in Learning.* In addition to the requirements for all centers and for all Content Centers described in this notice, the Center on Innovations in Learning must provide technical assistance to Regional Centers and SEAs that focuses on—

1. Identifying and implementing policies, strategies, and practices that encourage the identification and scaling up of new teaching and learning strategies, approaches, processes, or tools that significantly improve, or have the potential to significantly improve, student outcomes—for example, through analyzing State and district data to identify positive trends or unique patterns that indicate significant improvement, or the potential for significant improvement, in student outcomes; helping States use competitions to identify the most promising innovations; helping States rigorously evaluate promising innovations; and supporting States' broad adoption of the most promising and proven innovations and the replacement of less effective programs and practices;

2. Identifying and implementing policies, strategies, and practices that encourage improved student outcomes through personalization of learning for each student—for example, by helping SEAs, LEAs, and schools provide opportunities for self-paced learning, implement instructional approaches and subject matter matched to students needs and interests, and increase access to experts, teachers, and peers who can address specific student needs and interests;

3. Selecting and implementing technologies that support the personalization of learning—for example, (a) data systems that allow teachers to better differentiate instruction and instructional resources for maximum effectiveness and (b) adaptive instructional systems that enable students to optimize the pace of learning and individualize the instructional content they need to achieve mastery;

4. Using State and local data systems to identify specific areas of student need and evaluate the effectiveness of specific strategies that support innovations in learning—for example, practices that improve student learning outcomes, that increase the number of individuals served without increasing resources, or that maintain educational outcomes and the number of students served while using fewer resources; and

5. Identifying and implementing policies and practices that accelerate the adoption of promising and proven personalized learning strategies, practices, and tools.

K. *Application Requirements*

1. *Technical Assistance Plan.* An applicant for a Regional Center must submit as part of its application a five-year plan of technical assistance that describes how it will meet the program requirements for all centers and for Regional Centers. An applicant for a Content Center must submit as part of its application a five-year plan of technical assistance that describes how it will meet the program requirements for all centers, the general requirements for all Content Centers, and the applicable Content Center requirements described in this notice.

2. *Subject-Matter and Technical Expertise.* An applicant for a Regional or Content Center must provide a narrative describing the subject-matter and technical expertise of proposed center staff, including any partners and consultants. At a minimum, the narrative must include the names and resumes for the proposed center staff.

a. *All Centers.* An applicant for a Regional or Content Center must provide evidence in its application

demonstrating that the proposed center staff, including any partners and consultants, possesses—

i. Knowledge and understanding of the research-based practices and emerging promising practices that will enable the applicant to provide high-quality technical assistance specifically related to building SEA capacity to implement State-level initiatives and to support district- and school-level initiatives that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction; and

ii. Experience in the following:

(a) Delivering high-quality, relevant technical assistance and sharing expertise with SEAs or multiple districts. An applicant must provide evidence of the effect that its technical assistance has had on SEAs or LEAs, such as improved student outcomes, increased organizational capacity, the establishment of effective structures or processes, or high levels of client satisfaction.

(b) Supporting SEAs or multiple districts in implementing key initiatives and in making systemic changes beyond individual districts or schools.

(c) Building collaborative relationships with leading experts and organizations in applicable areas of expertise to increase the quality, relevance, and usefulness of technical assistance.

b. *Regional Centers.* In addition to the subject-matter and technical expertise outlined for all center applicants, an applicant for a Regional Center must provide evidence in its application demonstrating that the proposed center staff, including any partners and consultants, possesses—

i. Knowledge and understanding of—

(a) The context and status of education reform in each of the States the applicant would serve;

(b) Leading research on implementing educational initiatives and practices and on how to help SEAs implement, support, scale up, and sustain practices that address identified problems;

(c) LEA support systems within States the applicant would serve, such as networks of educational service agencies and third-party systems of support, and how to use those systems to provide high-quality support to districts and schools; and

ii. Experience in the following:

(a) Working with SEAs or multiple districts to implement comprehensive or innovative plans to improve student achievement or provide large-scale technical assistance focused on improving student outcomes.

(b) Developing and implementing performance and project management systems on a large scale or in large, complex, public-sector institutions.

(c) Facilitating communities of practice within and across States.

c. *Center on Standards and Assessments Implementation.* In addition to the subject-matter and technical expertise outlined for all centers, an applicant for the Center on Standards and Assessments Implementation must provide evidence in its application demonstrating that the proposed center staff, including any partners and consultants, possesses—

i. Knowledge and understanding of—

(a) The Common Core State Standards and other college- and career-ready standards that States have adopted, including detailed knowledge and understanding of the differences in expectations embedded in these standards compared to those embedded in current State standards;

(b) The work of the Smarter Balanced assessment consortium and the Partnership for Assessment of Readiness for College and Careers (PARCC) assessment consortium, as well as other State-developed assessments that are linked to college- and career-ready standards, including assessment designs and the status of efforts to develop and pilot the new assessments; and

(c) Instructional strategies and high-quality curricula that are aligned with rigorous college- and career-ready standards and support the teaching and learning of all students, including English Learners, students with disabilities, and low-achieving students; and

ii. Experience in the following:

(a) Working successfully with SEAs or multiple districts on the implementation of new standards or assessments.

(b) Working with experts and practitioners involved in college- and career-ready assessment efforts supported by States, such as the Smarter Balanced or PARCC assessment consortia.

(c) Working with SEAs or multiple districts in aligning curricular and instructional options, as well as teacher and leader professional development, with new, more rigorous standards.

(d) Working with SEAs, LEAs, or school policymakers and practitioners on the interpretation and appropriate use of assessment data.

d. *Center on Great Teachers and Leaders.* In addition to the subject-matter and technical expertise outlined for all centers, an applicant for the Center on Great Teachers and Leaders must provide evidence in its application demonstrating that the proposed center staff, including any partners and consultants, possesses—

i. Knowledge and understanding of—

(a) Teacher and leader professional development that improves instruction and helps students meet college- and career-ready standards;

(b) Strategies to improve teacher and leader recruitment and retention;

(c) Designing or improving teacher and leader human capital management systems, including teacher and leader evaluation and support systems, that are based in significant part on student growth, differentiate performance, include multiple measures of effectiveness, inform professional development, and focus on continuous improvement of instruction; and

(d) The broad range of SEA and district teacher and leader human capital management systems, State policies that facilitate or hinder the development of such high-quality systems, and possible barriers to the equitable distribution of effective teachers and leaders; and

ii. Experience in the following:

(a) Working successfully with SEAs or multiple districts on improving the quality of instruction statewide or across multiple districts.

(b) Working collaboratively with teacher and leader preparation organizations, institutions of higher education, charter management organizations, or other teacher and leader preparation and development groups to develop, implement, or improve teacher and leader human capital management systems, including teacher and leader evaluation and support systems.

e. *Center on School Turnaround.* In addition to the subject-matter and technical expertise outlined for all centers, an applicant for the Center on School Turnaround must provide evidence in its application demonstrating that the proposed center staff, including any partners and consultants, possesses—

i. Knowledge and understanding of—

(a) The approaches States, districts, and schools are taking to turn around their lowest-performing schools, including efforts under the School Improvement Grants and Race to the Top programs; and

(b) Emerging promising practices, including non-academic practices that impact student outcomes, for improving student outcomes in the lowest-performing schools, particularly those engaged in school turnaround efforts; and

ii. Experience working with SEAs or multiple districts on school turnaround

efforts, including helping SEAs or multiple districts develop and implement structures or systems that promote and sustain comprehensive district and school reforms and processes and tools to monitor turnaround efforts.

f. *Center on Enhancing Early Learning Outcomes.* In addition to the subject-matter and technical expertise outlined for all centers, an applicant for the Center on Enhancing Early Learning Outcomes must provide evidence in its application demonstrating that the proposed center staff, including any partners and consultants, possesses—

i. Knowledge and understanding of—

(a) Developmentally appropriate practices for early learning;

(b) State early learning and development standards that define what children should know and be able to do from birth through third grade;

(c) Principles and approaches to appropriately assess young children's knowledge and skills from birth through third grade, including expertise in the field of psychometrics;

(d) The issues related to improving the workforce serving children from birth through third grade, including issues related to workforce competencies, certifications, and compensation; and

(e) State early learning systems; and

ii. Experience in the following:

(a) Providing technical assistance to SEAs or multiple districts on selecting, using, and interpreting the results of early childhood assessments.

(b) Assisting SEAs or multiple districts on building an effective early childhood workforce; and

(c) Working with publically funded early learning programs, such as State-funded preschool; Head Start; programs funded under section 619 of part B of IDEA and part C of IDEA; programs funded under Title I of the ESEA; and programs receiving funds from the State's Child Care Development Fund (CCDF).

g. *Center on College and Career Readiness and Success.* In addition to the subject-matter and technical expertise outlined for all centers, an applicant for the Center on College and Career Readiness and Success must provide evidence in its application demonstrating that the proposed center staff, including any partners and consultants, possess—

i. Knowledge and understanding of—

(a) Research-based practices and emerging promising practices that support the successful transition of all students from secondary education to college, without the need for remediation, and to careers;

(b) Rigorous career and technical education programs of study that align with college- and career-ready standards; and

(c) High-quality STEM instructional pathways that lead to a postsecondary degree or certification in STEM fields; and

ii. Experience in the following:

(a) Working with SEAs or multiple districts to design and implement systemic, comprehensive strategies that promote college- and career-readiness for K–12 students and students' successful transition from high school graduation to postsecondary education and the workforce.

(b) Helping SEAs address the systemic needs and challenges they and their LEAs face in ensuring that all students graduate from high school prepared for college and careers, particularly in high-poverty, high-minority, urban, and rural settings.

(c) Working with K–12 and postsecondary education systems to align policies and practices in order to improve student transitions from high school to postsecondary degree or credential programs.

h. *Center on Building State Capacity and Productivity.* In addition to the subject-matter and technical expertise outlined for all centers, an applicant for the Center on Building State Capacity and Productivity must provide evidence in its application demonstrating that the proposed center staff, including any partners and consultants, possesses—

i. Knowledge and understanding of—

(a) SEA organizational structures that are effective in supporting district- and school-level implementation of effective practices to improve student outcomes;

(b) The relationship of an SEA to its LEAs and the differing resources and capacities that exist across LEAs;

(c) Research-based practices and emerging promising practices in using LEA support systems in States, such as networks of educational service agencies and third-party systems of support, in order to provide high-quality support to districts and schools; and

(d) Leading research in performance and project management, including research conducted in non-education sectors and industries; and

ii. Experience in the following:

(a) Working with SEAs to successfully implement programs or initiatives statewide or in multiple districts.

(b) Providing in-depth coaching and advice to SEA leaders on improving internal organizational capacity or the capacity to support district- and school-level implementation of effective practices in order to improve student outcomes.

(c) Facilitating communities of practice within and across States.

(d) Working with large-scale organizations, especially public-sector organizations that work with multiple constituencies and stakeholders, on performance and project management.

i. *Center on Innovations in Learning.* In addition to the subject-matter and technical expertise outlined for all centers, an applicant for the Center on Innovations in Learning must provide evidence in its application demonstrating that the proposed center staff, including any partners and consultants, possesses—

i. Knowledge and understanding of—

(a) Policies, strategies, and practices that encourage the identification and scaling up of new teaching and learning strategies, approaches, processes, or tools that significantly improve, or have the potential to significantly improve, student outcomes; and

(b) Policies, strategies, and practices that encourage improved student outcomes through personalization of learning and through implementing technologies that support the personalization of learning; and

ii. Experience in the following:

(a) Working with SEAs on identifying and implementing policies, strategies, and practices that encourage the identification and scaling up of new teaching and learning strategies, approaches, processes, or tools that significantly improve, or have the potential to significantly improve, student outcomes.

(b) Working with SEAs or LEAs on identifying and implementing policies, strategies, and practices that encourage improved student outcomes through personalization of learning, including selecting or developing and implementing technologies that support personalized learning.

3. Management Plan.

An applicant must submit a management plan that describes the responsibilities of key personnel, timelines, and milestones for accomplishing project tasks; the time commitment of key personnel; and the adequacy and allocation of resources, including financial or in-kind matching contributions from an entity or organization in the public or private sector, if any. If an applicant's proposed budget includes matching contributions, the application must include evidence of a commitment for the full amount of the matching contribution, inclusive of the source of the funds or in-kind contributions and the date(s) they will be received.

4. Performance and Evaluation Plan.

Each applicant must provide a plan to assess the progress and performance of the center in meeting the educational and capacity-building needs of SEAs. The plan must identify a set of performance objectives the project intends to achieve and performance measures for each performance objective, which must include results-based outcomes; explain the qualitative and quantitative methods that will be used to collect, analyze, and report performance data; and describe the methods that will be used to monitor progress and make mid-course corrections as needed. Each center must also provide a plan to collect and use reliable formative and summative data throughout the grant period to inform and improve service delivery.

III. Flexibility and Requirements for Regional Center Assignments

Requirements. In the second fiscal year of the cooperative agreement, and in each subsequent fiscal year, an SEA could indicate to the Department its desire to affiliate with a different Regional Center, regardless of the geographic location of that Center. A State could exercise this option only once in any two-year period.

To exercise this option, a State must notify the Department in writing, not later than six months prior to the end of the fiscal year, that it wishes to affiliate with a different Regional Center noting the specific reasons for requesting reassignment. The Department will notify the current Regional Center immediately after receiving the request for reassignment. In order to allow time for the grantee to address quality-of-service issues and for the Department to evaluate whether reassignment is in the best interest of the program, the Department will provide the State's current Regional Center a specified period of time to address the concerns articulated by the State before the Department considers the State request. The State must provide—

A. Documentation from the proposed Regional Center with which it wants to affiliate that indicates the Center's willingness and capacity to serve the additional State; and

B. Other information that the Department requests.

After considering the documentation and other information, the Department could approve a request if it is consistent with the requirements in section 203(a) of ETAA that (1) there be no fewer than 20 Comprehensive Centers and that (2) there be at least one Comprehensive Center in each of the 10 geographic regions served by the RELs. If the Department approves the request, the Department will re-designate regions served by each Regional Center to reflect any changes in regional membership. The Department will re-allocate the funding to each center, taking into account changes in the number of students served by each Regional Center and other such factors it deems appropriate. The Department will provide notification of any changes through a notice published in the **Federal Register**.

IV. Selection Criteria

Selection Criteria: In any competition under this program, the Secretary may use one or more of the selection criteria proposed in this notice, any of the selection criteria in 34 CFR 75.210, criteria based on the statutory requirements for the Comprehensive Centers program in accordance with 34 CFR 75.209, or any combination of these. This includes the authority to reduce the number of selection criteria.

The Secretary may apply one or more of these criteria in any year in which this program is in effect. The Secretary may also select one or more of these selection criteria to review pre-applications, if the Secretary decides to invite pre-applications in accordance with 34 CFR 75.103. In the notice inviting applications, the application package, or both, we will announce the maximum possible points assigned to each criterion.

A. Technical Assistance Plan.

1. *Overall quality of the technical assistance plan.* In determining the overall quality of the technical assistance plan for the proposed center and the likelihood of the center contributing to improved State outcomes, the Secretary considers—

a. The extent to which the proposed technical assistance plan presents an exceptional approach that will likely result in building SEA capacity to implement State-level initiatives and support district- and school-level initiatives that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction;

b. The potential contribution of the center to increasing the knowledge and understanding of effective strategies in the center's area of expertise; and

c. The extent to which the proposed technical assistance plan presents an approach that will result in the sharing of high-quality, relevant, useful information, materials, and other applicable resources across SEAs, districts, and schools, within and outside of a region.

d. In the case of an applicant for a Regional Center, the extent to which the proposed technical assistance plan presents an approach that is likely to secure an SEA's commitment to devote the time, leadership, and personnel needed to implement the work plan and achieve specific goals, which may include a memorandum of understanding or similar agreement that contains timelines and benchmarks to ensure that the work stays on track to achieve these goals.

2. *Quality of the Project Design.* In determining the quality of the project design of the proposed center for which the applicant is applying, the Secretary considers—

a. The extent to which the applicant's technical assistance plan proposes an exceptional approach to meeting the requirements for all centers, which includes—

i. Providing high-quality technical assistance that is based on up-to-date knowledge and understanding of research-based practices and emerging promising practices; is highly relevant and useful to SEAs, LEAs, and school policymakers and practitioners; and is delivered in a timely, cost-efficient manner;

ii. Focusing technical assistance on helping SEAs build capacity to implement State-level initiatives and support district- and school-level initiatives that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction; and

iii. Coordinating and collaborating with national experts and technical assistance providers to ensure that the technical assistance is informed by leading-edge research and innovative approaches and avoids duplicating efforts;

b. In the case of an applicant for a Regional Center, the extent to which the applicant's technical assistance plan proposes an exceptional approach to meeting the requirements for all Regional Centers; and

c. In the case of an applicant for a Content Center, the extent to which the applicant's technical assistance plan proposes an exceptional approach to meeting the requirements for all Content Centers, as well as the requirements for the specific Content Center for which the applicant is applying.

3. *Knowledge of State Technical Assistance Needs.* In determining the applicant's ability to meet State technical assistance needs, the Secretary considers the extent to which the proposed technical assistance plan provides strategies that address the technical assistance needs of States in key areas, as evidenced by in-depth knowledge and understanding of—

a. In the case of an applicant for a Regional Center, the specific educational goals and priorities of the States to be served by the applicant, including emerging priorities based on State-led reform efforts;

b. In the case of an applicant for a Regional Center, the applicable State and regional demographics, policy contexts, and other factors and their relevance to improving student outcomes, closing achievement gaps, and improving instruction; and

c. In the case of an applicant for a Content Center, State technical assistance needs, and research-based practices and emerging promising practices related to the Content Center for which the applicant is applying.

B. Subject-Matter and Technical Expertise.

Quality of Key Project Personnel. In determining the subject-matter and technical expertise of key project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers—

1. The knowledge, understanding, and experience of key project personnel as outlined under the subject-matter and technical expertise requirements for all centers;

2. In the case of an applicant for a Regional Center, in addition to the knowledge, understanding, and experience outlined under subject-matter and technical expertise requirements for all centers, the subject-matter and technical expertise of key personnel outlined under the requirements for Regional Centers;

3. In the case of an applicant for a Content Center, in addition to the knowledge, understanding, and experience outlined under subject-matter and technical expertise requirements for all centers, the subject-matter and technical expertise of key personnel outlined under the requirements for the specific Content Center for which the applicant is applying;

4. The extent to which the applicant has demonstrated experience providing high-quality technical assistance to SEAs or multiple districts;

5. The extent to which the applicant has demonstrated the ability to develop ongoing partnerships with leading experts and organizations nationwide that inform high-quality technical assistance and subject-matter expertise;

6. The extent to which the applicant has prior relevant experience operating a project of the scope required for the purposes of the center being proposed; and

7. The extent to which the applicant proposes an advisory board membership in accordance with the requirements of the ETAA and includes reasonable assurance of proposed board members' commitment to serve.

C. Management and Evaluation Plans.

1. *Quality of the Management Plan.* In determining the quality of the management plan for the proposed center, the Secretary considers—

a. The adequacy of the management plan to achieve the objectives of the project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks;

b. The extent to which the time commitments of the project director and other key project personnel, including any partners or consultants, are appropriate and adequate to meet the objectives of the proposed project;

c. The extent to which resources are allocated within a region for Regional Centers, and across regions for Content Centers, in a manner that reflects the need for technical assistance; and

d. The adequacy of the resources for the proposed project, including whether the applicant proposes facilities and equipment to successfully carry out the purposes and activities of the proposed center.

2. *Quality of the Project Evaluation Plan.* In determining the quality of the evaluation plan, the Secretary considers—

a. The extent to which the applicant demonstrates a strong capacity to provide reliable formative and summative data on performance measures;

b. The extent to which the performance goals and objectives for the project are clearly specified and measurable in terms of the project activities to be accomplished and their stated outcomes;

c. The extent to which the methods for monitoring performance and evaluating the effectiveness of project strategies in terms of outcomes for SEAs, districts, and schools are thorough, feasible, and appropriate to the objectives and outcomes of the proposed project;

d. The extent to which the methods of evaluation will provide continuous performance feedback and encourage the continuous assessment of progress toward achieving intended outcomes; and

e. The extent to which the applicant has a high-quality plan to use both formative and summative data from evaluations to inform and improve service delivery over the course of the grant.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these priorities, requirements, and selection criteria, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563: Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments, or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the Executive Order, it has been determined that this regulatory action is significant and subject to OMB review under section 3(f)(4) of the Executive Order.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those

approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these priorities, requirements, and selection criteria only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

Need for Federal Regulatory Action: These priorities, requirements, and selection criteria are needed to implement the Comprehensive Centers program because the authorizing language in the ETAA provides only broad parameters to govern the program. The Department does not believe that the statute, by itself, provides a sufficient level of detail to ensure that all States can build their capacity to improve educational outcomes for all students. The priorities, requirements, and selection criteria in this notice clarify the types of centers the Department seeks to fund and permit the Department to evaluate proposed centers using selection criteria that are based on the purpose of the program and are closely aligned with the Department's priorities. In the absence of specific selection criteria for the Comprehensive Centers program, the Department would use the general selection criteria in 34 CFR 75.210 of the Education Department General Administrative Regulations in selecting grant recipients. The Department does not believe the use of those general criteria would be sufficient for a Comprehensive Centers program competition because they do not focus specifically on the objectives of the program, especially the role of the centers in providing technical assistance to SEAs so that they can build their capacity to assist LEAs and schools and, in turn, improve educational outcomes for students.

Regulatory Alternatives Considered: The Department considered a variety of possible priorities, requirements, and selection criteria before deciding on those included in this notice. For example, the Department considered a priority to support knowledge management and dissemination across all Comprehensive Centers. It chose instead to require each center to collaborate with other Department-funded centers engaged in that type of activity.

The priorities, requirements, and selection criteria reflect and promote the purpose of the Comprehensive Centers program. They also align the program, where possible and permissible, with other Presidential and Departmental priorities. We believe that the priorities, requirements, and selection criteria in this notice appropriately balance the need for specific programmatic guidance while providing each applicant with flexibility to design and propose an innovative and effective Comprehensive Center.

Summary of Costs and Benefits: The Department believes that these priorities, requirements, and selection criteria do not impose significant costs on eligible research organizations, institutions, agencies, institutions of higher education, or partnerships among such entities, or individuals that would receive assistance through the Comprehensive Centers program. We also believe that the benefits of implementing the priorities and requirements contained in this notice justify any associated costs.

The Department believes that the priorities, requirements, and selection criteria will result in the selection of high-quality applications to establish centers that are most likely to build the capacity of SEAs in order to improve educational outcomes for all students. Through these priorities, requirements, and selection criteria, we clarify the scope of activities we expect to support with program funds and the expected burden of work involved in preparing an application and implementing a center under the program. A potential applicant would need to consider carefully the effort that would be required to prepare a strong application and its capacity to implement a project successfully.

The Department further believes that the costs imposed on an applicant by the priorities, requirements, and selection criteria are largely limited to paperwork burden related to preparing an application and that the benefits of preparing an application and receiving an award will justify any costs incurred by the applicant. This is because, during the project period, the costs of actually establishing a center and carrying out activities under a Comprehensive Centers program grant would be paid for with program funds and any matching funds. Thus, the costs of establishing a Comprehensive Center using these priorities, requirements, and selection criteria will not be a significant burden for any eligible applicant, including a small entity.

Accounting Statement: As required by OMB Circular A–4 (available at *http://www.Whithouse.gov/omb/Circulars/a004/a-4.pdf)*, in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the Federal payments to be made to eligible applicants under this program as a result of this regulatory action. This table is based on funds the Department has requested for new awards for this program for FY 2012. The actual level of funding, if any, depends on final congressional action. Expenditures are classified as transfers to those entities listed.

Accounting Statement Classification of Estimated Expenditures:

Category	Transfers (in millions)
Annual Monetized Transfers.	$51.2
From Whom to Whom.	Federal Government to research organizations, institutions, agencies, institutions of higher education, or partnerships among such entities, or individuals.

Regulatory Flexibility Act Certification: The Secretary certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this regulatory action may affect are eligible research organizations, institutions, agencies, institutions of higher education, or partnerships among such entities, or individuals. The Secretary believes that the costs imposed on an applicant by the priorities, requirements, and selection criteria would be limited to paperwork burden related to preparing

an application and that the benefits of implementing them would outweigh any costs incurred by the applicant.

Participation in the Comprehensive Centers program is voluntary. For this reason, the priorities, requirements, and selection criteria will impose no burden on small entities unless they apply for funding under the Comprehensive Centers program using the priorities, requirements, and selection criteria in this notice. We expect that in determining whether to apply for Comprehensive Center funds, an eligible entity would evaluate the requirements of preparing an application and implementing a Comprehensive Center, and any associated costs, and weigh them against the benefits likely to be achieved by implementing a center. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application and implementing a project. The likely benefits of applying for a Comprehensive Center program grant include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of such application to create partnerships with other entities in order to assist State educational agencies.

The U.S. Small Business Administration (SBA) Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The Secretary believes that the priorities, requirements, and selection criteria in this notice do not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of this regulatory action and the time needed to prepare an application would likely be the same.

Further, this regulatory action may help a small entity determine whether it has the interest, need, or capacity to implement activities under the program and, thus, prevent a small entity that does not have such an interest, need, or capacity from absorbing the burden of applying.

This regulatory action will not have a significant economic impact on a small entity once it receives a grant because it will be able to meet the costs of compliance using the funds provided under this program.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation process to provide the public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection 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 Department can properly assess the impact of collection requirements on respondents.

We estimate that each applicant will spend approximately 176 hours of staff time to address the priorities, requirements, and selection criteria; prepare the application; and obtain necessary clearances. Based on the number of applications the Department received in the last competition it held under this program (in FY 2005), we expect to receive approximately 65 applications for these funds. The total number of hours for all expected applicants is an estimated 11,440 hours. We estimate the total cost per hour of the applicant-level staff who will carry out this work to be $57 per hour. The total estimated cost for all applicants will be $652,080.

In the Notice of Proposed Priorities we invited comment on the paperwork burden estimated for this collection. We did not receive any comments.

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. The OMB control number assigned to this information collection is 1810–0709.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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

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Dated: June 1, 2012.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–13739 Filed 6–5–12; 8:45 am]

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