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FEDERAL REGISTER

Vol. 77 Thursday,
No. 149 August 2, 2012

Pages 45895–46256

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Title 3—

The President

Proclamation 8845 of July 27, 2012

World Hepatitis Day, 2012

By the President of the United States of America

A Proclamation

Worldwide, one in twelve people is living with viral hepatitis—a disease that threatens the health of millions of Americans and people across the globe. As a leading cause of liver cancer in the United States, it remains a major public health challenge here at home. Because the disease can persist for decades without symptoms, many Americans who are chronically infected are unaware of their infection status. On World Hepatitis Day, we call attention to this silent epidemic, and we rededicate ourselves to the fight against viral hepatitis.

Hepatitis prevention and control begins with awareness. Though all types of viral hepatitis are associated with serious health issues, hepatitis B and C can become chronic infections that often lead to liver cirrhosis or liver cancer. Tragically, complications resulting from viral hepatitis claim thousands of American lives every year—a burden borne disproportionately by African American, Hispanic, and Asian American and Pacific Islander (AAPI) communities, and by persons born between 1945 and 1965. Despite the health issues associated with the disease, a majority of Americans living with chronic hepatitis do not know they are infected.

Hepatitis A and B can be prevented with vaccines, which are recommended for all children—and for adults who are at high risk of contracting viral hepatitis. While no vaccine exists for hepatitis C, early detection and treatment can curb transmission, limit the disease's progression, and prevent life-threatening complications, including liver cancer. I encourage all Americans to talk with a physician about hepatitis prevention to learn more about what they can do to stay healthy.

My Administration remains committed to addressing viral hepatitis. As part of our Action Plan for the Prevention, Care, and Treatment of Viral Hepatitis; the Healthy People 2020 initiative; and other Federal programs, agencies across the Federal Government are partnering with States, communities, and stakeholders throughout the private and nonprofit sectors to prevent new cases of hepatitis and help Americans who have already been affected. We are promoting hepatitis outreach and education that shines a light on this public health issue. With the White House Initiative on Asian Americans and Pacific Islanders, we are working to prevent, treat, and control hepatitis B infections in AAPI communities. And by bringing health insurance within reach for more Americans, the Affordable Care Act is helping improve patient access to comprehensive viral hepatitis prevention and treatment services.

On World Hepatitis Day, let us raise awareness of the global health threat of viral hepatitis, renew our support for those living with the disease, and recommit to a future free of this tragic illness.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim July 28, 2012, as World Hepatitis Day. I encourage citizens, Government agencies, nonprofit organizations, and communities across the Nation to join in activities that will increase awareness about hepatitis and what we can do to prevent it.

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

[FR Doc. 2012–18974
Filed 8–1–12; 8:45 am]
Billing code 3295–F2–P

Presidential Documents

Executive Order 13622 of July 30, 2012

Authorizing Additional Sanctions With Respect to Iran

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, in order to take additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995, as relied upon for additional steps in subsequent Executive Orders, particularly in light of the Government of Iran's use of revenues from petroleum, petroleum products, and petrochemicals for illicit purposes, Iran's continued attempts to evade international sanctions through deceptive practices, and the unacceptable risk posed to the international financial system by Iran's activities, hereby order:

Section 1. (a) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to impose on a foreign financial institution the sanctions described in subsection (b) of this section upon determining that the foreign financial institution has knowingly conducted or facilitated any significant financial transaction:

(i) with the National Iranian Oil Company (NIOC) or Naftiran Intertrade Company (NICO), except for a sale or provision to NIOC or NICO of the products described in section 5(a)(3)(A)(i) of the Iran Sanctions Act of 1996 (Public Law 104–172), as amended, provided that the fair market value of such products is lower than the applicable dollar threshold specified in that provision;

(ii) for the purchase or acquisition of petroleum or petroleum products from Iran; or

(iii) for the purchase or acquisition of petrochemical products from Iran.

(b) With respect to any foreign financial institution determined by the Secretary of the Treasury in accordance with this section to meet the criteria set forth in subsection (a)(i), (a)(ii), or (a)(iii) of this section, the Secretary of the Treasury may prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by such foreign financial institution.

(c) Subsections (a)(i) and (ii) of this section shall apply with respect to a significant financial transaction conducted or facilitated by a foreign financial institution only if:

(i) the President determines under subparagraphs (4)(B) and (C) of subsection 1245(d) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81) (NDAA) that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions; and

(ii) an exception under subparagraph 4(D) of subsection 1245(d) of the NDAA from the imposition of sanctions under paragraph (1) of that subsection does not apply with respect to the country with primary jurisdiction over the foreign financial institution.

(d) Subsection (a) of this section shall not apply with respect to any person for conducting or facilitating a transaction for the sale of food,

medicine, or medical devices to Iran or when the underlying transaction has been authorized by the Secretary of the Treasury.

(e) The prohibitions in subsection (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. (a) The Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Commerce, and the United States Trade Representative, and with the President of the Export-Import Bank, the Chairman of the Board of Governors of the Federal Reserve System, and other agencies and officials as appropriate, is hereby authorized to impose on a person any of the sanctions described in section 3 or 4 of this order upon determining that the person:

(i) knowingly, on or after the effective date of this order, engaged in a significant transaction for the purchase or acquisition of petroleum or petroleum products from Iran;

(ii) knowingly, on or after the effective date of this order, engaged in a significant transaction for the purchase or acquisition of petrochemical products from Iran;

(iii) is a successor entity to a person determined by the Secretary of State in accordance with this subsection to meet the criteria in subsection (a)(i) or (a)(ii) of this section;

(iv) owns or controls a person determined by the Secretary of State in accordance with this subsection to meet the criteria in subsection (a)(i) or (a)(ii) of this section, and had knowledge that the person engaged in the activities referred to in that subsection; or

(v) is owned or controlled by, or under common ownership or control with, a person determined by the Secretary of State in accordance with this subsection to meet the criteria in subsection (a)(i) or (a)(ii) of this section, and knowingly participated in the activities referred to in that subsection.

(b) Subsection (a)(i) of this section shall apply with respect to a person only if:

(i) the President determines under subparagraphs (4)(B) and (C) of subsection 1245(d) of the NDAA that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions; and

(ii) an exception under subparagraph 4(D) of subsection 1245(d) of the NDAA from the imposition of sanctions under paragraph (1) of that subsection does not apply with respect to the country with primary jurisdiction over the person.

Sec. 3. When the Secretary of State, in accordance with the terms of section 2 of this order, has determined that a person meets any of the criteria described in section 2 and has selected any of the sanctions set forth below to impose on that person, the heads of relevant agencies, in consultation with the Secretary of State, shall take the following actions where necessary to implement the sanctions imposed by the Secretary of State:

(a) the Board of Directors of the Export-Import Bank shall deny approval of the issuance of any guarantee, insurance, extension of credit, or participation in an extension of credit in connection with the export of any goods or services to the sanctioned person;

(b) agencies shall not issue any specific license or grant any other specific permission or authority under any statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or technology to the sanctioned person;

(c) with respect to a sanctioned person that is a financial institution:

(i) the Chairman of the Board of Governors of the Federal Reserve System and the President of the Federal Reserve Bank of New York shall take such actions as they deem appropriate, including denying designation, or terminating the continuation of any prior designation of, the sanctioned person as a primary dealer in United States Government debt instruments; or

(ii) agencies shall prevent the sanctioned person from serving as an agent of the United States Government or serving as a repository for United States Government funds; or

(d) agencies shall not procure, or enter into a contract for the procurement of, any goods or services from the sanctioned person.

(e) The prohibitions in subsections (a)–(d) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 4. (a) When the Secretary of State, in accordance with the terms of section 2 of this order, has determined that a person meets any of the criteria described in section 2 and has selected any of the sanctions set forth below to impose on that person, the Secretary of the Treasury, in consultation with the Secretary of State, shall take the following actions where necessary to implement the sanctions imposed by the Secretary of State:

(i) prohibit any United States financial institution from making loans or providing credits to the sanctioned person totaling more than $10,000,000 in any 12-month period, unless such person is engaged in activities to relieve human suffering and the loans or credits are provided for such activities;

(ii) prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest;

(iii) prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the sanctioned person;

(iv) block all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any foreign branch, of the sanctioned person, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in; or

(v) restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from the sanctioned person.

(b) The prohibitions in subsections (a)(i)–(a)(v) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 5. (a) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to impose on a person the measures described in subsection (b) of this section upon determining that the person has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, NIOC, NICO, or the Central Bank of Iran, or the purchase or acquisition of U.S. bank notes or precious metals by the Government of Iran.

(b) With respect to any person determined by the Secretary of the Treasury in accordance with subsection (a) to meet the criteria set forth in subsection (a) of this section, all property and interests in property that are in the United States, that hereafter come within the United States, or that are

or hereafter come within the possession or control of any United States person, including any foreign branch, of such person are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(c) The prohibitions in subsection (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 6. Subsection 1(a), section 2, and subsection 5(a) of this order shall not apply with respect to any person for conducting or facilitating a transaction involving a natural gas development and pipeline project initiated prior to the effective date of this order to bring gas from Azerbaijan to Europe and Turkey in furtherance of a production sharing agreement or license awarded by a sovereign government other than the Government of Iran before the effective date of this order.

Sec. 7. I hereby determine that, to the extent section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) may apply, the making of donations of the type of articles specified in such section by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to subsection (a)(iv) of section 4 or subsection (b) of section 5 of this order would seriously impair my ability to deal with the national emergency declared in Executive Order 12957, and I hereby prohibit such donations as provided by subsection (a)(iv) of section 4 and subsection (b) of section 5 of this order.

Sec. 8. The prohibitions in subsection (a)(iv) of section 4 and subsection (b) of section 5 of this order include, but are not limited to:

(i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 9. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 10. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) the term ''financial institution,'' as used in sections 3 and 4 of this order, includes (i) a depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act) (12 U.S.C. 1813(c)(1)), including a branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) (12 U.S.C. 3101(7)); (ii) a credit union; (iii) a securities firm, including a broker or dealer; (iv) an insurance company, including an agency or underwriter; and (v) any other company that provides financial services;

(e) the term ''foreign financial institution,'' as used in section 1 of this order, means any foreign entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes, but is not limited to, depository institutions, banks, savings

banks, money service businesses, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and holding companies, affiliates, or subsidiaries of any of the foregoing. The term does not include the international financial institutions identified in 22 U.S.C. 262r(c)(2), the International Fund for Agricultural Development, the North American Development Bank, or any other international financial institution so notified by the Secretary of the Treasury;

(f) the term ''United States financial institution'' means a financial institution as defined in subsection (d) of this section (including its foreign branches) organized under the laws of the United States or any jurisdiction within the United States or located in the United States;

(g) the term ''Iran'' means the Government of Iran and the territory of Iran and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights, or jurisdiction, provided that the Government of Iran exercises partial or total de facto control over the area or derives a benefit from economic activity in the area pursuant to international arrangements;

(h) the term ''Government of Iran'' includes the Government of Iran, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iran, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran;

(i) the terms ''knowledge'' and ''knowingly,'' with respect to conduct, a circumstance, or a result, mean that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result;

(j) the term ''sanctioned person'' means a person on whom the Secretary of State, in accordance with the terms of section 2 of this order, has determined to impose sanctions pursuant to section 2;

(k) the term ''petroleum'' (also known as crude oil) means a mixture of hydrocarbons that exists in liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities;

(l) the term ''petroleum products'' includes unfinished oils, liquefied petroleum gases, pentanes plus, aviation gasoline, motor gasoline, naphtha-type jet fuel, kerosene-type jet fuel, kerosene, distillate fuel oil, residual fuel oil, petrochemical feedstocks, special naphthas, lubricants, waxes, petroleum coke, asphalt, road oil, still gas, and miscellaneous products obtained from the processing of: crude oil (including lease condensate), natural gas, and other hydrocarbon compounds. The term does not include natural gas, liquefied natural gas, biofuels, methanol, and other non-petroleum fuels;

(m) the term ''petrochemical products'' includes any aromatic, olefin, and synthesis gas, and any of their derivatives, including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol, and urea;

(n) the terms ''National Iranian Oil Company'' and ''NIOC'' mean the National Iranian Oil Company and any entity owned or controlled by, or operating for or on behalf of, the National Iranian Oil Company; and

(o) the terms ''Naftiran Intertrade Company'' and ''NICO'' mean the Naftiran Intertrade Company and any entity owned or controlled by, or operating for or on behalf of, the Naftiran Intertrade Company.

Sec. 11. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to subsection (a)(iv) of section 4 or subsection (b) of section 5 of this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national

emergency declared in Executive Order 12957, there need be no prior notice of an action taken pursuant to subsection (a)(iv) of section 4 or subsection (b) of section 5 of this order.

Sec. 12. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of sections 1, 4, and 5 of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 13. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 14. The measures taken pursuant to this order are in response to actions of the Government of Iran occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to those later actions.

Sec. 15. This order is effective at 12:01 a.m. eastern daylight time on July 31, 2012.

THE WHITE HOUSE,
Washington, July 30, 2012.

[FR Doc. 2012–19055
Filed 8–1–12; 8:45 am]
Billing code 3295–F2–P

Rules and Regulations

Federal Register
Vol. 77, No. 149
Thursday, August 2, 2012

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–11–0058; NOP–11–09FR]

RIN 0581–AD15

National Organic Program; Amendments to the National List of Allowed and Prohibited Substances (Crops, Livestock and Processing)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Department of Agriculture's (USDA's) National List of Allowed and Prohibited Substances (National List) to enact recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on October 28, 2010, and April 29, 2011. This final rule amends the annotation for tetracycline for use in organic crop production and adds two substances: formic acid and attapulgite, along with any restrictive annotations, for use in organic livestock production and organic processing, respectively.

DATES: *Effective Date:* This final rule is effective August 3, 2012.

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

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established within the National Organic Program (NOP) (7 CFR part 205), the National List regulations §§ 205.600 through 205.607. This National List identifies synthetic substances that may be used and nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies nonagricultural synthetic, nonsynthetic nonagricultural and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990 (OFPA), as amended, (7 U.S.C. 6501 *et seq.*), and the NOP regulations, in § 205.105, specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonsynthetic nonagricultural substance used in organic handling must also be on the National List.

Under the authority of the OFPA, as amended (7 U.S.C. 6501–6522), 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 13504); August 3, 2011 (76 FR 46595); February 14, 2012 (77 FR 8089); May 15, 2012 (77 FR 28472); and June 6, 2012 (77 FR 33290). Additionally, proposed amendments to the National List were published on January 12, 2012 (77 FR 1980), and on February 6, 2012 (77 FR 5717).

This final rule amends the National List to enact three recommendations submitted to the Secretary by the NOSB on October 28, 2010, and April 29, 2011. One recommendation addressed the annotation for tetracycline in organic crop production. The other recommendations pertained to the addition of two substances, formic acid for use in organic livestock production and attapulgite for use in organic handling.

Tetracycline

Tetracycline is a broad-spectrum antibiotic for control of bacteria, fungi and mycoplasma-like organisms which functions by inhibiting protein synthesis in bacteria and altering bacterial membranes so that vital genetic material is leaked. For regulatory purposes, Environmental Protection Agency (EPA) uses the term oxytetracycline to refer to pesticides containing either calcium oxytetracycline or hydroxytetracycline monohydrochloride (oxytetracycline hydrochloride). Oxytetracycline is registered with the EPA for the following agronomic uses: fire blight of apples, pears, peaches and nectarines; pear decline; bacterial spot on peaches and nectarines; lethal yellowing of coconut palm; and lethal decline of pritchardia palm.

The current listing for tetracycline on the National List at § 205.601(i)(12) is as follows:

Tetracycline, for fire blight control only and for use only until October 21, 2012.

Tetracycline (oxytetracycline calcium complex) was added to the National List by a final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). Since 2000, four notices have been published announcing the meetings of the NOSB and its planned deliberations involving the use of tetracycline in organic crop production. The four notices were published in the **Federal Register** as follows: (1) 71 FR 14493, March 22, 2006 (to consider the sunset recommendation for the continued listing of oxytetracycline calcium complex for fire blight control); (2) 73 FR 18491, April 4, 2008 (to consider a recommendation to add a second form of tetracycline, oxytetracycline hydrochloride, as plant disease control for all diseases on the crops registered by EPA); (3) 73 FR 54781, September 23, 2008 (to consider a recommendation to add a second form of tetracycline, oxytetracycline hydrochloride, for fire blight control and to place an expiration date on the use of all forms); and (4) 76 FR 12013, March 4, 2011 (to consider removal of the expiration date of tetracycline for fire blight control). The most recent final rule pertaining to tetracycline added an allowance for the use of oxytetracycline hydrochloride, and added an expiration date of October 21, 2012. This rule was published in the **Federal Register** on July 6, 2010 (75 FR 38693).

In October 2010, a petition was submitted to the NOSB to remove the expiration date for tetracycline. In effect, the petitioner requested an allowance for the use of tetracycline to control fire blight in organic apples and pears beyond the substance's current expiration date of October 21, 2012. On April 29, 2011, the NOSB issued a recommendation to extend the use of tetracycline to control fire blight in apples and pears only until October 21, 2014, by a vote of 13 in favor and 1 against. Consistent with this NOSB recommendation, AMS published a proposal on November 8, 2011 to amend the annotation for tetracycline by extending its use for fire blight control in apples and pears only until October 21, 2014 (76 FR 61941).

Formic Acid

Formic acid was petitioned for use in May 2010, as a pesticide for suppression of *Varroa* mites.[1] The Environmental Protection Agency (EPA) has exempted synthetic formic acid from the requirement of a tolerance in or on honey and honeycomb when used to control tracheal mites and suppress *Varroa* mites in bee colonies, and applied in accordance with label use directions (40 CFR 180.1178).[2]

At its October 25–28, 2010, meeting, the NOSB recommended adding formic acid to the National List for use in organic livestock production solely as a pesticide within honeybee hives. Consistent with this NOSB recommendation, AMS published a proposal on November 8, 2011 to amend § 205.603(b) of the National List by adding formic acid, with a restrictive annotation (76 FR 61941).

Attapulgite

Attapulgite was petitioned in May 2009 for two uses: (1) as a nonsynthetic processing aid in organic handling for purifying vegetable and animal oils; and (2) as a livestock feed additive.[3] The FDA has listed this substance in the database, ''Everything Added to Food in the United States (EAFUS) (Doc. No. 1943)'' and references this substance among those generally regarded as safe in 21 CFR Part 582.99 when used as an adjuvant for pesticide chemicals. The EPA permits attapulgite as an inert ingredient eligible in minimum risk pesticides applied for food and non-food uses which are exempt from federal registration under Section 25(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The EPA has determined that attapulgite is exempt from the requirement of a tolerance when used as an inert ingredient in pesticide formulations applied pre- and post-harvest per 40 CFR 180.910.[4]

At its April 26–29, 2011, meeting, the NOSB recommended adding attapulgite to the National List for use as a processing aid in organic handling of plant and animal oils. Consistent with this NOSB recommendation, AMS published a proposal on November 8, 2011, to amend § 205.605(b) the National List by adding attapulgite, with a restrictive annotation (76 FR 61941).

II. Overview of Amendments

The following provides an overview of the amendments made to designated sections of the National List regulations:

Section 205.601 Synthetic Substances Allowed for Use in Organic Crop Production

This final rule amends § 205.601(i)(12) of the National List regulations by: (1) Inserting the qualifying words ''in apples and pears''; between the words ''control'' and ''only,'' in the current annotation and (2) replacing the current expiration date of ''October 21, 2012'' with the new expiration date, ''October 21, 2014'', after which tetracycline may not be used in organic crop production.

Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production

This final rule amends § 205.603 of the National List regulations by redesignating current paragraphs (b)(2) through (b)(7) as paragraphs (b)(3) through (b)(8) for the purpose of adding the following substance as an external parasiticide at (b)(2):

Formic acid (CAS #64–18–6)—for use as a pesticide solely within honeybee hives.

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 § 205.605(a) of the National List by adding attapulgite as follows:

Attapulgite—as a processing aid in the handling of plant and animal oils.

III. Statutory and Regulatory Authority

The OFPA, as amended (7 U.S.C. 6501–6522), 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 the 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 § 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/nop.*

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 section 6514(b) of the OFPA. States are also preempted under sections 6503 through 6507 of the OFPA 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 section 6507(b)(2) of the OFPA, a State organic certification program may contain additional

[1] The petition was submitted by the Hawaii Department of Agriculture, and is retrievable from the NOP Web site in the Petitioned Substances Database: *http://www.ams.usda.gov/NOPPetitionedSubstancesDatabase.*

[2] Tracheal mites lay eggs inside bees' tracheal tubes, and their larvae feed on the bee after the eggs hatch.

[3] Due to the nonsynthetic classification of this substance, a petition for use as an additive for organic livestock feed is not required.

[4] Technical Report on Attapulgite. February 1, 2010. A copy of this report is available in the petitioned substances database, *http://www.ams.usda.gov/NOPPetitionedSubstancesDatabase.*

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 the EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136–136(y)).

Section 6520 of the OFPA 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 is to fit regulatory actions to the scale of businesses subject to the action. 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, the Agricultural Marketing Service (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 action on small entities. The impact on entities affected by this final rule would not be significant. The effect of this final rule would be to allow the use of additional substances in agricultural production and handling. This action would modify the regulations published in the final rule and would provide small entities with more tools to use in day-to-day operations. AMS concludes that the economic impact of this addition of allowed substances, if any, would be minimal and beneficial to small agricultural service firms. Accordingly, AMS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

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.[5] In 2009, U.S. certified organic apple acreage exceeded 21,000 acres, primarily concentrated in Washington and California.[6] ERS, based upon the list of certified operations maintained by the NOP, estimated the number of certified handling operations was 3,225 in 2007.[7] AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

U.S. sales of organic food and beverages have grown from $1 billion in 1990 to $26.7 billion in 2010. Sales in 2010 represented 7.7 percent growth over 2009 sales.[8] The USDA has 93 accredited certifying agents who provide certification services to producers and handlers under the NOP. 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 proposed 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–11–09

AMS received 25 comments on proposed rule AMS–11–0058; NOP–11–09PR. Comments were received from organic crop producers, crop distributors, consumers, accredited certifying agents, trade associations, non-profit organizations, growers associations, advocacy groups and an industry working group.

Twenty one of the comments submitted addressed tetracycline. Seventeen comments supported a continued allowance for tetracycline in organic crop production after its current expiration date of October 21, 2012. Two commenters opposed any use of tetracycline in organic crop production, and asserted that antibiotic use is contrary to organic principles. These two comments concurred with the NOSB's concerns over engendering antibiotic resistance and supported the eventual prohibition of all antibiotic use, including that for tetracycline, in organic crop production. One commenter specifically supported the 2014 expiration date on the grounds that current research efforts are too heavily focused on antibiotic product replacement instead of on the NOSB's principle of achieving agro-ecosystems that are ecologically, socially, and economically sustainable.[9] The same

[5] 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/.*

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

[7] 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.*

[8] Organic Trade Association. 2011. Organic Industry Survey. *www.ota.com.*

[9] NOSB's Principles of Organic Production and Handling, Adopted October 17, 2001. *http://*

Continued

commenter stated that, in the absence of alternative materials that could meet organic standards, organic consumers would support the planting of existing varieties that are more resistant to fire blight than those varieties favored by the conventional market.

One commenter expressed support for the use of formic acid as a pesticide in bee hives, stating that the substance is a safe and effective treatment that is easy to apply. The commenter also conveyed that an allowance for this use of formic acid under the NOP regulations would be consistent with other international organic standards. In the proposed rule on November 8, 2011 (76 FR 61941), AMS specifically sought comments on the appropriate placement of formic acid on § 205.603 of the National List. No comments were received addressing this topic, therefore the proposal to list formic acid at § 205.603(b) of the National List is retained in this final rule. No comments were received regarding attapulgite.

Two comments stated their general opposition to the allowance of synthetics in organic production and handling, and two comments submitted statements unrelated to the proposed rulemaking action.

Changes Requested But Not Made

Many comments supportive of continuing the allowance for tetracycline recommended that the substance be listed without an expiration date. Such an action would, in effect, extend the allowance for the substance until October 2017 under the five year sunset review process for the National List. These commenters believe that more alternatives to tetracycline could be available to organic producers by 2017. These comments further stated that an October 21, 2014 expiration date for tetracycline will not provide a sufficient timeframe for development and implementation of suitable alternatives. These commenters described the following as specific concerns with the expiration of tetracycline from the National List: (1) An increase in streptomycin resistance by the pathogen, which will further limit the ability of producers to control fire blight;[10] (2) consumer preference for apple and pear varieties which are more susceptible to fire blight; and (3) the lack of fire blight resistant root stocks and effective biological controls. Many of these comments stated that the expiration of tetracycline in 2014 could result in a reduced volume of U.S. organic apples and pears. Some commenters cited the potential costs to organic apple and pear growers (e.g. cost to replant trees, reduced productivity in existing trees) and organic handlers (e.g. constrained domestic supply of organic apples and pears) following the expiration of tetracycline from the National List in 2014. The commenters suggested that the slow development and limited availability of alternatives to control fire blight control in organic orchards could also trigger conversion to conventional production.

Several commenters expressed their preference that tetracycline be allowed beyond 2014 (e.g. until 2015, 2016, or 2017) to allow the industry time to develop more alternatives to this substance. Listing tetracycline with a later date or 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 October 21, 2014 expiration date to the listing for tetracycline through this final rule. AMS notes that extending the allowance for the use of tetracycline 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).

Some commenters also stated that allowing the substance to expire on October 21, 2014 would have a negative economic impact on small businesses and that this rulemaking action should therefore be classified as ''significant''. AMS disagrees. This action does not further restrict the use of this substance. This action extends the allowance for the substance in organic crop production for an additional two years after its current expiration date of October 21, 2012. Parties interested in requesting an extension for the authorized use of tetracycline in organic crop production after October 21, 2014 may submit a petition to the NOSB. The petition process is outlined in 72 FR 2167 (January 18, 2007).

Based on the public comments received, commenters remain concerned regarding the availability and efficacy of alternatives to tetracycline for fire blight control. Several commenters specifically requested that the NOSB reconsider the October 21, 2014 expiration date for tetracycline. Further, commenters asked that the NOP and the NOSB develop a phase-out plan for the use of antibiotics in fruit trees that has benchmarks and timelines based on consultations with appropriate stakeholders to ensure that the methods proposed to reach them are feasible. The NOSB recommended that tetracycline is allowed for fire blight control in apples and pears through October 21, 2014. Parties interested in requesting an extension for the authorized use of tetracycline in organic crop production after October 21, 2014 may submit a petition to the NOSB. Parties interested in having the NOSB develop a phase-out plan for the use of antibiotics in tree fruit production may submit public comments to the NOSB at any of their public meetings. The public comment process is outlined on the NOP Web site.

Commenters also requested that the NOP establish a Fire Blight Task Force to assist in development of alternatives. After the NOSB issued their recommendation on tetracycline in April 2011, stakeholders from the research community and organic tree fruit industry established a working group to consolidate efforts and develop alternatives to tetracycline for fire blight control. This working group is expected to provide updates to the public on their progress at future NOSB meetings. Furthermore, in response to the requests by the NOSB and to comments from the public for additional resources to support research on alternatives to tetracycline in organic production, AMS submitted requests to the USDA Agricultural Research Service (ARS) and the National Institute of Food and Agriculture (NIFA) in May 2011 for assistance in prioritizing research in the following areas: (1) The efficacy of combinations of substances for fire blight management; (2) breeding, production, and propagation of resistant cultivars and rootstocks that are commercially viable; and (3) cultural practices, crop management, disease forecasting and other production practices that can optimize control of this disease.[11] In fiscal year 2011, NIFA funded a project through the Organic Agriculture Research and Extension Initiative (OREI) for research on the development of non-antibiotic treatments for the control of fire blight in organic apple and pear crops. In January 2012, NIFA included a targeted request for additional research proposals on alternatives to the use of tetracycline for fire blight control in organic production as part of their solicitation for proposals under OREI.[12]

www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELDEV3013893.

[10] Streptomycin is currently listed at § 205.601 of the National List for fire blight control in organic apple and pear production. This allowance on the National List expires on October 21, 2014.

[11] May 2011 Letters submitted by NOP to USDA ARS and NIFA on fire blight research. Available at the NOP Web site: *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5091325.*

[12] January 2012 OREI Request for Proposals. National Institute of Food and Agriculture.

AMS will continue to seek assistance across USDA as appropriate on this issue.

A few commenters requested that the NOP address concerns with the current use of antibiotics in organic tree fruit production through ensuring compliance with § 205.206(a)(3). Section 205.206(a) requires producers to use management practices to prevent disease through crop rotation, sanitation measures and cultural practices. Section 205.206(a)(3) lists specific cultural practices that enhance crop health, including selection of plant species and varieties with regard to suitability to site-specific conditions and resistance to prevalent pests, weeds, and diseases. Certifying agents are responsible for ensuring that all organic producers use management practices to prevent disease. Certifying agents verify that organic producers are meeting all USDA organic requirements including utilizing preventative management practices to prevent disease.

These same commenters also stated that, as part of a strategy for addressing fire blight in organic apple and pear production, the NOP should consider variances under § 205.290 to allow antibiotic use in instances when fire blight disease puts orchards at risk. Temporary variances for the use of a synthetic substance that is not on the National List (i.e. use of tetracycline after October 21, 2014) cannot be granted per the current requirements at § 205.290(e).

F. Effective Date

This final rule reflects recommendations submitted to the Secretary by the NOSB. The amendment to the listing of one exempted substance and the addition of two substances to the National List were based on petitions from the industry and evaluated by the NOSB using criteria in OFPA and the NOP regulations. Because the amendments have been subject to extensive discussion and public comment and are considered vital to organic crops, processing and livestock production, AMS believes that producers and handlers should be able to use them on their operations as soon as possible. Furthermore, tetracycline is due to expire from the National List on October 21, 2012; this action must be finalized by October 21, 2012, to ensure that organic apple and pear producers have access to this substance for two additional years beyond its current expiration date. Accordingly, AMS finds that good cause exists under 5 U.S.C. 553(d)(3) for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**.

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, Subpart G 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 paragraph (i)(12) is revised to read as follows:

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

* * * * *

(i) * * *

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

* * * * *

■ 3. Section 205.603 is amended by:

■ A. Redesignating paragraphs (b)(2) through (b)(7) as paragraphs (b)(3) through (b)(8); and

■ B. Adding paragraph (b)(2) to read as follows:

§ 205.603 Synthetic substances allowed for use in organic livestock production.

* * * * *

(b) * * *

(2) Formic acid (CAS # 64–18–6)—for use as a pesticide solely within honeybee hives.

* * * * *

■ 4. In § 205.605(a), the substance ''Attapulgite'' is added in alphabetical order to read 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 groups(s)).''

* * * * *

(a) * * *

Attapulgite—as a processing aid in the handling of plant and animal oils.

* * * * *

Dated: July 27, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–18819 Filed 8–1–12; 8:45 am]

BILLING CODE 3410–02–P

Available online at: *http://www.nifa.usda.gov/funding/rfas/pdfs/12_orei.pdf.*

FEDERAL RESERVE SYSTEM

12 CFR Part 234

[Regulation HH; Docket No. R–1412]

RIN 7100–AD 71

Financial Market Utilities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final rule, Regulation HH, Designated Financial Market Utilities. This rule implements provisions of sections 805(a) and 806(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'' or ''Act''), including risk-management standards for financial market utilities (''FMUs'') that are designated as systemically important by the Financial Stability Oversight Council (the ''Council'') and standards for determining when a designated FMU is required to provide advance notice of proposed changes to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated FMU.

DATES: This final rule is effective September 14, 2012.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Lucier, Assistant Director (202) 872–7581 or Kathy C. Wang, Senior Financial Services Analyst (202) 872–4991, Division of Reserve Bank Operations and Payment Systems; Christopher W. Clubb, Senior Counsel (202) 452–3904 or Kara L. Handzlik, Senior Attorney (202) 452–3852, Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Title VIII of the Dodd-Frank Act, titled the ''Payment, Clearing, and Settlement Supervision Act of 2010,'' was enacted to mitigate systemic risk in the financial system and to promote financial stability, in part, through enhanced supervision of designated FMUs.[1] Section 803 of the Dodd-Frank

[1] The Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376, was signed into law on July 21, 2010.

Act defines an FMU as a person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person. The basic risks that FMUs must manage include credit risk, liquidity risk, settlement risk, operational risk, and legal risk. These risks arise between financial institutions and FMUs as they settle payments and other financial transactions. In order to maintain financial stability, FMUs must be well-designed and operated in a safe and sound manner. If a systemically important FMU fails to measure, monitor, and manage its risks effectively, it could pose significant risk to its participants and the financial system more broadly.

Under section 805(a)(1) of the Dodd-Frank Act, the Board is required to promulgate risk-management standards governing the operations related to the payment, clearing, and settlement (''PCS'') activities of certain FMUs that are designated as systemically important by the Council. Section 805(a)(1) of the Act also requires the Board to take into consideration relevant international standards and existing prudential requirements in prescribing the regulations. For a designated FMU that is a derivatives clearing organization (''DCO'') registered under section 5b of the Commodity Exchange Act or a clearing agency registered under section 17A of the Securities Exchange Act of 1934 (collectively, ''designated clearing entities''), the Commodity Futures Trading Commission (''CFTC'') or the Securities and Exchange Commission (''SEC''), respectively, are granted authority to prescribe regulations, in consultation with the Council and the Board, containing applicable risk-management standards.[2]

Section 805(b) of the Act sets out the following objectives and principles for the risk-management standards: (a) Promote robust risk management, (b) promote safety and soundness, (c) reduce systemic risks, and (d) support the stability of the broader financial system. Section 805(c) of the Act states that risk-management standards may address areas such as (1) risk-management policies and procedures, (2) margin and collateral requirements, (3) participant or counterparty default policies and procedures, (4) the ability to complete timely clearing and settlement of financial transactions, (5) capital and financial resource requirements for designated FMUs, and (6) other areas that are necessary to achieve the objectives and principles for risk-management standards.

In addition, section 806(e)(1) of the Dodd-Frank Act requires a designated FMU to provide 60 days' advance notice to its Supervisory Agency of any proposed change to its rules, procedures, or operations that could, as defined in rules of each Supervisory Agency, materially affect the nature or level of risks presented by the designated FMU. Under section 803(b) of the Act, a ''Supervisory Agency'' means the federal agency that has primary jurisdiction over a designated FMU under federal banking, securities, or commodity futures laws.[3]

In April 2011, the Board published for comment a notice of proposed rulemaking (''NPRM'') to propose a new part to the Code of Federal Regulations (12 CFR part 234, Regulation HH) to establish risk-management standards for designated FMUs and requirements for advance notice of material changes to a designated FMU's rules, procedures, or operations.[4] The public comment period closed on May 19, 2011.

II. Summary of Public Comments and Analysis

The Board received twelve public comment letters on the NPRM. Comments were submitted by two payment systems, seven industry and other groups, one bank, and two other commenters. In general, the comments pertained broadly to three categories: (i) Risk-management standards, (ii) advance notice requirements and the materiality definition, and (iii) other miscellaneous comments. The Board considered these comments in developing its final rule as discussed in more detail below.[5]

A. Risk-Management Standards

1. International Standards

Proposed § 234.3 sets out risk-management standards for designated FMUs that are payment systems, and proposed § 234.4 sets out risk-management standards for central counterparties (''CCPs'') and central securities depositories (''CSDs''), based on the international risk-management standards developed by the Committee on Payment and Settlement Systems (''CPSS'') and the Technical Committee of the International Organization of Securities Commissions (''IOSCO''). These international standards were the Core Principles for Systemically Important Payment Systems (the ''Core Principles'') developed by the CPSS in 2001, and the Recommendations for Securities Settlement Systems and the Recommendations for Central Counterparties (collectively, the ''CPSS–IOSCO Recommendations'') developed jointly by the CPSS and IOSCO in 2001 and 2004, respectively. The Board believes these standards are the appropriate basis for setting initial risk-management standards under Title VIII for several reasons. First, section 805(a)(1) of the Act directs the Board to consider relevant international standards in prescribing risk-management standards under Title VIII. As explained in the NPRM, the Core Principles and the CPSS–IOSCO Recommendations were the international standards most relevant to risk management of FMUs.[6] Second, FMUs are familiar with these standards as the long-standing basis for Part I of the Federal Reserve Policy on Payment System Risk (''PSR policy'').[7] Third, the Board has significant experience applying these international standards to large-value payment and settlement systems pursuant to its PSR policy.

CPSS and IOSCO recently conducted a comprehensive review of risk-management standards for PCS systems. On April 16, 2012, CPSS and IOSCO issued the final report on the ''Principles for Financial Market Infrastructures,'' which includes an updated, harmonized, and strengthened set of international risk-management standards (the ''PFMI'').[8] CPSS and IOSCO intend for the PFMI to replace the Core Principles and CPSS–IOSCO Recommendations. As noted in the NPRM, the Board anticipates that it will review the new international standards, consult with other appropriate agencies and the Council, and seek public comment on the adoption of revised

[2] Under section 805(a)(2) of the Act, the CFTC and the SEC are also required to take relevant international standards and existing prudential requirements into consideration in prescribing regulations containing risk-management standards governing designated clearing entities.

[3] A Supervisory Agency includes the SEC and CFTC with respect to their respective designated clearing entities (as defined above), the appropriate federal banking agencies (including the Board) with respect to FMUs that are institutions described in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and the Board with respect to a designated FMU that is otherwise not subject to the jurisdiction of any of the agencies listed above.

[4] See 76 FR 18445 (Apr. 4, 2011).

[5] In addition, the Board is adopting several changes intended to clarify the requirements of the regulation.

[6] See 76 FR at 18447.

[7] The PSR policy is available on the Board's public Web site at: *http://www.federalreserve.gov/paymentsystems/psr_policy.htm*.

[8] The *Principles for Financial Market Infrastructures* are available at *http://www.bis.org/publ/cpss101a.pdf*. The final report reflects comments received during the public consultation period from March 10, 2011 to July 29, 2011.

standards for designated FMUs based on the new international standards.

Commenters generally appeared to support the Board's approach of using the Core Principles and CPSS–IOSCO Recommendations as a basis for its risk-management standards for designated FMUs under section 805 of the Act. Two commenters explicitly stated their support for the Board's approach. Two other commenters stated that the proposed risk-management standards were largely prudent and sensible.

One commenter was also supportive of the Board's intention to evaluate the new international standards once they are final for the purposes of revising Regulation HH. Two other commenters expressed some general reservations with respect to the new international standards; one of the commenters cautioned the Board against adopting the new international standards ''in full,'' because doing so would include principles that may not directly relate to the risks posed by the designated FMUs and contemplated by Title VIII.

After considering the public comments and for the reasons stated above, the Board continues to believe that the most suitable approach to establishing initial risk-management standards under Title VIII of the Act is to use the Core Principles and CPSS–IOSCO Recommendations as the basis for the standards promulgated by this notice, and to proceed with consideration of the PFMI as the basis for any future revisions. The Board agrees with commenters that international standards that are not, in some way or to some degree, related to existing or potential risks posed to or by a designated FMU should not be adopted for purposes of section 805 of the Act. As noted in the NPRM, the Board acknowledged that the scope of the Core Principles and CPSS–IOSCO Recommendations is broad and proposed to adopt by regulation particular standards, or portions thereof, that relate to the risks presented to or by a designated FMU, rather than those standards, or portions thereof, that apply more generally to financial markets or regulators. Similarly, the Board anticipates evaluating the appropriateness of each of the new PFMI for the purpose of possible revisions to Regulation HH.

2. Applicability of Standards to Retail Payment Systems

Proposed § 234.3 is based on the entire set of the Core Principles. Some commenters questioned whether three standards included in the Core Principles could be applied to retail payment systems, particularly automated clearinghouses (''ACH'') and check clearinghouses, should those systems be designated as systemically important by the Council. Specifically, proposed § 234.3(a)(3) would require any FMU that is designated on the basis of its role as operator of a payment system to have clearly defined procedures for the management of credit risks and liquidity risks, which specify the respective responsibilities of the system operator and the participants and which provide appropriate incentives to manage and contain those risks. Proposed § 234.3(a)(4) would require any designated FMU that is designated on the basis of its role as operator of a payment system to provide prompt final settlement on the day of value, preferably during the day and at a minimum at the end of the day. Proposed § 234.3(a)(5) would require any designated FMU that is designated on the basis of its role as operator of a payment system, and in which multilateral netting takes place, to, at a minimum, be capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single settlement obligation.

The Board received several comments on the applicability of these risk-management standards to retail payment systems, should they be designated by the Council. Several commenters stated their support for an exemption for retail payment systems from designation as systemically important by the Council under the Dodd-Frank Act. The Council, however, determined not to categorically exclude FMUs operating retail payment or other systems in its rule regarding the FMU designation process.[9] As a result, commenters provided feedback on the ability of retail payment systems to meet certain of the Board's proposed risk-management standards in the event the Council decides to designate them.

One commenter specifically referenced proposed § 234.3(a)(3)–(5) as risk-management standards that, while appropriate risk controls for truly systemically important payment systems, were generally inapplicable (or had no relevance) to payments systems such as ACH clearing arrangements that permit the return of transactions within a certain timeframe. One commenter argued that the standard in proposed § 234.3(a)(3) regarding the management of credit and liquidity risk would have no application where a system that did not assume credit and liquidity risks in the first place by committing to pay funds that it had not received and where the payment system participants expect to manage their own credit and liquidity risks. Two commenters also stated that proposed § 234.3(a)(4) on settlement finality contradicts long-standing and established practices of ACH rules that allow for certain transactions to be reversed or returned for any reason until the banking day after the settlement date. One commenter stated that application of proposed § 234.3(a)(5) regarding the ability to complete settlement in the event the single largest participant is unable to settle would require a fundamental change in the nature of ACH debit transactions and the abolishment of the right to return the transaction. In general, these commenters stated that they do not believe that, if designated, retail payment systems would be able to comply with these proposed standards and, accordingly, asked that such systems be exempted from them.

The Board notes that the proposed risk-management standards were designed to apply to large-value payment systems. This approach is consistent with the direction of the Council expressed in its final rule on the FMU designation process. Specifically, the Council stated that, within payment systems, it expects to focus at this time on FMUs that operate large-value systems and not on FMUs that operate low-value systems (such as check and ACH).[10] The Council also decided not to include considerations more narrowly tailored to the characteristics of retail payment systems because the Council did not believe they were necessary or appropriate given the current focus for designations.

Given the Council's focus on large-value systems, the Board does not anticipate that the Council will designate a FMU under Title VIII on the basis of its role as operator of a retail payment system. However, because the authority to designate systemically important FMUs resides with the Council, not the Board, the Board cannot be assured of the type of FMU the Council may designate in the future. In the event that the Council designates an FMU on the basis of its role as operator of a retail payment system, the Board would review, at that time, whether the risk-management standards in § 234.3 were appropriate for that

[9] See 76 FR 44763, 44769 (July 27, 2011).

[10] See 76 FR at 44769. The Council also decided, however, against including in the final rule any categorical exclusion for FMUs operating retail payment or other systems, both because there are not clear distinctions between various types of systems, and because such an exclusion would impair the Council's ability to respond appropriately to new information, changed circumstances, and future developments.

designated FMU, as it would for any type of newly designated FMU.

In order to accommodate this review in the event that an unanticipated type of FMU is designated, and in consideration of the comments, the Board is adopting in the final rule a modification to proposed §§ 234.3(b) and 234.4(b) that clarifies that the application of individual risk-management standards could be waived in a situation where such standards could not appropriately be applied to a particular designated FMU. Both §§ 234.3(b) and 234.4(b) will be amended by inserting text that states ''[t]he Board, by order, may waive the application of a standard or standards to a particular designated financial market utility where the risks presented by or the design of that designated financial market utility would make the application of the standard or standards inappropriate.'' This revision is intended to bridge any gap between Council designation of a new type of designated FMU and the process of promulgating regulations appropriate for the new type of designated FMU, if necessary.

In addition, the Board notes that with respect to a designated FMU that operates more than one payment system (e.g., one large-value and one retail), standards would apply only with respect to the system that provided the basis for the Council's designation of the FMU. The Board is modifying § 234.3(a) and (b) to clarify this point. The Board also is making a parallel modification to § 234.4(a) and (b).[11]

The Board is also modifying §§ 234.3(a) and 234.4(a) to require a designated FMU to ''implement rules, procedures, or operations designed to ensure that it meets or exceeds'' the risk-management standards set forth in these sections. In addition, the word ''should'' has been deleted from the individual standards to clarify that these are requirements with which a designated FMU must comply.

3. Scope of Risk-Management Standards

As noted above, the proposed risk-management standards for designated FMUs that operate as payment systems, CCPs, or CSDs are based on the Core Principles and CPSS–IOSCO Recommendations. Each set includes separate standards relating to efficiency, access criteria, and governance. Several commenters suggested that the Board eliminate some or all of these three proposed standards for payment systems, arguing that they address system operating issues that are outside the scope of the systemic risk issues contemplated by Title VIII of the Dodd-Frank Act. Specifically, the commenters questioned whether proposed § 234.3(a)(8), (9), and (10) regarding efficiency, access criteria, and governance, respectively, were relevant to systemic risk.[12] The applicability of the efficiency standard was a common concern of the commenters that raised questions about the scope of the risk-management standards; a subset of these commenters also questioned whether either the access criteria or governance standard was within the scope of risk management. These standards in general were viewed as admirable goals that designated FMUs should aim to achieve, but nevertheless as goals that should be driven by market forces and not by regulatory mandate.

Efficiency. The efficiency standard in proposed § 234.3(a)(8) states that an FMU that is designated on the basis of its role as operator of a payment system should provide a means of making payments that is practical for its users and efficient for the economy. Several commenters argued that the efficiency standard exceeds the Act's objectives because it addresses operating system issues and not risk matters. One commenter argued that whether a form of payment is practical and efficient is largely a matter of judgment that is better left to the market and its participants.

The Board believes the efficiency standard furthers the objectives set out in Title VIII of the Act to reduce systemic risks and support the stability of the broader financial system.

A designated FMU supports the ongoing functioning and stability of the market it serves by providing effective, reliable PCS services to its participants and, in particular, completing timely clearing and settlement of financial transactions. An FMU that is designed or managed inefficiently or impractically may ultimately distort financial activity and market structure, increasing not only the financial and other risks of an FMU's participants, but also the risks of their customers and end users. To avoid such outcomes, a designated FMU should consider the tradeoffs between, and seek a reasonable balance of, safety (i.e., risk management) and efficiency (i.e., direct and indirect costs) when designing and managing the system. For example, overly demanding financial resource requirements may create a liquidity demand so high that it would be impractical for participants to meet. Although liquidity is very important, an FMU that accumulates excessive liquid resources from its participants intraday may increase the participants' opportunity cost of sending each payment. In such cases, participants that become liquidity constrained may be forced to delay submitting certain time- or mission-critical payments.

Additionally, an FMU's design, operating structure, scope of PCS activities, and use of technology can influence its efficiency and can ultimately provide incentives for market participants to use, or not use, the FMU's services. For example, in certain cases, inefficiently designed systems may increase costs to the point where it would be cost-prohibitive for participants to use the FMU, and possibly drive market participants toward less safe alternatives, such as bilateral clearing or settlement on the books of the participants. In such cases, risks to the market participants increase as they seek less safe opportunities to lower direct costs; this behavior may reintroduce risk into the market that the FMU was intended to mitigate.

As these examples suggest, a designated FMU must function efficiently, as well as safely, and provide services that are appropriate to the needs of its users without becoming cost-prohibitive to use. A designated FMU that is inefficient can have a direct, negative impact on financial stability. Accordingly, the Board believes that it is appropriate for a supervisor of a designated FMU to take into account the need for practical and efficient design of the designated FMU as part of the set of risk-management standards set forth in Regulation HH. For these reasons, the Board is adopting the efficiency standards in proposed §§ 234.3(a)(8) and 234.4(a)(6) essentially as set out in the NPRM.

Access criteria. The access criteria standard in proposed § 234.3(a)(9) states that a payment system should have objective and publicly disclosed criteria for participation, which permit fair and open access. Some commenters argued that the access criteria standard did not relate to any of the risks contemplated by Title VIII of the Act. One commenter stated that the actions taken by the payment system, CSD, or CCP, create or mitigate risk, not the rules governing who can participate in them. Another commenter noted that the participation structure for payment systems can vary broadly and, while the participation criteria for these systems could be an issue for competition law, it was

[11] To conform to these modifications, the Board is revising the definitions in § 234.2 (a), (b), and (e).

[12] One commenter raised similar concerns with the corresponding access criteria and governance standards in proposed § 234.4(a)(2) and (8) with respect to CSDs and CCPs.

difficult to see how the criteria could directly affect the risks that were the focus of Title VIII.

The Board believes that access criteria are important to a designated FMU's risk-management framework and affect the level of risk a designated FMU presents to the financial system. Access criteria are typically referred to as an FMU's ''first line of defense'' in ensuring it admits financial institutions that will be able to meet their obligations and not expose the FMU or its other participants to unacceptable risk. Access criteria need to be designed to ensure that participants meet appropriate operational, financial, and legal requirements to allow them to meet their obligations on a timely basis.[13] However, these criteria need to be balanced against the FMU's ability to effectively serve the market it supports, in particular markets that are subject to a statutory requirement for central clearing or settlement through an FMU. Although a designated FMU may use risk-based measures to control access, requirements that are unnecessarily discriminatory or overly restrictive can minimize the FMU's overall effectiveness.

Criteria that allow for fair and open access also may help achieve the Title VIII objectives of reducing systemic risk and supporting the overall stability of the financial system. A fair and open approach to participation criteria may help prevent the concentration of financial activity (and therefore risk) into a few large participants. By encouraging the reduction of risk concentration, the proposed standard helps lower the likelihood that a few financial institutions will be perceived as ''too big to fail.'' Broad participation in a designated FMU can, for example, increase the effectiveness of multilateral netting, facilitate crisis management by applying a consistent set of rules and procedures (e.g., default management, loss mutualization), and improve overall market transparency by increasing the number of transactions processed by the FMU. Accordingly, access criteria that do not permit fair and open access may reduce the overall risk-reduction benefits that a designated FMU can offer.

For these reasons, the Board is adopting the access criteria standards in proposed §§ 234.3(a)(9) and 234.4(a)(2) essentially as set out in the NPRM.

Governance. The governance standard in proposed § 234.3(a)(10) states that a payment system's governance arrangements should be effective, accountable, and transparent. Some commenters claimed that although the decisions made by a designated FMU's governing body can affect the risks it presents, the particular governance structure itself presents no such risks. Conversely, one commenter supported inclusion of the governance standard, stating that weak governance practices and poor risk-management procedures at designated FMUs could pose hazards both to participating financial institutions and to the market as a whole. Another commenter stated that risk management effectively encompasses governance, among other areas.

The Board believes that effective, accountable, and transparent governance arrangements are critical to the effective risk management of a designated FMU. A strong governance arrangement provides a sound basis for compliance with the other risk-management standards in Regulation HH. A number of tools or techniques discussed in the Core Principles with respect to the governance standard have proved to be effective in ensuring effective governance, such as written strategic objectives and plans for achieving them and separation of risk management and audit functions from day-to-day operations. The Board expects supervisors to review a designated FMU's governance arrangements against the background of these and other relevant techniques in order to promote robust risk management. In addition, given the role of the FMU's board of directors in setting the overall risk-management framework of the designated FMU, the Board believes that a weak or ineffective governance structure could have systemic implications for the participants of the service, other FMUs, and other markets. Accordingly, the Board believes that a supervisor should consider a designated FMU's governance arrangements when performing its systemic risk review. For these reasons, the Board is adopting the governance standard in proposed §§ 234.3(a)(10) and 234.4(a)(8) essentially as set out in the NPRM.

4. Independent Model Validation

Proposed § 234.4(a)(17) requires a designated FMU that operates as a CCP to use margin requirements to limit its credit exposures to participants in normal market conditions and use risk-based models and parameters that are reviewed regularly. In addition, proposed § 234.4(a)(17)(i) would require a CCP to provide for annual model validation consisting of evaluating the performance of the CCP's margin models and the related parameters and assumptions associated with such models by a qualified person who does not perform functions associated with the CCP's margin models (except as part of the annual model validation) and also does not report to such a person.[14] Two commenters noted that proposed § 234.4(a)(17)(i), although on the right track, should stress explicitly the complete independence of the organization conducting the validation. One of the commenters believed models must be validated annually by a qualified and independent organization with no financial stake in the outcome because no employee of a systemically important CCP should be expected to resist the inevitable direct and indirect pressures of management who may have incentives to achieve a less-appropriate and less-independent outcome. The other commenter also stated that model validation must be performed by a truly independent party with no financial stake in the outcome of the validation and expressed concern that a validator that is not sufficiently independent would face the conflict of interest that would lead designated FMUs to lower their margins in order to attract business and increase profits.

The Board believes that a validator must be able to offer independent, unbiased conclusions and recommendations as part of the margin model validation process. It is unlikely that the person who was responsible for initially developing the margin model would be able to provide an independent, unbiased assessment of the product. Similarly, it appears unlikely that a person under the functional control of the developer would be able to provide independent, unbiased validation of the model without the influence of the developer and concern for employment security. Accordingly, proposed § 234.4(a)(17)(i) would require that the model validation be conducted by a qualified person who does not perform functions associated with the CCP's margin model, such as development and implementation, and does not report to such a person.[15]

[13] For example, a designated FMU may set access criteria based on risk measures such as capital ratios, risk ratings, or other indicators.

[14] Proposed § 234.4(a)(17)(i) inadvertently referred to the margin models of the ''clearing agency.'' The Board has revised these references to ''central counterparty'' in the final rule.

[15] This position is generally consistent with current supervisory guidance on model risk management by banks. See SR letter 11–7, p.3 (Apr. 4, 2011), which states:

Validation involves a degree of independence from model development and use. Generally, validation is done by staff who are not responsible for model development or use and do not have a stake in whether a model is determined to be valid.

Continued

The Board recognizes the concern expressed in the comments that there may be financial considerations beyond the validator's immediate employment security, and that there may be situations where a validator from outside the CCP may be needed to provide an appropriately independent validation. In such cases, the Board may hold a particular designated FMU to a stricter definition of independent validation that is appropriate for the level of risk presented by the designated FMU. Proposed § 234.4(b) allows for the Board, by order, to apply heightened risk-management standards to a particular designated FMU in response to the risks presented by that designated FMU. As a generally applicable standard, however, the Board believes it is appropriate to recognize basic requirements for an independent validation. For these reasons, the Board is adopting proposed § 234.4(a)(17)(i) essentially as set out in the NPRM.

5. Financial Resource Coverage

Proposed § 234.4(a)(15) would require a designated FMU that is acting as a CSD to institute risk controls that include collateral requirements and limits, and ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle when the CSD extends intraday credit. Proposed § 234.4(a)(18) would require a designated FMU that is acting as a CCP to maintain sufficient financial resources to withstand, at a minimum, a default by the participant to which it has the largest exposure in extreme but plausible market conditions. The Board specifically requested comment on whether such designated FMUs should be required to maintain sufficient financial resources to withstand the default by the participant with the largest exposure or obligation in extreme but plausible market conditions, where the ''participant'' means the family of affiliated participants when there is more than one affiliated participant (''cover one''), or whether such designated FMUs should be required to maintain sufficient financial resources to withstand the defaults by the two participants, plus any affiliated participants, with the largest exposures or obligations in extreme but plausible market conditions (''cover two'').

Two commenters stated that, if the Board continued to base its financial resources standard on the number of participants that pose large risk exposures to a CCP, they supported the higher cover two requirement. One commenter cited the ''interconnectedness of financial institutions'' as one of the central dangers, which must be addressed by financial reforms and a reason for adopting a cover two standard. This commenter also suggested that the Board's rule should conform to a similar standard proposed by the CFTC for systemically important DCOs, which included a cover two requirement.[16] The other commenter supported a cover two standard because, during a period of extreme market stress, it cannot be guaranteed that there will be only a single default. Neither commenter, however, provided any analysis to support its contention that a cover two standard would be more appropriate as a generally applicable standard.

Both commenters, however, expressed a preference for a financial resource coverage requirement based on an additional measurement as determined by a percentage of aggregate exposure, and suggested that the default rate used in stress tests be based on the larger of (a) the two members representing the largest exposure to the CCP and (b) the members constituting at least 33 percent of the exposures in aggregate to the CCP. The two commenters believed that the additional measurement captures the risk of a diverse, but interconnected, membership.

As noted in the NPRM, the Board's proposed financial resources standards would apply a heightened cover one requirement because the term ''participant'' would be interpreted as the largest family of affiliated participants if there was more than one affiliated participant. The Board believes that this interpretation will address the interconnectedness of participants through corporate ownership structures. With respect to risks presented by other types of interconnectedness (i.e., through common participation across markets or FMUs), the standards for a designated FMU's financial resource coverage, as with all other standards set out in the regulation, are generally applicable standards. The Board expects that a designated FMU would employ a risk-management framework that is appropriate for the risks faced by the FMU and the FMU may, at its own initiative, institute a cover two financial resource coverage requirement. In addition, the Board may require, by order, a particular designated FMU to exceed the generally applicable standards set out in the regulation to address the risks presented by, including those borne by, the FMU.[17] Although the existing cover one standard was adopted by the Board in its PSR policy and applied in its supervision of payment and settlement systems since 1994, the Board has applied heightened financial resource coverage requirements when the appropriate situation arose. Therefore, although the Board agrees with the commenters that, in some cases, a higher requirement would be more appropriate to the level of risk presented by a particular designated FMU, the Board believes, at this time, that the most appropriate course is to adopt the cover one standard as generally applicable and impose a higher standard, including possibly a cover two standard, on a case-by-case basis when appropriate. The Board will consider the appropriateness of adopting a cover two standard in the context of possible revisions to Regulation HH in light of the PFMI. Accordingly, the Board is adopting the cover one standard in § 234.4(a)(15) and (18) essentially as set out in the NPRM.

The Board believes the commenters' concern regarding appropriately addressing the interconnectedness of a designated FMU's participants and the suggestion of applying the additional measurement using a percentage of aggregate exposure are important to consider. Before determining the viability of this approach, however, the Board believes further analysis is needed regarding how the suggested additional measure would be applied, and such analysis could include identifying situations in which the additional aggregate exposure measure would capture risk that is not addressed by either a cover one or cover two standard, an explanation of how the additional measure would be calculated (including the appropriate time horizon to use), and an explanation of why a 33 percent aggregate exposure standard would be most appropriate for this approach. The Board will consider this approach further in the context of revisions to Regulation HH in light of

As a practical matter, some validation work may be most effectively done by model developers and users; it is essential, however, that such validation work be subject to critical review by an independent party, who should conduct additional activities to ensure proper validation. Overall, the quality of the validation process is indicated by critical review by objective, knowledgeable parties and the actions taken to address issues identified by those parties.

[16] On November 8, 2011, pursuant to its authority under Title VII of the Dodd-Frank Act, the CFTC published its final rule on risk-management standards for DCOs. The CFTC elected to adopt a cover one requirement for all DCOs, and delay risk-management related rulemakings for systemically important DCOs until a later time. See 76 FR 69334 (Nov. 8, 2011).

[17] *See* § 234.4(b).

the PFMI. The Board welcomes and will review any supporting research on this issue that is submitted.

6. Legal Certainty of Netting Arrangements

One commenter raised an issue regarding designated FMUs that allow netting of payments to and from individual participants. The commenter stated that, to ensure that the netting will be honored in a bankruptcy or other insolvency proceeding, Regulation HH must require that the designated FMU demonstrate that, under the policies, procedures, and documentation of the designated FMU, the netting permitted by the designated FMU will be given legal effect in default and insolvency situations through an analysis provided by outside legal counsel that is a nationally recognized expert in matters of corporate insolvency.

The Board recognizes the importance of legal certainty of a designated FMU's transactions, not only during default and insolvency situations, but also at all other times. To address these concerns, the Board proposed standards regarding a designated FMU's legal framework for payment systems, as well as CSDs and CCPs. For example, proposed § 234.4(a)(1) states that the CSD or CCP should have a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions. As explained in the NPRM, the Board expects that a designated FMU will manage its legal risks within the context of currently applicable statutes and regulations, so it can ensure that its rules, procedures, and contractual provisions will be enforceable with a high degree of certainty.[18]

Legal certainty of each aspect of a designated FMU's activities (including its netting function) is expected to be supported by existing law in all relevant jurisdictions. Obtaining an opinion of outside counsel is one method for a designated FMU to judge legal certainty of its rules and procedures, but it is not the only method. In many cases, the designated FMU's in-house counsel may be better positioned to evaluate the intricacies of the designated FMU's netting arrangements and the law of the jurisdictions that are relevant to the designated FMU's operations. In addition, obtaining an opinion of outside counsel could involve significant expense for the designated FMU, depending on the complexity and number of relevant jurisdictions. The Board does not believe it is appropriate to impose such costs as a general expectation when they may not be necessary in all cases. Whether legal certainty must be supported by an opinion of outside counsel or may be verified by in-house counsel is a decision that may be made initially by management of the designated FMU. In the event the Board determines in a particular situation that an opinion by outside counsel is warranted, it could require such an opinion in that case. For these reasons, the Board believes that the legal framework standard as proposed is sufficient to address the concerns raised by the commenter.

7. Costs of Risk-Management Standards to Participants

One commenter urged the Board to ensure that the benefits of enhanced risk-management standards exceed the costs of implementing the standards on banks and their customers. The commenter stated that banks will feel the effects of the risk-management standards because any designated FMUs with whom the banks transact business will likely pass on the costs and constraints of enhanced supervisory oversight to their participants.

The Board is keenly aware of the need to weigh the costs and benefits of particular rulemakings. Section 805(a) of the Act requires the Board to prescribe risk-management standards governing the operations related to the PCS activities of designated FMUs. The Board's discretion lies not in whether risk-management standards must be promulgated, but rather in how the Board can best avoid unnecessary burden associated with the standards.

With respect to the benefits of the risk-management standards, section 805(b) states that the objectives and principles for the standards are to (1) Promote robust risk management; (2) promote safety and soundness; (3) reduce systemic risks; and (4) support the stability of the broader financial system. The benefit of reducing systemic risk is, of course, difficult to quantify. Generally speaking, however, an FMU that is better positioned to withstand disruptive systemic events would result in much smaller costs being borne by the FMU, and its participants, and, more generally, the financial system and taxpayers.

The costs of the risk-management standards can be viewed as a designated FMU's incremental expenses in establishing and maintaining the systems and procedures necessary to meet the standards, and other Regulation HH requirements, over and above the risk-management measures the FMU would have otherwise adopted for business reasons. As the commenter noted, such costs are generally passed on to a designated FMU's participants. These costs could take the form of higher transaction costs, margin or collateral costs, and capital requirements. These costs should be weighed against the societal benefit of stability in the financial system and the economy more broadly.

As explained in the NPRM, the Board proposed to adopt the Core Principles and CPSS–IOSCO Recommendations as the basis for the risk-management standards required by the Act, in part because that approach strikes a reasonable balance between furthering the Act's goals of enhanced risk management and financial stability and controlling the costs imposed on the FMUs. As explained in the NPRM, the Core Principles and CPSS–IOSCO Recommendations were formulated by central banks and securities regulators over several years and with considerable discussion and input from the financial services industry. The Federal Reserve collaborated with participating financial system authorities in developing the three sets of standards. In addition, the SEC and CFTC participated in the development of the CPSS–IOSCO Recommendations. The three sets of standards, particularly those relevant to payment systems, have been incorporated into the Board's PSR policy for many years. Further, the Board has used these standards, in conjunction with relevant laws and other Federal Reserve policies, when exercising its authority with respect to supervising payment and securities settlement systems.[19] FMUs that are likely to be designated by the Council, as well as their participants, are well-acquainted with these standards and, in many cases, such FMUs have already incorporated these standards into their governance, risk-management, and operating frameworks. The Board, therefore, does not anticipate material additional costs associated with adopting the Core Principles and CPSS–IOSCO Recommendations into its regulation for participants in payment systems already managing towards these standards.

Although these standards would be generally applicable, the Board is retaining the authority to impose a more stringent standard or waive a standard

[18] 76 FR at 18447.

[19] The Core Principles and the Recommendations for Securities Settlement Systems were incorporated into the PSR policy in 2004 (*http://www.federalreserve.gov/boarddocs/press/other/2004/20041126/default.htm*). The Recommendations for Central Counterparties was incorporated into the PSR policy in 2007 (*http://www.federalreserve.gov/newsevents/press/other/20070112a.htm*).

on a case-by-case basis in situations where it is warranted.[20] The Board believes this is a more cost-effective approach to achieving the risk management objectives of Title VIII of the Act. For example, when a situation that warrants a higher standard is discovered, the Board will exercise its authority to tailor a higher standard for the risks presented. In addition, alternatively, if review of the PFMI demonstrates that a higher standard is more appropriate for general application, the Board will consider a revision to the regulation.

B. Advance Notice of Material Changes

1. Materiality Threshold

Section 806(e) of the Act requires a designated FMU to provide 60 days' advance notice to its Supervisory Agency of any proposed change to its rules, procedures, or operations ''that could, as defined in rules of each Supervisory Agency, materially affect the nature or level of risks presented'' by the designated FMU. Proposed § 234.5(c)(1) states that the term ''materially affect the nature or level of risks presented'' means matters as to which there is a ''reasonable possibility that the change could materially affect the performance of clearing, settlement, or payment functions or the overall nature or level of risk presented by the designated financial market utility.'' Proposed § 234.5(c)(2) provides a non-exclusive list of changes that would materially affect the nature or level of risks presented, including changes that affect participant eligibility or access criteria; product eligibility; risk management; settlement failure or default procedures; financial resources; business continuity and disaster recovery plans; daily or intraday settlement procedures; scope of services; non-routine changes to the underlying technological framework for PCS functions; or governance. Proposed § 234.5(c)(3) provides a non-exclusive list of changes that would not materially affect the nature or level of risks presented, including a change that does not modify the contractual rights or obligations of the designated FMU or its participants; a change that does not adversely affect the safeguarding of securities, collateral, or funds for which the designated FMU is responsible; a routine technology upgrade; a routine administrative change; or a non-substantive change to rules, procedures, or other documentation.

The Board requested comments on all aspects of its proposed materiality rule, particularly on the appropriateness of the definition of ''materially affect the nature or level of risks presented'' and the utility of the non-exclusive lists for material and non-material changes. Commenters generally stated that the materiality standard would benefit from one or more of the following three adjustments: (1) A narrower scope of the definition itself, (2) a shorter list of inclusions, or (3) a more expansive list of exclusions.

''Reasonable possibility.'' Several commenters stated that the definition of ''materially affect the nature or level of risks presented'' is overly vague and were concerned that the Board would be flooded with advance notices of non-material changes as a result. Three commenters generally stated that the definition of materiality is too vague and suggest a more narrowly drawn definition to provide for expeditious review. One commenter suggested revising the proposed materiality standard, which requires notice of proposed changes that have ''a reasonable possibility'' of material effect, to require notice only for those changes that are ''reasonably likely'' to have a material effect. The commenter stated that, with the proposed definition, designated FMUs were highly likely to err in favor of significantly ''over-disclosing'' changes to their rules, procedures, and operations, which would be overly burdensome to both the Board and the industry.

The Board believes the proposed definition sets an appropriate minimum threshold for advance notices at this time. Proposed § 234.5(c) asks the designated FMU to consider whether it is reasonably possible that a change could have a material effect on the performance of its PCS functions or its overall risk profile. The Board recognizes that ''possible'' is a lower threshold than ''likely.'' Section 806(e)(1) of the Act uses the phrase ''could * * * materially affect'' the PCS functions or its overall risk profile of the designated FMU. This word choice indicates possibility, rather than likelihood.[21] If Congress had intended that advance notices be submitted only for changes that were likely to have a material effect, it could easily have framed it in that way. In addition, when the Board seeks to fulfill its statutory responsibility, the lower threshold is appropriate to ensure that it is able to review a broad sampling of the types of material changes that the designated FMU normally makes in its operations. As the designated FMU submits advance notices, the Board will be able to provide feedback and filter out the specific types of rule changes normally considered by that particular designated FMU that do not warrant advance notices. Within this framework, the Board anticipates that it will be able to more precisely balance the regulatory burden of the advance notice requirement with its need to receive advance notice of material changes for the supervision of a particular designated FMU contemplated by Title VIII of the Act.

Further, the suggested revision would require the designated FMU to determine which changes were likely to materially affect the performance of its PCS functions or its overall risk profile. Making this judgment without any input from the Board would increase the risk that the designated FMU would not submit an advance notice to the Board that the Board would determine could have a material effect. This not only could subject the designated FMU to supervisory criticism and possible modification or rescission of the change, but also could prevent the Board from obtaining valuable insight into the operations of the designated FMU as contemplated by the statute.

Although a lower materiality threshold initially may result in a higher number of advance notice filings, the Board does not believe that this is a reason to change the definition. The Board will provide guidance, through ongoing dialogue during the supervisory process, to assist a designated FMU in determining whether a proposed change requires advanced notice. For the reasons set out above, the Board is retaining the ''reasonable possibility'' language in the definition of ''materially affect the nature or level of risks presented'' in § 234.5(c)(1) of the final rule.

''Performance of clearing, settlement, or payment functions.'' One commenter suggested deleting from the materiality definition the phrase ''performance of clearing, settlement, or payment functions.'' The commenter stated that the proposed definition of materiality overreaches the statutory purpose of ensuring sound risk management by requiring advance notice of changes that affect the performance of PCS functions in addition to the overall nature or level or risks presented. The commenter stated that changes implemented by the

[20] One example of this approach is the financial resource coverage standard in § 234.4(a)(15) and (18) (cover one versus cover two).

[21] ''Could'' is commonly defined as the past tense of ''can,'' and is used to indicate ''possibility.'' ''Likely'' is defined as ''possessing or displaying the qualities or characteristics that make something probable.'' American Heritage Dictionary of the English Language (Fourth Edition), *http://ahdictionary.com/*.

designated FMU that relate to the broad category of ''performance,'' as opposed to risk, are more appropriately vetted in the competitive marketplace.

In referring to the performance of PCS functions, the Board intended to provide additional guidance to the scope of the advance notice requirement by including an express focus on the PCS functions of a designated FMU. The Board believes that the language in proposed § 234.5(c)(1) appropriately implements the statutory authority provided by the Act. To address the commenters' concerns and provide clarity regarding the scope of the advance notice requirement in § 234.5(c)(1), the Board is adopting a revision to the proposed regulatory text to state that the term ''materially affect the nature or level of risks presented'' means matters as to which there is a reasonable possibility that the change could ''materially affect the overall nature or level of risk presented by the designated financial market utility, including risk arising in the performance of payment, clearing, or settlement functions.'' [22] This revision ensures that the definition follows the statutory authority, while also providing an indication that the Board expects designated FMUs to pay particular attention to providing advance notice of proposed changes to its rules, procedures, or operations regarding the performance of its PCS functions that could materially affect the nature or level of risks presented by the designated FMU. The additional guidance, however, does not limit the scope of ''materially affect the nature or level of risks presented'' to only those risks arising in the performance of PCS functions. A proposed change to any of the designated FMU's rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated FMU should be the subject of an advance notice, regardless of whether it is regarding the performance of PCS functions.

Non-exclusive lists. Four commenters stated that the non-exclusive list of material changes in proposed § 234.5(c)(2) was too broad or the non-exclusive list of non-material changes in proposed § 234.5(c)(3) was too narrow. The commenters acknowledged the value of providing guidance regarding changes that were material or not material, but generally stated that the proposed lists did not appropriately draw this dividing line.

One commenter stated that most items included on the material list in proposed § 234.5(c)(2) are described in a manner that would require a designated FMU to provide the Board notice of changes that would not necessarily affect the nature or level of risk in any manner. In particular, the commenter noted that ''financial resources'' is included in the list in proposed § 234.5(c)(2)(v), but is not modified by any quantitative or qualitative measure, so a designated FMU would be required to submit advance notice of any change in its financial resources, even changes that are not material, such as any changes that in any way affect capital, access to credit, or liquidity. Two commenters cited the ''scope of services'' item in proposed § 234.5(c)(2)(viii) as another example of an overly broad requirement that is unrelated to risk. For similar reasons, two commenters suggested deleting the ''governance'' item in proposed § 234.5(c)(2)(x). One commenter also suggested deleting the ''participant eligibility or access'' item in proposed § 234.5(c)(2)(i).

The Board believes that material changes in the areas listed in proposed § 234.5(c)(2) could affect a designated FMU's core functions and, as a result, might affect its ability to manage its risks appropriately and to continue to conduct systemically important PCS services. This may, in turn, affect the designated FMU's ability to comply with the risk-management standards set out in §§ 234.3 and 234.4 to which they will be held. The list of material changes provided in proposed § 234.5(c)(2) was intended to track those risk-management standards, and the reasons for including these items in the list of material changes requiring an advance notice are similar in most cases. For example, the importance of understanding material changes in the financial resources of a designated FMU acting as a payment system would be critical to assessing the ability of the designated FMU to continue to provide systemically important PCS services in the event of a default, as well as its compliance with several of the proposed risk-management standards, such as the capability to ensure timely completion of daily settlements as set out in proposed § 234.3(a)(5).

To address the commenters' concerns that de minimis changes to the areas listed in § 234.5(c)(2) would require an advance notice, the Board is adopting revised language in the final rule to clarify that the changes that ''materially affect'' the areas listed would be considered changes that materially affect the nature or level of risks presented by the designated FMU.

Also, as explained above regarding the risk-management standard for governance in proposed § 234.3(a)(10), the Board believes that effective, accountable, and transparent governance arrangements are critical to effective risk management of a designated FMU. As a result, changes that materially affect a designated FMU's governance arrangements should be submitted pursuant to the advance notice process.

Similarly, the Board believes that access criteria can help ensure that a designated FMU admits financial institutions that will be able to meet their obligations and not expose the FMU or its other participants to risk, including through risk measures such as capital ratios, risk ratings, or other indicators. For this reason, the Board will have an interest in receiving advance notice of any material changes to a designated FMU's participant eligibility or access criteria. Finally, understanding the scope of services offered by an FMU that is designated on the basis of its role as operator of a payment system is fundamental to being able to have a clear understanding of the payment system's risk profile. A designated FMU's services could affect the financial risks participants face through their participation in the system, as well as the level of risk that the designated FMU is incurring by providing the services.

Commenters also suggested revising the list of non-material changes in proposed § 234.5(c)(3).[23] One commenter stated that certain examples on the non-material list are so narrowly drawn as to be unhelpful in marking a reasonable line between circumstances that may compel advance notice and those that may not. As an example, the commenter cited the example of ''a change that does not modify the contractual rights or obligations of the designated financial market utility or persons using its payment, clearing, or settlement services'' set out in proposed § 234.5(c)(3)(i) and noted these types of changes, in essence, would be the types of clerical, non-substantive changes separately identified in proposed § 234.5(c)(3)(v). Another commenter

[22] The risks presented by the designated FMU's performance of its PCS functions can go beyond the effect on the designated FMU itself and reach its participants or the market more broadly.

[23] One commenter suggested that the final rule include in the non-material list of proposed § 234.5(c)(3) a greater range of operating rule changes for designated FMUs participating in the retail payment systems. As explained above, however, the Council has indicated that it expects to focus at this time on FMUs that operate large-value systems and not on FMUs that operate low-value systems, such as check or ACH. 76 FR 44763, 44769 (July 2011).

supported a broad application of the example set forth in § 234.5(c)(3)(ii) (''a change to an existing procedure, control, or service that does not adversely affect the safeguarding of securities, collateral, or funds in the custody or control of the designated financial market utility or for which it is responsible'').

After taking into consideration the comments noted above and reexamining the list of non-material changes, the Board is eliminating the examples in proposed §§ 234.5(c)(3)(i) and (ii). With respect to proposed § 234.5(c)(3)(i), the Board recognizes the commenter's concern; however, the Board believes it is more prudent to capture a wider range of proposed changes at this time and therefore is reluctant to expand the example's breadth. In addition, the Board is concerned that a broad application of the non-material change set forth in proposed § 234.5(c)(3)(ii) might inadvertently create an overlap with the advance notice requirement for material change set forth in § 234.5(c)(2)(iii) because both changes fall broadly within the area of risk management. In order to avoid this overlap, and any resulting confusion, the Board is removing the example in proposed § 234.5(c)(3)(ii).

The list provided by the Board in § 234.5(c)(3) is not meant to be exhaustive. The Board believes that it is difficult to draw a bright line that could be uniformly applicable to all designated FMUs between changes that would require advance notice and those that would not because of the range of different designs and functions. The Board believes, at this time, that routine changes like those listed in the remaining examples of § 234.5(c)(3) would be considered clearly non-material for the purposes of triggering the 60-day advance notice requirement. In addition, the Board believes that changes to fees, prices, or other charges for services provided by the designated FMU constitute business decisions that would not require advance notice. To that end, the Board is adopting an explicit exclusion for fees, prices, or other charges in § 234.5(c)(3)(ii). As mentioned above, as the supervisory process develops with a particular designated FMU, the Board anticipates that it will reach an understanding with the FMU about what constitutes a non-material rule change for that FMU that would not require advance notice.

2. Expedited Review

Proposed § 234.5(a) includes procedural requirements regarding advance notices of material changes, such as the required content of the notices and the procedures and timing for the methods for approving such changes. These provisions essentially reiterate similar provisions in section 806(e) of the Dodd-Frank Act. Some commenters were concerned that the open-ended time frame for the Board to request additional information on a material change would unnecessarily delay action on certain changes to rules, procedures, or operations that are time sensitive, but do not materially affect the level of risks posed by the designated FMU. As a means of expediting the processing of advance notice submissions, commenters made several suggestions to limit the time of the Board's review, such as (a) establishing a 10-day preliminary determination window in which the Board determines whether a proposed change requires advance notice or a full 60-day review and (b) limiting the Board's authority to request additional information to assess the effects of the proposed change to within the first 30 days of the review period. The commenters were generally concerned that the Board would engage in an indefinite and extended review of advance notices that would hinder a designated FMU's ability to manage its business.

As a general matter, the Board recognizes the importance of reducing regulatory burden and being diligent in reviewing proposed material changes in a timely manner. Section 806(e)(1)(I) of the Act permits a designated FMU to implement a change in less than 60 days from the filing of the advance notice if its Supervisory Agency notifies the designated FMU that it does not object to the proposed change and authorizes the designated FMU to implement the change at an earlier date. The Board incorporated this statutory provision in proposed § 234.5(a)(8) and is retaining this provision in the final rule. This provision provides a mechanism for the Board to complete its review and inform the designated FMU that it may proceed before the expiration of the 60-day advance notice period. The Board expects to use this procedure as appropriate. The Board, however, recognizes that it must balance the need for expediency with the need to conduct a thorough review of any necessary supporting documentation or information related to a proposed change, in order to make an informed decision consistent with its statutory responsibilities. Therefore, the timeliness of the Board's review may depend, in part, on the completeness of the information provided by and level of engagement with the designated FMU prior to and following the submission of the advance notice.

3. Advance Notice by Rule-Setting Bodies

Two commenters responsible for developing and setting rules for retail payment systems suggested that the Board's advance notice procedure permit the submission of a proposed rule change by the rule-writing body and that such submission satisfy the advance notice requirement for any designated payment system operating subject to the rules. As an initial matter, the Board will be mindful of the need for efficiency and minimizing regulatory burden, while also ensuring that the Board receives the necessary information on a timely basis in order to fulfill its responsibilities under the Act. The Board notes, however, that although such rule-writing arrangements exist for several retail payment networks, as noted above, such systems are not expected to be designated by the Council as systemically important at this time. If the Council designates any payment systems subject to such rule-writing arrangements and the Board is the Supervisory Agency for that system, the Board would review, at that time, the appropriate means for such systems to submit advance notices.

4. Emergency Changes

One commenter requested that the Board take care in allowing designated FMUs to make immediate emergency changes to their governing rules under proposed § 234.5(b), particularly with respect to customer collateral and margin requirements. The commenter stated that situations that justify alteration of loss mutualization standards from international standards are rare and should be carefully scrutinized. The commenter also requested that the Board incorporate CPSS–IOSCO principles with regard to customer collateral and margin requirements so as to ensure that designated FMUs will apply loss mutualization standards that comport with international standards.

Section 806(e)(2) of the Act contemplates the possibility that designated FMUs may need to implement material changes to their rules, procedures, or operations in emergency situations and includes a mechanism allowing for the ex-post notification of the Supervisory Agency regarding such emergency material changes. This mechanism was incorporated into proposed § 234.5(b). In order to take advantage of the emergency change process, a designated

FMU is required to explain to the Board within 24 hours of the implementation of the change, among other things, the nature of the emergency and the reason the changes was necessary for the designated FMU to continue to provide its services in a safe and sound manner. Pursuant to Title VIII and the proposed rule, the Board may require modification or rescission of the change if it finds that the change is not consistent with the purposes of the Act or rules or standards prescribed thereunder. The Board expects that emergency changes, including any changes to customer collateral and margin requirements, will occur rarely and will be carefully scrutinized.

5. Advance Notice and Competitive Issues

Two commenters raised concerns regarding the advance notice procedure for designated FMUs that offer services that compete with services offered by the Federal Reserve Banks (''Reserve Banks''). One commenter involved in check imaging stated that if Reserve Banks engaged in check image services were not subject to the advance notice procedure under proposed § 234.5(a) and private-sector check-image-exchange rules were subject to the advance notice procedure, the Reserve Banks would enjoy a significant competitive advantage over the private-sector competitors. This commenter believed that the Reserve Banks would be able to change their check-image rules without being subject to the same delay and uncertainty as the competing designated FMU under the advance notice procedure. The commenter suggested that the Board include within the final rule provisions that seek to mitigate the potential for a negative impact on competition that may arise from the advance notice procedure for designated FMUs. Another commenter stated that it was beyond the scope of systemic risk regulation for the Board to ''force a delay in implementing business-related changes; particularly in a competitive market in which the Reserve Banks offer the competing alternative.''

The Board is cognizant of the competition between the Reserve Banks and private-sector service providers in certain financial services, including check and funds transfer services, and has long-standing policies to address such competitive issues. Under the Federal Reserve Act, the Board has general supervisory authority over the Reserve Banks, including the Reserve Banks' provision of payment and settlement services (''Reserve Bank financial services''), that is much more extensive in scope than the authority provided under Title VIII over designated FMUs.[24] In practice, Board oversight of the Reserve Banks in many ways goes beyond the typical supervisory framework for private-sector entities, including the framework provided by Title VIII. For example, the Board applies robust risk-management standards to the relevant Reserve Bank financial services; conducts regular examinations; and reviews key strategic initiatives, prices and service terms, proposed material changes, and ongoing operations.

The Board conducts regular examinations of the Reserve Bank financial services covering, among other things, operational safety and soundness and management effectiveness. It also regularly monitors the services' operations and initiatives through reports, discussions with Reserve Bank management, and its oversight liaison roles on various Reserve Bank management groups. The Board is also involved in reviewing or approving proposed changes to the Reserve Banks' rules, procedures, and operations, including those involving Reserve Bank financial services, from their inception. The Board's oversight of these proposed changes is significantly broader and more detailed than the Title VIII advance notice procedures. For example, the Board reviews all changes to the Reserve Banks' operating circulars, approves the Reserve Banks' budgets, including budgets related to the Reserve Bank financial services, and approves major strategic initiatives, and the associated expenditures.

Moreover, the Board recognizes the critical role Reserve Bank financial services, particularly the Fedwire Funds and Fedwire Securities services, play in the financial system and is committed to strong and effective supervision of these services that is comparable to, or exceeds, the requirements placed on similar private-sector entities. For example, the Board expects the Fedwire services to meet or exceed the Board's PSR policy standards, which are consistent with the Regulation HH standards applied to designated FMUs. In addition, the Board will hold the Reserve Banks to advance notice requirements with respect to proposed material changes to Fedwire rules, procedures, and operations that are the same as, or higher than, the requirements for designated FMUs that are supervised by the Board.[25] Moreover, if the Council designates an FMU on the basis of its role as operator of a payment system that competes with another Reserve Bank service, the Board will ensure that the competing Reserve Bank service is held to the same or higher requirements as those set forth in Regulation HH.

In addition, in order to address any competitive inequalities between Reserve Bank priced services and similar services provided by private sector entities, the Monetary Control Act of 1980 (the ''MCA'') requires Reserve Bank priced services to be priced explicitly and that fees be established on basis of all direct and indirect costs actually incurred, including taxes that would have been paid and a return on capital that would have been provided had the services been furnished by a private business firm.[26] As required by the MCA, the Board also has established a set of pricing principles that governs the schedule of fees for the Reserve Bank priced services, which must give due regard to competitive factors.[27] Board policy also requires that Federal Reserve actions are implemented in a manner that ensures fairness to other providers of payment services.[28] In light of these policies, the Board believes that changes to Reserve Bank priced services rules or operating circulars are subject to no less scrutiny, and in many cases more scrutiny, than the review contemplated by Title VIII's advance notice procedure.

III. Administrative Law Matters

A. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (''RFA'') generally requires an agency to perform an initial and a final regulatory flexibility analysis on the impact a rule is expected to have on small entities. However, under section 605(b) of the RFA, the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on current information, the Board believes that the payment systems that would likely be designated by the Council would not be ''small entities'' for purposes of the RFA, and

[24] 12 U.S.C. 221 *et seq.*

[25] See the Board's policy on ''Oversight of Key Financial Infrastructures'' related to Reserve Bank Systems at *http://www.federalreserve.gov/paymentsystems/over_rbsystems.htm.*

[26] 12 U.S.C. 248a. These costs are included in the private-sector adjustment factor for pricing Reserve Bank priced services.

[27] 12 U.S.C. 248a(c)(3).

[28] The Board policy can be found at: *http://www.federalreserve.gov/paymentsystems/pfs_standards.htm.*

so, the final rule likely would not have a significant economic impact on a substantial number of small entities. The authority to designate FMUs, however, resides with the Council, rather than the Board, and the Board therefore cannot be assured of the identity of the FMUs that the Council may designate in the future. Accordingly, the Board has prepared the following final regulatory flexibility analysis pursuant to section 604 of the RFA.

1. *Statement of the need for, and objectives of, the final rule.* In accordance with Sections 805(a) and 806(e) of the Dodd-Frank Act, the Board is adopting the final rule as Regulation HH, new Part 234 of Title 12 of the Code of Federal Regulations. The final rule establishes risk-management standards for systemically important FMUs and standards for determining when advance notice is required to be provided by a designated FMU that proposes to change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated financial market utility. The reasons and justification for the final rule are described above in the Supplementary Information.

2. *Summary of the significant issues raised by public comment on Board's initial analysis, the Board's assessment of such issues, and a statement of any changes made as a result of such comments.* The Board did not receive any public comments regarding its initial regulatory flexibility analysis.

3. *Small entities affected by the final rule.* The final rule would affect FMUs that the Council designates as systemically important to the U.S. financial system for which the Board is the Supervisory Agency. The Board estimates that fewer than five large-value payment systems would meet these conditions and be affected by this rule. Pursuant to regulations issued by the Small Business Administration (the ''SBA'') (13 CFR 121.201), a ''small entity'' includes an establishment engaged in providing financial transaction processing, reserve and liquidity services, or clearinghouse services with an average revenue of $7 million or less (NAICS code 522320). As noted in the NPRM, the Board does not currently believe that any of the payment systems that would likely be designated by the Council would be ''small entities'' pursuant to the SBA regulation. In addition, the Board does not believe at this time that, pursuant to section 803(8) of the Dodd-Frank Act, it would be the Supervisory Agency for any FMU that operates as a central securities depository or central counterparty and that would likely be designated by the Council.

4. *Recordkeeping, reporting, and compliance requirements.* The final rule imposes certain reporting and recordkeeping requirements for a designated FMU. (See, for example, § 234.3(a)(3) (requiring clearly defined procedures for the management of credit risks and liquidity risks); § 234.5(a)(1) and (2) (requiring advance notice of changes that could materially affect the nature or level of risks presented by the designated FMU), and § 234.5(b)(2) and (3) (requiring notice of an emergency change implemented by a designated FMU).) The final rule also contains a number of compliance requirements, including the standards that the designated FMU must meet, such as having a well-founded legal basis under all relevant jurisdictions and having rules and procedures that enable participants to understand clearly the FMU's impact on each of the financial risks they incur by participation in it. Payment systems under the Board's jurisdiction (including certain payment systems the Board believes could be designated as systemically important) are generally already expected to meet these standards, or are at least familiar with these standards, so the rule would not likely impose material additional costs on those payment systems.

5. *Significant alternatives to the revisions.* Section 805(a) of the Act requires the Board to prescribe risk-management standards governing the operations related to PCS activities of designated FMUs, so other administrative methods for accomplishing the goals of the Act were not considered. One alternative to adopting risk-management standards based on the relevant international standards was to develop a different set of risk-management standards specifically for purposes of section 805(a) of the Act. As explained in the NPRM and above, the Board proposed to adopt the Core Principles and CPSS–IOSCO Recommendations as the basis for establishing initial risk-management standards required by section 805(a) of the Act, in part, because this approach presented advantageous cost efficiencies for the regulators and the FMUs. Furthermore, the new standards set forth in the PFMI were still under development at the time of the NPRM and not available for consideration as an alternative. As explained above, the Core Principles and CPSS–IOSCO Recommendations were formulated by central banks and securities regulators with considerable discussion and industry consultation. In particular, the Federal Reserve collaborated with participating financial system authorities and consulted with FMUs and their participants in developing the standards. In addition, the SEC and CFTC participated in the development of the CPSS–IOSCO Recommendations. The Board incorporated these standards in its PSR policy in 2004 and 2007 and has been guided by the policy, in conjunction with relevant laws and other Federal Reserve policies, when exercising its authority with respect to supervising large-value payment and securities settlement systems.[29] Payment systems that would likely be designated by the Council, therefore, would likely be familiar with the Core Principles and could implement them promptly with relatively less burden than if the Board developed a different set of standards to implement section 805(a) of the Act.

B. Competitive Impact Analysis

As a matter of policy, the Board subjects all operational and legal changes that could have a substantial effect on payment system participants to a competitive impact analysis, even if competitive effects are not apparent on the face of the proposal.[30] Pursuant to this policy, the Board assesses whether proposed changes ''would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services'' and whether any such adverse effect ''was due to legal differences or due to a dominant market position deriving from such legal differences.'' If, as a result of this analysis, the Board identifies an adverse effect on the ability to compete, the Board then assesses whether the associated benefits—such as improvements to payment system efficiency or integrity—can be achieved while minimizing the adverse effect on competition.

This final rule promulgates risk-management standards and advance notice requirements for designated FMUs, as required by Title VIII of the Act. Some FMUs may be designated on the basis of their role as operators of payment systems that compete with similar services provided by the Reserve Banks, and designation subjects the FMU to an enhanced supervisory framework. Commenters have raised concerns regarding the Reserve Banks obtaining a competitive advantage over private-sector competitors through the

[29] See footnote 19.

[30] See ''The Federal Reserve in the Payments System,'' Fed. Res. Reg. Svc. § 9–1550, 9–1558 (Apr. 2009).

Board imposing a less-stringent supervisory framework on the Reserve Banks priced services than would be imposed on a competing designated FMU. As noted above, Board oversight of the Reserve Banks goes well beyond the typical supervisory framework for private-sector entities, including the framework provided by Title VIII. The Board applies risk-management standards to the Reserve Banks' Fedwire and other financial services that are at least as stringent as those applied to designated FMUs pursuant to Title VIII. Further, the Board will hold Reserve Banks to procedural requirements that are the same as, or higher than, the requirements for designated FMUs supervised by the Board, with respect to advance notice of material changes to the rules, procedures, or operations of Reserve Bank priced services that compete with designated FMUs. Therefore, the Board does not believe the final rule promulgating risk-management standards or advance notice requirements for designated FMUs under Title VIII will have any direct and material adverse effect on the ability of other service providers to compete with the Reserve Banks.

C. Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. As noted in the proposal, for purposes of calculating burden under the Paperwork Reduction Act, a ''collection of information'' involves 10 or more respondents. Any collection of information addressed to all or a substantial majority of an industry is presumed to involve 10 or more respondents (5 CFR 1320.3(c), 1320.3(c)(4)(ii)). The Board estimates there are fewer than 10 respondents, and these respondents do not represent all or a substantial majority of the participants in payment, clearing, and settlement systems. Therefore, no collections of information pursuant to the Paperwork Reduction Act are contained in the final rule. The Board did not receive any comments on this analysis.

The Board has a continuing interest in the public's opinion of the collection of information. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

List of Subjects in 12 CFR Part 234

Banks, Banking, Credit, Electronic funds transfers, Financial market utilities, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR, Chapter II by adding part 234, as set forth below.

PART 234—DESIGNATED FINANCIAL MARKET UTILITIES (REGULATION HH)

Sec.

234.1 Authority, purpose, and scope.
234.2 Definitions.
234.3 Standards for payment systems.
234.4 Standards for central securities depositories and central counterparties.
234.5 Changes to rules, procedures, or operations.

Authority: 12 U.S.C. 5461 *et seq.*

§ 234.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the authority of sections 805, 806, and 810 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376; 12 U.S.C. 5464, 5465, and 5469).

(b) *Purpose and scope.* This part establishes risk-management standards governing the operations related to the payment, clearing, and settlement activities of designated financial market utilities. The risk-management standards do not apply, however, to a designated financial market utility that is a derivatives clearing organization registered under section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) or a clearing agency registered with the Securities and Exchange Commission under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1), which are governed by the risk-management standards promulgated by the Commodity Futures Trading Commission or the Securities and Exchange Commission, respectively, for which each is the Supervisory Agency (as defined below). In addition, this part sets out requirements and procedures for a designated financial market utility that proposes to make a change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated financial market utility and for which the Board is the Supervisory Agency.

§ 234.2 Definitions.

As used in this part:

(a) *Central counterparty* means an entity that interposes itself between the counterparties to trades, acting as the buyer to every seller and the seller to every buyer.

(b) *Central securities depository* means an entity that holds securities in custody to enable securities transactions to be processed by means of book entries or an entity that enables securities to be transferred and settled by book entry either free of or against payment.

(c) *Designated financial market utility* means a financial market utility (as defined in paragraph (d) of this section) that the Financial Stability Oversight Council has designated under section 804 of the Dodd-Frank Act (12 U.S.C. 5463).

(d) *Financial market utility* has the same meaning as the term defined in section 803(6) of the Dodd-Frank Act (12 U.S.C. 5462(6)).

(e) *Payment system* means a set of payment instructions, procedures, and rules for the transfer of funds among system participants.

(f) *Supervisory Agency* has the same meaning as the term is defined in section 803(8) of the Dodd-Frank Act (12 U.S.C. 5462(8)).

§ 234.3 Standards for payment systems.

(a) A designated financial market utility that is designated on the basis of its role as the operator of a payment system must implement rules, procedures, or operations designed to ensure that it meets or exceeds the following risk-management standards with respect to the payment, clearing, and settlement activities of that payment system:

(1) The payment system has a well-founded legal basis under all relevant jurisdictions.

(2) The payment system's rules and procedures enable participants to have a clear understanding of the payment system's impact on each of the financial risks they incur through participation in it.

(3) The payment system has clearly defined procedures for the management of credit risks and liquidity risks, which specify the respective responsibilities of the payment system operator and the participants and which provide appropriate incentives to manage and contain those risks.

(4) The payment system provides prompt final settlement on the day of value, during the day and at a minimum at the end of the day.

(5) A payment system in which multilateral netting takes place is, at a

minimum, capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single settlement obligation.

(6) Assets used for settlement are a claim on the central bank or other assets that carry little or no credit risk and little or no liquidity risk.

(7) The payment system ensures a high degree of security and operational reliability and has contingency arrangements for timely completion of daily processing.

(8) The payment system provides a means of making payments that is practical for its users and efficient for the economy.

(9) The payment system has objective and publicly disclosed criteria for participation, which permit fair and open access.

(10) The payment system's governance arrangements are effective, accountable, and transparent.

(b) The Board, by order, may apply heightened risk-management standards to a particular designated financial market utility in accordance with the risks presented by that designated financial market utility. The Board, by order, may waive the application of a standard or standards to a particular designated financial market utility where the risks presented by or the design of that designated financial market utility would make the application of the standard or standards inappropriate.

§ 234.4 Standards for central securities depositories and central counterparties.

(a) A designated financial market utility that is designated on the basis of its role as a central securities depository or a central counterparty must implement rules, procedures, or operations designed to ensure that it meets or exceeds the following risk-management standards with respect to the payment, clearing, and settlement activities of that central securities depository or central counterparty:

(1) The central securities depository or central counterparty has a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.

(2) The central securities depository or central counterparty requires participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the central securities depository or central counterparty. The central securities depository or central counterparty has procedures in place to monitor that participation requirements are met on an ongoing basis. The central securities depository's or central counterparty's participation requirements are objective and publicly disclosed, and permit fair and open access.

(3) The central securities depository or central counterparty holds assets in a manner whereby risk of loss or of delay in its access to them is minimized. Assets invested by a central securities depository or central counterparty are held in instruments with minimal credit, market, and liquidity risks.

(4) The central securities depository or central counterparty identifies sources of operational risk and minimizes them through the development of appropriate systems, controls, and procedures; has systems that are reliable and secure, and has adequate, scalable capacity; and has business continuity plans that allow for timely recovery of operations and fulfillment of the central securities depository's or central counterparty's obligations.

(5) The central securities depository or central counterparty employs money settlement arrangements that eliminate or strictly limit its settlement bank risks, that is, its credit and liquidity risks from the use of banks to effect money settlements with its participants and requires funds transfers to the central securities depository or central counterparty be final when effected.

(6) The central securities depository or central counterparty is cost-effective in meeting the requirements of participants while maintaining safe and secure operations.

(7) The central securities depository or central counterparty evaluates the potential sources of risks that can arise when the central securities depository or central counterparty establishes links either cross-border or domestically to settle transactions or clear trades, and ensures that the risks are managed prudently on an ongoing basis.

(8) The central securities depository or central counterparty has governance arrangements that are clear and transparent to fulfill public interest requirements and to support the objectives of owners and participants and promotes the effectiveness of a central securities depository's or central counterparty's risk-management procedures.

(9) The central securities depository or central counterparty provides market participants with sufficient information for them to identify and evaluate accurately the risks and costs associated with using its services.

(10) The central securities depository or central counterparty establishes default procedures that ensures that the central securities depository or central counterparty can take timely action to contain losses and liquidity pressures and to continue meeting its obligations and provides for key aspects of the default procedures to be publicly available.

(11) The central securities depository or central counterparty ensures that final settlement occurs no later than the end of the settlement day and requires that intraday or real-time finality be provided where necessary to reduce risks.

(12) The central securities depository or central counterparty eliminates principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.

(13) The central securities depository or central counterparty states its obligations with respect to physical deliveries, and the risks from these obligations are identified and managed.

(14) The central securities depository immobilizes or dematerializes securities certificates and transfers them by book entry to the greatest extent possible.

(15) The central securities depository institutes risk controls that include collateral requirements and limits, and ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle when the central securities depository extends intraday credit.

(16) The central counterparty measures its credit exposures to its participants at least once a day and limits its exposures to potential losses from defaults by its participants in normal market conditions so that the operations of the central counterparty would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.

(17) The central counterparty uses margin requirements to limit its credit exposures to participants in normal market conditions and uses risk-based models and parameters to set margin requirements and reviews them regularly. Specifically, the central counterparty—

(i) Provides for annual model validation consisting of evaluating the performance of the central counterparty's margin models and the related parameters and assumptions associated with such models by a qualified person who does not perform functions associated with the central counterparty's margin models (except as part of the annual model validation) and does not report to such a person.

(ii) Reviews and backtests margin models and parameters at least quarterly.

(18) The central counterparty maintains sufficient financial resources to withstand, at a minimum, a default by the participant to which it has the largest exposure in extreme but plausible market conditions.

(b) The Board, by order, may apply heightened risk-management standards to a particular designated financial market utility in accordance with the risks presented by that designated financial market utility. The Board, by order, may waive the application of a standard or standards to a particular designated financial market utility where the risks presented by or the design of that designated financial market utility would make the application of the standard or standards inappropriate.

§ 234.5 Changes to rules, procedures, or operations.

(a) *Advance notice.*

(1) A designated financial market utility shall provide at least 60-days advance notice to the Board of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated financial market utility.

(2) The notice of the proposed change shall describe—

(i) The nature of the change and expected effects on risks to the designated financial market utility, its participants, or the market; and

(ii) How the designated financial market utility plans to manage any identified risks.

(3) The Board may require the designated financial market utility to provide additional information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the utility's payment, clearing, or settlement activities and the sufficiency of any proposed risk-management techniques.

(4) A designated financial market utility shall not implement a change to which the Board has an objection.

(5) The Board will notify the designated financial market utility of any objection before the end of 60 days after the later of—

(i) The date the Board receives the notice of proposed change; or

(ii) The date the Board receives any further information it requests for consideration of the notice.

(6) A designated financial market utility may implement a change if it has not received an objection to the proposed change before the end of 60 days after the later of—

(i) The date the Board receives the notice of proposed change; or

(ii) The date the Board receives any further information it requests for consideration of the notice.

(7) With respect to proposed changes that raise novel or complex issues, the Board may, by written notice during the 60-day review period, extend the review period for an additional 60 days. Any extension under this paragraph will extend the time periods under paragraphs (a)(5) and (a)(6) of this section to 120 days.

(8) A designated financial market utility may implement a proposed change before the expiration of the applicable review period if the Board notifies the designated financial market utility in writing that the Board does not object to the proposed change and authorizes the designated financial market utility to implement the change on an earlier date, subject to any conditions imposed by the Board.

(b) *Emergency changes.*

(1) A designated financial market utility may implement a change that would otherwise require advance notice under this section if it determines that—

(i) An emergency exists; and

(ii) Immediate implementation of the change is necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(2) The designated financial market utility shall provide notice of any such emergency change to the Board as soon as practicable and no later than 24 hours after implementation of the change.

(3) In addition to the information required for changes requiring advance notice in paragraph (a)(2) of this section, the notice of an emergency change shall describe—

(i) The nature of the emergency; and

(ii) The reason the change was necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(4) The Board may require modification or rescission of the change if it finds that the change is not consistent with the purposes of the Dodd-Frank Act or any applicable rules, order, or standards prescribed under section 805(a) of the Dodd-Frank Act.

(c) *Materiality.*

(1) The term ''materially affect the nature or level of risks presented'' in paragraph (a)(1) of this section means matters as to which there is a reasonable possibility that the change would materially affect the overall nature or level of risk presented by the designated financial market utility, including risk arising in the performance of payment, clearing, or settlement functions.

(2) A change to rules, procedures, or operations that would materially affect the nature or level of risks presented includes, but is not limited to, changes that materially affect any one or more of the following:

(i) Participant eligibility or access criteria;

(ii) Product eligibility;

(iii) Risk management;

(iv) Settlement failure or default procedures;

(v) Financial resources;

(vi) Business continuity and disaster recovery plans;

(vii) Daily or intraday settlement procedures;

(viii) The scope of services, including the addition of a new service or discontinuation of an existing service;

(ix) Technical design or operating platform, which results in non-routine changes to the underlying technological framework for payment, clearing, or settlement functions; or

(x) Governance.

(3) A change to rules, procedures, or operations that does not meet the conditions of paragraph (c)(2) of this section and would not materially affect the nature or level of risks presented includes, but is not limited to the following:

(i) A routine technology systems upgrade;

(ii) A change in a fee, price, or other charge for services provided by the designated financial market utility;

(iii) A change related solely to the administration of the designated financial market utility or related to the routine, daily administration, direction, and control of employees; or

(iv) A clerical change and other non-substantive revisions to rules, procedures, or other documentation.

By order of the Board of Governors of the Federal Reserve System, July 27, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–18762 Filed 8–1–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

Alaskan Fuel Hauling as a Restricted Category Special Purpose Flight Operation

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Notice of policy.

SUMMARY: This notice of policy announces Alaskan fuel hauling as a restricted category special purpose

operation under Title 14 of the Code of Federal Regulations (14 CFR) 21.25(b)(7), for aircraft type-certificated under 14 CFR 21.25(a)(1), for operations within the State of Alaska, to provide bulk fuel to isolated individuals or locations in the State of Alaska.

DATES: This policy is August 2, 2012.

FOR FURTHER INFORMATION CONTACT: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Certification Procedures Office (AIR–110), Mike Monroney Aeronautical Center, P.O. Box 26460, Oklahoma City, OK 73125. Attn: Jon Mowery. Telephone (405) 954–4776, fax 405–954–2209, email to: *jon.mowery@faa.gov.*

SUPPLEMENTARY INFORMATION: On August 6, 2009, a notice of proposed policy was published in the **Federal Register** (74 FR 39242) in which the FAA proposed to specify Alaskan fuel hauling as a restricted category special purpose operation under 14 CFR 21.25(b)(7). The comment period closed September 8, 2009. This notice of policy addresses only one of the three special purpose operations proposed in 2009. The other two proposals are still under consideration and are not addressed at this time in this notice.

The FAA received comments from six commenters, in three major areas. One of the comments submitted was, ''The transport of the fuel could be made safer by limiting the payload on each flight to say 35% of the aircraft weight so there won't be problems with takeoff and landing''. Another commenter proposed that Alaska fuel hauling be limited to aircraft having a maximum certificated takeoff weight (''MTOW'') of 20,000 lb or less. The FAA does not agree with setting an arbitrary maximum weight limit for this special purpose, nor does the FAA see a need to operate below the certificated capabilities of the aircraft. To provide for safe operations, each aircraft used to transport fuel will be required to receive FAA certification for the purpose of fuel hauling. During certification the airplane payload and performance limits will be specified as part of the certification process. All aircraft must be operated within their certificated weight and balance limitations, and airfield performance limitations. No overweight operations will be permitted.

One commenter suggested that the special purpose of fuel hauling be expanded to include operations outside the State of Alaska, while another commenter requested that the proposal be strictly limited to operations conducted solely within the state. The FAA will limit this proposed special purpose to operations in the State of Alaska only. Alaska has a unique dependence on aviation for delivery of essential supplies to remote villages that are not serviced by roads or rail. Most of these villages are served by airports with runways less than 3,000 feet long. The remoteness and limited transportation infrastructure means that air transportation of fuel is the only method to deliver fuel to these areas during many times of the year.

One commenter requested that the FAA confirm that restricted category aircraft certificated for the special purpose of Alaskan fuel hauling would be permitted to conduct these operations in view of the provisions of § 91.313, which provides the operating limitations for aircraft certificated in restricted category. Section 91.313(a) states that no person may operate a restricted category civil aircraft for any purpose other than the special purpose for which it is certificated. Section 91.313(c) states that a restricted category aircraft cannot be used to carry persons or property for compensation or hire. However, this paragraph goes on to say that for the purposes of § 91.313(c) the definition of ''for compensation or hire'' changes if the special purpose requires the carriage of material necessary for that special purpose. Then carriage of that material is not considered carriage ''for compensation or hire'', but only in regards to the limitations in § 91.313(c). For example, an airplane with a restricted category airworthiness certificate for the special purpose of Alaska fuel hauling may carry fuel for commercial gain. However, the operation must comply with 14 CFR part 119, which addresses commercial operations. Since Alaskan fuel hauling does not meet any of the exclusions in 14 CFR part 119, the operation would need to meet the requirements of 14 CFR part 135 or part 121. Operational approval for Alaskan fuel hauling must be obtained from FAA Flight Standards Service in accordance with the operating regulations.

The special purpose of Alaskan fuel hauling was considered for aircraft type-certificated under § 21.25(a)(1). This limitation will result in a higher level of safety than surplus military aircraft type-certificated under § 21.25(a)(2). Compliance with 14 CFR part 36 noise requirements is required for this special purpose. The fuel hauling system must be shown to meet the applicable airworthiness regulations as required by §§ 21.25(a)(1), and 21.101 if appropriate. Upon approval of the fuel hauling configuration of an aircraft for Alaskan fuel hauling, the operator must obtain an airworthiness certificate for the new special purpose.

Accordingly, the Aircraft Engineering Division hereby specifies, under authority delegated by the Administrator, that Alaskan fuel hauling is a restricted category special purpose flight operation under the provisions of § 21.25(b)(7). This approval is limited to aircraft type-certificated under § 21.25(a)(1). This action will enable bulk fuel to be carried to isolated individuals and locations (such as villages, towns, and mining facilities) in the State of Alaska, during times when other methods are impractical.

Issued in Washington, DC, on June 29, 2012.

David W. Hempe,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 2012–18557 Filed 8–1–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30853; Amdt. No. 3488]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 2, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of August 2, 2012.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPs, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866;(2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on July 20, 2012.

John Duncan,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

Part 97—Standard Instrument Approach Procedures

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 23 August 2012

Pensacola, FL, Pensacola Gulf Coast Rgnl, RNAV (GPS) RWY 17, Amdt 2A
Plymouth, MA, Plymouth Muni, ILS OR LOC/DME RWY 6, Amdt 1B
Worcester, MA, Worcester Rgnl, VOR/DME RWY 33, Amdt 1
Mackinac Island, MI, Mackinac Island, Takeoff Minimums and Obstacle DP, Amdt 2
Montauk, NY, Montauk, RNAV (GPS) RWY 6, Orig
Montauk, NY, Montauk, RNAV (GPS) RWY 24, Amdt 1
Myrtle Beach, SC, Myrtle Beach Intl, RNAV (GPS)–A, Orig
Dallas, TX, Dallas Love Field, RNAV (GPS) Z RWY 13L, Amdt 1A
Dallas, TX, Dallas Love Field, RNAV (GPS) Z RWY 13R, Orig-B
El Paso, TX, El Paso Intl, RNAV (RNP) Y RWY 4, Orig-B
Oconto, WI, J. Douglas Bake Memorial, GPS RWY 11, Orig-A, CANCELED
Oconto, WI, J. Douglas Bake Memorial, NDB OR GPS RWY 29, Orig-B, CANCELED

Oconto, WI, J. Douglas Bake Memorial, RNAV (GPS) RWY 11, Orig
Oconto, WI, J. Douglas Bake Memorial, RNAV (GPS) RWY 29, Orig

Effective 20 September 2012

Galena, AK, Edward G. Pitka Sr, RNAV (GPS) RWY 7, Amdt 2
Galena, AK, Edward G. Pitka Sr, RNAV (GPS) RWY 25, Amdt 2
Galena, AK, Edward G. Pitka Sr, VOR/DME RWY 7, Amdt 8
Galena, AK, Edward G. Pitka Sr, VOR/DME RWY 25, Amdt 11
Iliamna, AK, Iliamna, RNAV (GPS) RWY 35, Amdt 2
King Salmon, AK, King Salmon, ILS OR LOC/DME RWY 12, Amdt 18
King Salmon, AK, King Salmon, LOC/DME BC RWY 30, Amdt 5
Courtland, AL, Courtland, RNAV (GPS) RWY 13, Amdt 2
Courtland, AL, Courtland, RNAV (GPS) RWY 31, Amdt 2
Courtland, AL, Courtland, Takeoff Minimums and Obstacle DP, Amdt 2
Firebaugh, CA, Firebaugh, Takeoff Minimums and Obstacle DP, Amdt 2
San Francisco, CA, San Francisco Intl, ILS OR LOC RWY 28L, Amdt 23
San Francisco, CA, San Francisco Intl, ILS PRM RWY 28L (Simultaneous Close Parallel), Amdt 2
Pagosa Springs, CO, Stevens Field, RNAV (GPS)–A, Amdt 1
Daytona Beach, FL, Daytona Beach Intl, ILS OR LOC RWY 7L, Amdt 31
Daytona Beach, FL, Daytona Beach Intl, RNAV (GPS) RWY 7L, Amdt 1
Daytona Beach, FL, Daytona Beach Intl, RNAV (GPS) Y RWY 7L, Orig-B, CANCELED
Hollywood, FL, North Perry, GPS RWY 9R, Orig-B, CANCELED
Hollywood, FL, North Perry, RNAV (GPS) RWY 10R, Orig
Hollywood, FL, North Perry, RNAV (GPS) RWY 28R, Orig
Hollywood, FL, North Perry, Takeoff Minimums and Obstacle DP, Amdt 4
Jacksonville, FL, Cecil, VOR RWY 9R, Amdt 1
Melbourne, FL, Melbourne Intl, ILS OR LOC RWY 9R, Amdt 12
Melbourne, FL, Melbourne Intl, LOC BC RWY 27L, Amdt 10
Melbourne, FL, Melbourne Intl, RNAV (GPS) RWY 9L, Amdt 1
Melbourne, FL, Melbourne Intl, RNAV (GPS) RWY 9R, Amdt 1
Melbourne, FL, Melbourne Intl, RNAV (GPS) RWY 27L, Amdt 1
Melbourne, FL, Melbourne Intl, RNAV (GPS) RWY 27R, Amdt 1
Melbourne, FL, Melbourne Intl, VOR RWY 9R, Amdt 21
Melbourne, FL, Melbourne Intl, VOR RWY 27L, Amdt 13
Orlando, FL, Kissimmee Gateway, GPS RWY 6, Orig-B, CANCELED
Orlando, FL, Kissimmee Gateway, RNAV (GPS) RWY 6, Orig
Orlando, FL, Kissimmee Gateway, RNAV (GPS) RWY 33, Amdt 2
Orlando, FL, Orlando Intl, ILS OR LOC RWY 17L, ILS RWY 17L (CAT II), Amdt 1B
Orlando, FL, Orlando Intl, ILS OR LOC RWY 17R, ILS RWY 17R (CAT II), Amdt 5B
Orlando, FL, Orlando Intl, ILS OR LOC RWY 18R, Amdt 9B
Orlando, FL, Orlando Intl, ILS OR LOC RWY 35L, ILS RWY 35L (CAT II), ILS RWY 35L (CAT III), Amdt 6C
Orlando, FL, Orlando Intl, ILS OR LOC RWY 35R, ILS RWY 35R (CAT II), Amdt 1C
Orlando, FL, Orlando Intl, ILS OR LOC RWY 36R, ILS RWY 36R (CAT II), ILS RWY 36R (CAT III), Amdt 9C
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 17L, Orig-A
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 17R, Orig-A
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 18L, Orig-A
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 18R, Orig-A
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 35L, Orig-B
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 35R, Orig-B
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 36L, Orig-B
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 36R, Orig-B
Orlando, FL, Orlando Intl, RNAV (RNP) Z RWY 17L, Orig-A, CANCELED
Orlando, FL, Orlando Intl, RNAV (RNP) Z RWY 17R, Orig-A, CANCELED
Orlando, FL, Orlando Intl, RNAV (RNP) Z RWY 18L, Orig-A, CANCELED
Orlando, FL, Orlando Intl, RNAV (RNP) Z RWY 18R, Orig-A, CANCELED
Orlando, FL, Orlando Intl, RNAV (RNP) Z RWY 35L, Orig-B, CANCELED
Orlando, FL, Orlando Intl, RNAV (RNP) Z RWY 35R, Orig-B, CANCELED
Orlando, FL, Orlando Intl, RNAV (RNP) Z RWY 36L, Orig-B, CANCELED
Orlando, FL, Orlando Intl, RNAV (RNP) Z RWY 36R, Orig-B, CANCELED
Atlanta, GA, Dekalb-Peachtree, VOR/DME RWY 27, Amdt 1F, CANCELED
Atlanta, GA, Dekalb-Peachtree, VOR/DME–D, Orig
Ames, IA, Ames Muni, ILS OR LOC RWY 1, Amdt 2
Indianapolis, IN, Greenwood Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Pittsburg, KS, Atkinson Muni, RNAV (GPS) RWY 4, Amdt 1
Pittsburg, KS, Atkinson Muni, RNAV (GPS) RWY 16, Amdt 2
Pittsburg, KS, Atkinson Muni, RNAV (GPS) RWY 22, Amdt 1
Pittsburg, KS, Atkinson Muni, RNAV (GPS) RWY 34, Amdt 2
Gonzales, LA, Louisiana Rgnl, RNAV (GPS) RWY 17, Amdt 1
Gonzales, LA, Louisiana Rgnl, RNAV (GPS) RWY 35, Amdt 1
Gonzales, LA, Louisiana Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Slidell, LA, Slidell, NDB RWY 36, Orig-E, CANCELED
Vineyard Haven, MA, Marthas Vineyard, RNAV (GPS) RWY 15, Orig
Vineyard Haven, MA, Marthas Vineyard, RNAV (GPS) RWY 33, Orig
Winona, MN, Winona Muni-Max Conrad Fld, RNAV (GPS) RWY 30, Amdt 1
Winona, MN, Winona Muni-Max Conrad Fld, Takeoff Minimums and Obstacle DP, Amdt 4
St Louis, MO, Lambert-St Louis Intl, RNAV (GPS) Y RWY 11, Orig-B
St Louis, MO, Lambert-St Louis Intl, RNAV (GPS) Y RWY 12L, Amdt 2B
St Louis, MO, Lambert-St Louis Intl, RNAV (GPS) Y RWY 12R, Amdt 1B
St Louis, MO, Lambert-St Louis Intl, RNAV (GPS) Y RWY 29, Orig-C
St Louis, MO, Lambert-St Louis Intl, RNAV (GPS) Y RWY 30L, Amdt 1B
St Louis, MO, Lambert-St Louis Intl, RNAV (GPS) Y RWY 30R, Amdt 1D
Marks, MS, Selfs, Takeoff Minimums and Obstacle DP, Amdt 1
Cavalier, ND, Cavalier Muni, RNAV (GPS) RWY 34, Amdt 1
Cavalier, ND, Cavalier Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Le Roy, NY, Le Roy, RNAV (GPS) RWY 10, Orig
Le Roy, NY, Le Roy, RNAV (GPS) RWY 28, Orig
Le Roy, NY, Le Roy, Takeoff Minimums and Obstacle DP, Amdt 1
Le Roy, NY, Le Roy, VOR–A, Amdt 1
Shirley, NY, Brookhaven, ILS OR LOC RWY 6, Amdt 2
Cincinnati, OH, Cincinnati Muni Airport Lunken Field, ILS OR LOC RWY 21L, Amdt 19
Cincinnati, OH, Cincinnati Muni Airport Lunken Field, NDB RWY 21L, Amdt 17
Cincinnati, OH, Cincinnati Muni Airport Lunken Field, NDB RWY 25, Amdt 12
Cincinnati, OH, Cincinnati Muni Airport Lunken Field, RNAV (GPS) RWY 3R, Orig
Cincinnati, OH, Cincinnati Muni Airport Lunken Field, RNAV (GPS) RWY 21L, Amdt 1
Cincinnati, OH, Cincinnati Muni Airport Lunken Field, RNAV (GPS) RWY 25, Amdt 1
Clearfield, PA, Clearfield-Lawrence, RNAV (GPS) RWY 12, Orig
Clearfield, PA, Clearfield-Lawrence, RNAV (GPS) RWY 30, Amdt 1
Clearfield, PA, Clearfield-Lawrence, Takeoff Minimums and Obstacle DP, Amdt 3
Connellsville, PA, Joseph A. Hardy Connellsville, LOC RWY 5, Amdt 4
Connellsville, PA, Joseph A. Hardy Connellsville, RNAV (GPS) RWY 5, Orig
Connellsville, PA, Joseph A. Hardy Connellsville, RNAV (GPS) RWY 14, Orig
Connellsville, PA, Joseph A. Hardy Connellsville, Takeoff Minimums and Obstacle DP, Amdt 1
Clemson, SC, Oconee County Rgnl, RNAV (GPS) RWY 25, Amdt 3
Gregory, SD, Gregory Muni, Flynn Fld, GPS RWY 31, Amdt 1, CANCELED
Gregory, SD, Gregory Muni—Flynn Fld, RNAV (GPS) RWY 13, Orig
Gregory, SD, Gregory Muni—Flynn Fld, RNAV (GPS) RWY 31, Orig
Angelton/Lake Jackson, TX, Texas Gulf Coast Rgnl, ILS OR LOC RWY 17, Amdt 5
Caldwell, TX, Caldwell Muni, RNAV (GPS) RWY 15, Orig
Caldwell, TX, Caldwell Muni, RNAV (GPS) RWY 33, Orig
Caldwell, TX, Caldwell Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Caldwell, TX, Caldwell Muni, VOR/DME–A, Amdt 3
Lago Vista, TX, Lago Vista TX—Rusty Allen, GPS RWY 15, Orig-A, CANCELED

Lago Vista, TX, Lago Vista TX—Rusty Allen, RNAV (GPS) RWY 15, Orig
Robstown, TX, Nueces County, GPS RWY 13, Orig-C, CANCELED
Robstown, TX, Nueces County, RNAV (GPS) RWY 13, Orig
Robstown, TX, Nueces County, Takeoff Minimums and Obstacle DP, Amdt 1
Clarksville, VA, Lake Country Regional, VOR/DME–A, Orig-A, CANCELED
Richland, WA, Richland, LOC RWY 19, Amdt 8
Richland, WA, Richland, RNAV (GPS) Y RWY 19, Amdt 1
Richland, WA, Richland, RNAV (GPS) Z RWY 19, Orig
Wenatchee, WA, Pangborn Memorial, ILS X RWY 12, Orig
Yakima, WA, Yakima Air Terminal/McAllister Field, RNAV (GPS) X RWY 27, Amdt 1A
Medford, WI, Taylor County, RNAV (GPS) RWY 16, Orig
Medford, WI, Taylor County, RNAV (GPS) RWY 34, Orig
Mineral Point, WI, Iowa County, NDB RWY 22, Amdt 6
Mineral Point, WI, Iowa County, RNAV (GPS) RWY 4, Amdt 1
Mineral Point, WI, Iowa County, RNAV (GPS) RWY 11, Amdt 1
Mineral Point, WI, Iowa County, RNAV (GPS) RWY 22, Amdt 1
Mineral Point, WI, Iowa County, RNAV (GPS) RWY 29, Amdt 1
Superior, WI, Richard I Bong, GPS RWY 3, Orig, CANCELED
Superior, WI, Richard I Bong, GPS RWY 13, Orig, CANCELED
Superior, WI, Richard I Bong, GPS RWY 31, Orig, CANCELED
Superior, WI, Richard I Bong, RNAV (GPS) RWY 4, Orig
Superior, WI, Richard I Bong, RNAV (GPS) RWY 14, Orig
Superior, WI, Richard I Bong, RNAV (GPS) RWY 22, Orig
Superior, WI, Richard I Bong, RNAV (GPS) RWY 32, Orig
Casper, WY, Casper/Natrona County Intl, Takeoff Minimums and Obstacle DP, Amdt 4
Cheyenne, WY, Cheyenne Rgnl/Jerry Olson Field, Takeoff Minimums and Obstacle DP, Amdt 4

[FR Doc. 2012–18521 Filed 8–1–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30854; Amdt. No. 3489]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 2, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 2, 2012.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and

safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on July 20, 2012.

John Duncan,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

Part 97—Standard Instrument Approach Procedures

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
23-Aug-12	KS	Wichita	Wichita Mid-Continent	2/0134	7/11/12	RNAV (GPS) RWY 1R, Amdt 1.
23-Aug-12	NE	North Platte	North Platte Rgnl Airport Lee Bird Field.	2/0484	7/11/12	ILS OR LOC RWY 30, Amdt 6.
23-Aug-12	NE	North Platte	North Platte Rgnl Airport Lee Bird Field.	2/0485	7/11/12	VOR RWY 35, Amdt 18A.
23-Aug-12	TX	Dallas	Dallas Love Field	2/0613	7/11/12	ILS RWY 13R, Amdt 4D.
23-Aug-12	TX	Dallas	Dallas Love Field	2/0617	7/11/12	ILS RWY 13L, Amdt 31B.
23-Aug-12	CA	Santa Ana	John Wayne Airport-Orange County.	2/1446	7/11/12	RNAV (GPS) Y RWY 19R, Amdt 1B.
23-Aug-12	KS	Hutchinson	Hutchinson Muni	2/3180	7/11/12	RNAV (GPS) RWY 31, Amdt 1.
23-Aug-12	MA	Orange	Orange Muni	2/3482	7/11/12	VOR A, Amdt 7.
23-Aug-12	MA	Worcester	Worcester Rgnl	2/3525	7/11/12	ILS OR LOC RWY 29, Amdt 4.
23-Aug-12	IA	Des Moines	Des Moines Intl	2/3637	7/11/12	ILS OR LOC RWY 13, Amdt 9A.
23-Aug-12	OK	Tulsa	Tulsa Intl	2/3664	7/11/12	RNAV (RNP) Z RWY 26, Orig-A.
23-Aug-12	OK	Tulsa	Tulsa Intl	2/3666	7/11/12	RNAV (GPS) Y RWY 26, Amdt 3.
23-Aug-12	NC	Jacksonville	Albert J Ellis	2/4274	7/11/12	RNAV (GPS) RWY 5, Amdt 1.
23-Aug-12	MN	Luverne	Quentin Aanenson Field	2/5558	7/11/12	RNAV (GPS) RWY 36, Orig.
23-Aug-12	OK	Tulsa	Tulsa Intl	2/6222	7/11/12	VOR OR TACAN RWY 26, Amdt 24.
23-Aug-12	AL	Huntsville	Huntsville Intl-Carl T Jones Field.	2/6348	7/11/12	ILS OR LOC RWY 18R, Amdt 24C.
23-Aug-12	TX	George West	Live Oak County	2/7921	7/11/12	RNAV (GPS) RWY 13, Orig.
23-Aug-12	TX	George West	Live Oak County	2/7922	7/11/12	VOR/DME A, Amdt 2.
23-Aug-12	MN	Owatonna	Owatonna Degner Rgnl	2/7931	7/11/12	ILS OR LOC RWY 30, Amdt 2A.
23-Aug-12	WI	Boyceville	Boyceville Muni	2/7936	7/11/12	RNAV (GPS) RWY 26, Amdt 1.
23-Aug-12	WI	Boyceville	Boyceville Muni	2/7937	7/11/12	RNAV (GPS) RWY 8, Amdt 1.
23-Aug-12	MO	Mountain Grove	Mountain Grove Memorial	2/7942	7/11/12	VOR/DME OR GPS Rwy 8, Orig-A.
23-Aug-12	MI	Fremont	Fremont Muni	2/8257	7/11/12	RNAV (GPS) RWY 18, Amdt 1B.
23-Aug-12	NY	Williamson/Sodus	Williamson-Sodus	2/8598	7/11/12	RNAV (GPS) RWY 10, Amdt 1.
23-Aug-12	NY	Williamson/Sodus	Williamson-Sodus	2/8599	7/11/12	RNAV (GPS) RWY 28, Amdt 2.
23-Aug-12	FL	Miami	Miami Intl	2/8600	7/11/12	ILS OR LOC RWY 26L, Amdt 15B.
23-Aug-12	LA	New Orleans	Louis Armstrong New Orleans Intl.	2/8632	7/11/12	ILS OR LOC RWY 1, Amdt 17.
23-Aug-12	CA	Santa Ana	John Wayne Airport-Orange County.	2/8703	7/11/12	ILS OR LOC RWY 19R, Amdt 12A.
23-Aug-12	TX	Austin	Lakeway Airpark	2/8777	7/11/12	RNAV (GPS) RWY 16, Orig.

[FR Doc. 2012–18516 Filed 8–1–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

The Commerce Control List

CFR Correction

In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of January 1, 2012, in supplement no. 1 to part 774, in Category 6, make the following corrections:

■ 1. In 6A001:

■ A. On page 807, in the note following paragraph 6A001.a.1, add ''equipment as follows'' after ''6A001.a.1 does not control''.

■ B. On page 807, in paragraph a.1.a.1.a, remove ''20'' and add ''20°'' in its place.

■ C. On page 810, designating the notes following 6A001.b.2 as ''Note 1'' and ''Note 2''.

■ D. On page 810, removing the note to 6A001.a.2 following the N.B. at the end of the section.

■ 2. In 6A992, on page 826, in the table for ''License Requirements'', remove the entry for RS and place it below the table as an indented paragraph.

■ 3. In 6B108, on page 830, remove ''Unit: r'' and add ''Unit: Number'' in its place.

■ 4. In 6C005, on page 831, add ''License Requirements'' above ''Reason for Control''.

■ 5. In 6D001, on page 831, remove ''CIV: * * *'' and add ''CIV: N/A'' in its place.

■ 6. In 6D003:

■ A. On page 832, in ''Reason for Control'', after ''NS'', add ''RS,''.

■ B. On page 833, remove paragraphs h.1.a and h.1.b.

■ 7. In 6E001, on page 834, add ''License Requirements'' above ''Reason for Control''.

■ 8. In 6E002, on page 835, add ''License Requirements'' above ''Reason for Control''.

[FR Doc. 2012–18967 Filed 8–1–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 807

[Docket No. FDA–2009–N–0114]

RIN 0910–AF88

Implementation of Device Registration and Listing Requirements Enacted in the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, the Medical Device User Fee and Modernization Act of 2002, and Title II of the Food and Drug Administration Amendments Act of 2007

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect recent statutory amendments to the device registration and listing provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act). The Food and Drug Administration Amendments Act of 2007 (FDAAA), enacted on September 27, 2007, amended the FD&C Act by requiring domestic and foreign device establishments to begin submitting their registration and device listing information to FDA by electronic means rather than on paper forms, and also specified the timeframes when establishments are required to submit such information. In addition, this final rule would facilitate FDA's collection of additional registration information from foreign establishments as required by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act). The final rule will update certain provisions in the regulations to improve the quality of registration and listing information available to FDA. FDA relies on having complete and accurate registration and listing information in order to accomplish a number of important public health objectives.

DATES: This final rule is effective October 1, 2012.

FOR FURTHER INFORMATION CONTACT:

Ann Ferriter, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2680, Silver Spring, MD 20993–0002, 301–796–5686; and

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

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I. Background

We originally published establishment registration regulations for medical devices in the **Federal Register** of September 3, 1976 (41 FR 37458) (proposed rule) and August 23, 1977 (42 FR 42520) (final rule), and device listing regulations in the **Federal Register** of September 30, 1977 (42 FR 52808) (proposed rule), and August 25, 1978 (43 FR 37990) (final rule).

These regulations called for establishment registration and device listing information to be submitted to the Center for Devices and Radiological Health (CDRH) on several paper forms: FDA 2891, Registration of Device Establishment; FDA 2891a, Annual Registration of Device Establishment; and FDA 2892, Device Listing. Once these forms were completed and submitted to FDA, FDA then forwarded them to a data entry contractor who entered the information into FDA's device registration and listing database.

In June 2002, section 321 of the Bioterrorism Act (Pub. L. 107–188) amended section 510(i) of the FD&C Act (21 U.S.C. 360(i)) to require those foreign establishments who are required to register with FDA to do so by electronic means, and to include additional information identifying certain parties involved in the importation of the foreign establishment's devices into the United States as part of their registration. Subsequently, in October 2002, section 207 of the Medical Device User Fee and Modernization Act (MDUFMA) (Pub. L. 107–250) further amended section 510 of the FD&C Act by extending the requirement for electronic submission of registration information to include domestic firms as well as foreign firms. However, when adding these new electronic submission requirements, which appear in section 510(p) of the FD&C Act, Congress chose to delay their implementation so that FDA would have an opportunity to first put systems in place to accommodate the electronic receipt of registration information. This was accomplished by including a

requirement in section 510(p) of the FD&C Act for the Secretary of the Department of Health and Human Services (the Secretary) to make a finding that the electronic receipt of registration information was feasible before implementing electronic registration.

As reflected in FDAAA (Pub. L. 110–85), the most recent legislation establishing changes to FDA's device registration and listing program, FDA has now developed a system that makes the electronic receipt of device registration and listing information feasible. FDAAA amended section 510(p) of the FD&C Act by eliminating the need for a feasibility finding, and requiring both foreign and domestic establishment registration and device listing information to be submitted using electronic means unless FDA grants a waiver request. In accordance with FDAAA, FDA's Unified Registration and Listing System (FURLS) for devices, which is a new Internet-based system, became operational on October 1, 2007. FDA believes this electronic system will ultimately make the process of submitting registration and listing information for devices more efficient for industry and will provide faster access to this information for both FDA and industry.

In addition, the new electronic system will allow FDA to more effectively gather information concerning marketed devices. We rely on having complete and accurate registration and listing information to accomplish a number of important statutory and regulatory objectives. For example, we use registration and listing information to:

- Identify establishments producing marketed medical devices;
- Identify establishments producing a specific device when that device is in short supply or is needed for a national emergency. This information helps us facilitate prompt shipment of devices to the places where they are needed most. For example, during a bioterrorism incident, we could use device listing information to identify establishments that could be helpful in preventing or counteracting the deadly effects of biological weapons; with this information, we could facilitate prompt shipment of the devices as needed;
- Facilitate the recall of devices marketed by owners or operators of device establishments;
- Identify and catalogue marketed devices;
- Administer our postmarketing surveillance programs for devices;
- Identify devices marketed in violation of the law;
- Identify and control devices imported or offered for import into the country from foreign establishments; and
- Schedule and plan inspections of registered establishments under section 704 of the FD&C Act (21 U.S.C. 374).

We also rely on registration and listing information to help us comply with several other statutory provisions. For example, we use this information to generate accurate estimates of the number of businesses that are affected by our rulemaking activities. These estimates help us assess the impact of our regulations on regulated industry, which we are required to do under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121); the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (2 U.S.C. 1501 *et seq.*); the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520); Executive Order 12866 (September 30, 1993); and the Congressional Review Act (section 251 of Pub. L. 104–121).

Registration and listing information will continue to be used for all of the important public health purposes outlined in this document. The electronic submission of registration and listing information allows us to use such information more quickly and effectively to carry out all of the activities described in this document.

In addition, electronic submission of registration and listing information furthers the purpose of the Government Paperwork Elimination Act of 1998 (Pub. L. 105–277, Title XVII) (GPEA). GPEA requires Federal Agencies to give persons who are required to maintain, submit, or disclose information, the option of doing so electronically when practicable as a substitute for paper, and to use electronic authentication (electronic signature) methods to verify the identity of the sender and the integrity of the electronic content. We believe that electronic submission of registration and listing information furthers the purpose of this law and makes the registration and listing processes more efficient and effective both for industry and us.

To implement the FDAAA and Bioterrorism Act amendments to section 510 of the FD&C Act, FDA published in the **Federal Register** of March 26, 2010 (75 FR 14510), a proposed rule to amend its regulations governing medical device establishment registration and device listing (the March 2010 proposed rule). The comment period closed on June 24, 2010.

II. Overview of the Final Rule

A. Significant Changes to the Proposed Rule

FDA made no significant changes to the proposed rule.

B. Highlights of the Final Rule

1. Switch to an Electronic Registration and Listing System

This final rule updates the regulations to conform to the requirement in section 510(p) of the FD&C Act, as amended by FDAAA, that registration and listing information be provided to FDA electronically unless FDA grants a request for a waiver.

As part of the new electronic registration and listing system, each owner or operator establishes an account on FDA's online device establishment registration and device listing system, FURLS, which the owner or operator uses to create and update his or her device establishment registration and device listing information. Information submitted to FDA prior to September 15, 2007, has already been migrated to the new FURLS electronic database and thus there is no need for owners or operators to reenter this information.

In accordance with section 510 of the FD&C Act, as amended by sections 222 through 224 of FDAAA, device establishment owners and operators have been using FURLS to submit their establishment registration and device listing information electronically since the system became operational on October 1, 2007. In addition, in accordance with section 510(p) of the FD&C Act, as amended by FDAAA section 224, FDA is granting waivers from the new electronic submission requirements only to those owners or operators for whom electronic registration and listing is not reasonable.

2. Foreign Establishment Registration and Listing Requirements of the Bioterrorism Act

Before its devices will be allowed into the United States, each foreign establishment that is required to register must supply to FDA the registration information required by part 807, including the name and contact information for its U.S. agent. Section 321 of the Bioterrorism Act affected foreign establishment registration in part by amending section 510(i) of the FD&C Act to require, as part of an establishment's registration, the name of each importer of the device that is known to the establishment and the name of each person who imports or offers to import the device into the

United States. This final rule amends part 807 to reflect in our regulations the Bioterrorism Act requirement that foreign establishments whose devices are imported or offered for import into the United States must identify: (1) All importers known to the foreign establishment and (2) the name of each person who imports or offers to import the foreign establishment's device into the United States. The final rule revises § 807.3 to add specific definitions for these two new categories of information that need to be submitted by foreign establishments.

The final rule eliminates the exemption in § 807.40(a) for foreign establishments whose devices enter a foreign trade zone and are re-exported from the foreign trade zone without entering U.S. commerce, and also eliminates the exemption in § 807.40(c) for devices that are imported under section 801(d)(3) of the FD&C Act (21 U.S.C. 381(d)(3)). Removing the exemptions from registration and listing requirements for devices entering foreign trade zones and for products imported under section 801(d)(3) of the FD&C Act is consistent with Congress' desire, as reflected in the Bioterrorism Act, to increase the Nation's ability to prepare for and effectively respond to bioterrorism and other public health emergencies by requiring foreign establishments to provide more, rather than less, information for imported products. For example, registration and listing information for devices imported into foreign trade zones and devices imported under section 801(d)(3) of the FD&C Act will help us identify and contact foreign establishments that export to the U.S. devices for which there may be a domestic shortage in an emergency.

3. Change in Requirements Relating to Contract Manufacturers and Sterilizers

The final regulation also amends part 807 to modify § 807.20(a)(2) and removes § 807.20(c)(1) and (c)(2) such that all contract manufacturers and contract sterilizers are required to register their establishments and list their devices. FDA relies on having a complete and accurate registration of device establishments and listing information for devices processed at those establishments in order to accomplish a number of important statutory and regulatory objectives. For example, when an establishment experiences a problem, it can have a significant impact on the product lines for one or multiple firms for which it is contracted to provide manufacturing or sterilization services. Knowing which products are manufactured or sterilized at the affected site could facilitate the recall of the impacted devices. FDA also believes that knowing that these manufacturing sites exist would be critical information when a device is in short supply or needed in the event of a national emergency.

4. Requiring Submission of the FDA Product Code Assigned to a Device Rather Than the Classification Name and Number

The new electronic system requires exempt devices to be identified by product code rather than by classification name and number. The product code is already requested for such devices. This change to the regulation codifies the existing practice.

5. Requiring Submission of the 510(k) or the Humanitarian Device Exemption (HDE) Number for Non-Exempt Device Listings

Section 807.25(g)(4) of the final regulation also codifies the practice of including the 510(k) number when listing a medical device that has gone through premarket clearance or the approved HDE number in the electronic device registration and listing system. This change also provides FDA with a tool to help ensure that devices that lack a required premarket clearance or premarket approval are not marketed.

6. Identification of a Contact Person to Administer the Electronic System Accounts

As a result of the passage of FDAAA, FDA began collecting device registration and listing information using FURLS beginning in October 2007. When using FURLS, an owner or operator needs to identify not only an official correspondent for the establishment but also a contact person for the owner or operator. The contact person is the only person who can administer the owner or operator's user accounts in FURLS.

In instances where owners or operators have only one establishment, they may choose the same person to serve as both the contact person for the user account and the official correspondent for the establishment. For owners or operators with multiple establishments, the contact person for the owner or operator may also serve as the official correspondent for any or all of the owner or operator's establishments. Alternatively, using the accounts management software for FURLS, the owner or operator may create subaccounts in which different official correspondents are identified for each establishment.

Proper control of access to accounts and control of the ability to update an establishment's online information is necessary to avoid errors. Therefore, the final rule requires that each owner or operator identify only one contact person within the owner or operator's organization who will be responsible for creating the master account in FURLS for the owner or operator and assigning subaccounts to each establishment, if needed. Once the contact person creates the master account and any needed subaccounts, the official correspondent can then use the accounts to submit the owner or operator's establishment registration and device listing information to FDA.

7. Establishment Operations Will Be Reported Through Device Listing

The final rule requires owners or operators to identify the operations or activities their establishments engage in only as part of their device listings. This is because the new electronic system has been designed to automatically migrate the information provided in the device listing to the owner or operator's registration, thus saving the owner or operator from having to provide the same information twice. Because under the new system owners or operators would only have to supply such information once, this change will save time and help avoid inconsistencies between the registration and listing information for a single establishment.

8. Registration Fees

FDAAA section 212 requires that certain medical device establishments pay a registration user fee when they initially register with FDA and for each annual registration thereafter. The final rule, therefore, removes the sentence at the beginning of § 807.20(b) that states ''[n]o registration or listing fee is required.''

9. Definition of Restricted Devices

The final rule revises the definition of ''restricted device'' in § 807.3(i) to more accurately reflect the provisions of the FD&C Act that provide us with authority to restrict devices.

III. Comments on the Proposed Rule

In the March 2010 proposed rule, FDA proposed to amend its regulations governing medical device establishment registration and device listing. FDA provided 90 days for the submission of comments from interested parties. FDA received three sets of comments which FDA summarizes and discusses in this section of this document.

(Comment 1) Two comments objected that it is not necessary for contract manufacturers and contract sterilizers to list all products, since these contractors

are typically not responsible for putting the contracted products into the marketplace. The comments stated that such a requirement would: (1) Duplicate information already submitted by the manufacturer; (2) increase the risk that inaccurate information was submitted to FDA because contract manufacturers are not in the best position to inform FDA when commercial distribution of a device has commenced, ceased, or resumed; and (3) reveal confidential business partnerships to competitors.

(Response) FDA disagrees with these comments. FDA does not consider the requirement that contract sterilizers and manufacturers list devices to be duplicative. While registration provides valuable information regarding, for example, the location of device establishments, this value is limited if we do not also know what devices are being manufactured and sterilized at the establishments. FDA relies on having a complete and accurate registry of device establishments and a list of devices processed at those establishments in order to accomplish a number of important statutory and regulatory objectives. For example, having basic information about where devices are made and cleaned will enable us to respond in a more timely and effective fashion in the case of an adverse event or defect associated with a particular device or if there is a shortage of a particular device in the event of a national emergency.

FDA does not believe that the final rule will increase the risk that inaccurate listing information is submitted to FDA. Contract manufacturers and contract sterilizers, as with other establishments, will be required to register and list within 30 days of entering into such operation and review and update listing information annually. Contracting entities will be responsible for providing accurate information to FDA and should know what devices they manufacture or sterilize at their establishment.

Finally, requiring contract manufacturers and sterilizers to submit listing information to FDA will not reveal confidential business partnerships to competitors. Under 21 CFR 20.116, public disclosure of establishment registration and device listing information is governed entirely by § 807.37, which addresses how such information will be subject to inspection in accordance with section 510(f) of the FD&C Act. FDA has revised § 807.37 to reflect its plans to exclude from public inspection or posting on the FDA Web site brand names and premarket submission numbers of devices manufactured or sterilized by a contractor that would reveal confidential business relationships, and plans to add a mechanism in FURLS to allow entities to indicate whether they believe information should not be made public under this standard. We also revised § 807.37 to make clear that FDA-assigned listing numbers will also not be publicly available or posted on the public FURLS Web site. Listing numbers serve important governmental functions that may be harmed if they were made public.

(Comment 2) One comment questioned requiring contract manufacturers to register because contract manufacturers have a one-to-one relationship with finished device manufacturers that would not be of benefit in providing enhanced manufacturing when devices are in short supply.

(Response) FDA disagrees. By statute, all establishments engaged in the manufacture, preparation, propagation, compounding, or processing of a device (including repackaging and relabeling) are required to register unless specifically exempted by regulation. See sections 510(a) to (d), (i) and (g) of the FD&C Act. Contract manufacturers are engaged in these activities, and FDA believes that the registration of their establishments is not unnecessary to the protection of the public health. For example, this information would provide us with basic information about the entities that make devices, facilitating a timely and effective response to adverse events, shortage, or other device problems associated with one of these establishments, in addition to potentially assisting with device shortages. The information would also assist us in our fundamental regulatory activities, such as planning and scheduling inspections.

(Comment 3) One comment suggested that FDA add a new registration type for foreign establishments that import devices into foreign trade zones.

(Response) FDA believes that foreign establishments that import devices into foreign trade zones should be treated the same as other establishments that must register and list. FDA agrees, however, that it is important to capture whether an establishment is importing devices into foreign trade zones and will add an establishment type to the existing list of establishment types in FURLS to cover this activity.

(Comment 4) One comment disagreed with FDA's proposed revocation of the exemption in § 807.40(a) for devices from foreign establishments that enter a foreign trade zone and are re-exported from that foreign trade zone without having entered U.S. commerce. The comment questioned whether the Bioterrorism Act would require the revocation of the exemption and whether the U.S. Customs and Border Protection Customs-Trade Partnership Against Terrorism and the Customs Advance Manifest Rule would provide FDA access to verification that devices for export are re-exported and information about the shipper, cargo, and consignee.

(Response) FDA disagrees. The removal of the exemption increases the United States' ability to defend against and respond to bioterrorism by providing FDA with additional information regarding foreign establishments and devices manufactured at those establishments that are shipped into the United States, which is consistent with the goals of the Bioterrorism Act. For example, this information could be used to address a device shortage in an emergency.

(Comment 5) One comment urged FDA to revise § 807.40 to include a list of activities that require foreign establishment registration that parallels the list in § 807.20(a) of activities that require registration of domestic establishments.

(Response) FDA declines to revise the rule as suggested by the comment, as the list of activities in § 807.20(a), which is not all-inclusive, already applies to both domestic and foreign establishments. FDA does want to emphasize, however, that it considers a foreign establishment that only exports devices to the United States to be engaged in the manufacture, preparation, propagation, compounding, or processing of a device, and it therefore must register and list. Further, § 807.40(c) prohibits a device from being imported or offered for import into the United States unless it is the subject of a device listing and is manufactured, prepared, propagated, compounded, or processed at a registered foreign establishment. Thus, a device may not enter the country unless valid registration and listing information are provided. This information is used, for example, by verifying that medical devices entering the United States are exported from legitimate sources, are not counterfeit, and are legally marketed in the United States.

(Comment 6) One comment urged that § 807.25(a) discuss the part 11 (21 CFR part 11), Electronic Records, Electronic Signatures responsibilities of a party using the FDA-supplied FURLS system.

(Response) FDA declines to revise the rule as suggested by the comment. Under § 807.25(a), the submission of registration and listing information must be made in accordance with part 11, with certain exceptions. See discussion

in the preamble to the March 2010 proposed rule (75 FR 14510 at 14523) and FDA's guidance on part 11 referenced therein.

(Comment 7) Citing the preamble to the March 2010 proposed rule (75 FR 14510 at 14516), one comment expressed concerns about combination products having to register and list with, and pay fees to, more than one Center. The comment urged FDA to add a flag to a listing that identifies a combination product.

(Response) As reflected in the preamble to the March 2010 proposed rule, the Agency is currently working to develop and implement a more streamlined approach to facility registration and product listing for combination products. User fees are outside the scope of this rule. We intend to address these issues in the future. For efficient, effective regulation of combination products, FDA intends to add a flag to identify whether a listing is for a combination product.

(Comment 8) One comment urged FDA to revise § 807.25(g)(4) to list the submission types.

(Response) FDA declines to revise the rule as suggested by the comment. However, we revised §§ 807.25(g)(4) and 807.3(w) to make clear that they include the premarket submission number for granted de novo petitions for classification under section 513(f) of the FD&C Act (21 U.S.C. 360c(f)), which are currently given a number preceded by the letter ''K.''

(Comment 9) One comment urged that owner-operators be given the ability to assign individuals to have ''View Only'' access to FURLS.

(Response) This comment asks for a change beyond the scope of this rulemaking.

(Comment 10) One comment urged that private label manufacturers should not have to submit brand names considered trade confidential under § 807.25(b). Alternatively, the comment urged FDA to restrict access to information considered to be trade confidential to FDA and the FURLS account owner.

(Response) FDA declines to remove this requirement from the rule. Requiring private label manufacturers to submit brand names to FDA will not reveal this information to the public. FDA has revised § 807.37 to reflect its plans to exclude from public inspection or posting on the FDA Web site brand names and premarket submission numbers of devices marketed by a private label manufacturer that would reveal confidential business relationships, and plans to include a mechanism in FURLS to allow entities to indicate whether they believe information should not be made public under this standard.

(Comment 11) One comment urged FDA to describe the timeline that applies to establishment registration and provide acknowledgment of successful registration.

(Response) FDA agrees that describing the timeline that applies to establishment registration is important, which is why § 807.22, ''Times for establishment registration and device listing,'' provides timelines for registration. To be clear that § 807.28 governs conditions that require that listing information be updated, and not the time at which listing must be updated, which is governed by § 807.22, we changed four occurrences of ''when'' to ''if'' in § 807.28(a) and (b). We also want to be clear that, though changes to listing information must be reported to FDA between October 1 and December 31 of each year, the information that must be reported includes any changes that occur since the previous annual listing. For example, if a manufacturer begins producing a device in January and ceases (temporarily or permanently) producing such device in June, this would have to be reported to FDA between October 1 and December 31 of that year.

When an establishment successfully completes a process (e.g., registers and lists for the first time, completes annual registration, creates a new listing, etc.) in FURLS, a confirmation screen appears indicating successful completion of the process. In some cases, the establishment may also receive an email in addition to the confirmation screen. These instances include when an establishment registers and lists for the first time and when FDA sends an email to confirm that they have completed their annual registration. If an establishment does not successfully make it through the process it is trying to complete (e.g., registering and/or listing devices, updating information in the software, etc.), it would not be provided with an email or confirmation screen and would know it was not successfully processed or that an error occurred.

(Comment 12) One comment urged FDA to make available a test or training version of FURLS online that provides access to simulated data or an instruction manual that includes screen shots of the steps in the registration and listing process.

(Response) FDA agrees. Already available, the FURLS Device Registration and Listing Module (DRLM) has online instructions that include screen shots that may be viewed by clicking on the help icon located near the top right of the screen. FDA's DRLM Web site: (*http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/HowtoMarketYourDevice/RegistrationandListing/default.htm*) provides instruction on who must register and list, who must pay the annual registration user fee and how to register, list, and pay the fee. Assistance is available by sending an email to *reglist@cdrh.fda.gov* or by calling 301–796–7400.

IV. Legal Authority

We have the legal authority to amend our regulations on foreign and domestic establishment registration and listing for human devices. The statutory basis for our authority includes sections 201, 301, 501, 502, 510, 512, 513, 515, 519–520, 701, 704, 801, and 903 of the FD&C Act (21 U.S.C. 321, 331, 351, 352, 360, 360c, 360e, 360i–360j, 371, 374, 381, and 393); and sections 361 and 368 of the Public Health Service Act (42 U.S.C. 264 and 271) (the PHS Act).

Section 510(c) of the FD&C Act requires every person upon first engaging in the manufacture, preparation, propagation, compounding, or processing of a device to immediately register with the Secretary his name, place of business, and the establishment. The provisions in section 510(b) and (d) of the FD&C Act require annual registration and registration of additional establishments, respectively. As amended by section 222 of FDAAA, section 510(b) of the FD&C Act requires that annual registration take place during the period beginning on October 1 and ending on December 31 of each year. Section 510(i) of the FD&C Act, as amended by section 222 of FDAAA, requires any establishment within any foreign country engaged in the manufacture, preparation, propagation, compounding, or processing of a device that is imported or offered for import into the United States, upon first engaging in such activity, to immediately register with the Secretary through electronic means, and thereafter to register annually during the period beginning on October 1 and ending on December 31 of each year. These provisions, together with section 701(a) (among others) of the FD&C Act (21 U.S.C. 371(a)), authorize us to require the submission of the registration information specified in the final rule. The information specified in this final rule will help us identify who is manufacturing, preparing, propagating, compounding, processing, repacking, or relabeling devices and where those operations are being performed. In

addition, some information (e.g., official correspondent information) would help us communicate with establishments more effectively and schedule inspections more efficiently.

Section 510(j)(1) of the FD&C Act requires every person who registers to file with the Secretary of the Department of Health and Human Services (the Secretary), at the time of registration, a list of all devices that are being manufactured, prepared, propagated, compounded, or processed by the registrant for commercial distribution. That list must be prepared in the form and manner prescribed by the Secretary and must be accompanied by a copy of labeling (or the label and package insert) and, in some cases, advertising. Section 510(j)(2) of the FD&C Act, as amended by section 223 of FDAAA, requires each person who registers with the Secretary under this section to report listing information updates once each year during the period beginning on October 1 and ending on December 31 of each year. Listing information gives us a current inventory of marketed devices. These provisions and others of the FD&C Act, together with section 701(a) of the FD&C Act, provide authority for requiring the submission of the listing information set forth in this final rule. The device listing information specified in this final rule will help us: (1) Develop a more current, robust inventory of devices as a counter-terrorism measure; (2) administer our postmarket surveillance programs more effectively; (3) facilitate recalls of products; (4) identify devices in short supply in the event of a national emergency; and (5) identify devices marketed in violation of the FD&C Act.

Section 510(p) of the FD&C Act, as amended by section 224 of FDAAA, requires that registration and listing information be submitted electronically, subject to FDA's grant of waivers to individual requestors who meet the criteria set forth in section 510(p). Electronic receipt of registration and listing information will enable us to shift resources from performing more ministerial tasks, such as data entry, to pursuing important public health objectives such as those described in section I of this document. Electronic receipt of registration and listing information also will help us with the efficient enforcement of the FD&C Act because we would be able to distinguish situations where there has been noncompliance with registration and listing requirements from situations where there have been no changes in information. The failure to register or list is a prohibited act under section 301(p) of the FD&C Act (21 U.S.C. 331(p)) and the failure to do either generally renders a device misbranded under section 502(o) of the FD&C Act (21 U.S.C. 360(o)).

V. Analysis of Economic Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the cost of this final rule is expected to be very small, the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $139 million, using the most current (2011) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

We received no comments on the analysis of impacts in the March 2010 proposed rule. We have updated but have not made substantial changes to the analysis for this final rule. We used the same baseline as we did in the proposed rule; costs and benefits are estimated relative to the system of paper forms that existed prior to FDA's Internet-based electronic listing and registration system. The new system became operational on October 1, 2007.

We contracted with the Eastern Research Group, Inc. (ERG), to collect data, interview industry experts, and estimate the costs and benefits of the rule. The analysis in support of the effects of the final rule (ERG Memo) is on file with the Division of Dockets Management. ERG identified several very small impacts, both costs and benefits, most of which are too small to generate meaningful numeric estimates.[1] The ERG Memo identified recurring costs associated with this final rule, plus additional costs that would not apply to U.S. establishments. After updating ERG's findings with more recent cost information, we find annual costs of $340,000 associated with this final rule, and an additional $138,000 that would only affect non-U.S. establishments. We were unable to quantify specific benefits attributable to the final rule, but the ultimate use of electronic registration and listing data, the mandate under the Bioterrorism Act to collect additional pieces of registration data, and the requirement under the Bioterrorism Act and FDAAA that information be submitted to FDA electronically justify taking this action.

A. The Need for Regulation

As discussed elsewhere in this preamble, section 224 of FDAAA amended section 510(p) of the FD&C Act to require establishment registrations and device listings to be submitted to FDA by electronic means unless the Secretary grants a waiver from electronic submission requirements. We currently maintain databases that contain establishment registration and device listing information obtained from owners and operators of device establishments. Prior to FDAAA, these databases relied on paper forms submitted by the owners and operators to us, which were then forwarded by us to a data entry contractor for input into our device registration and listing databases.

Our device registration and listing databases play an important role in our efforts to accomplish many regulatory and statutory objectives. For example, we can use this information to identify device manufacturers to facilitate recalls or information alerts in the case of potential safety concerns. We also use it to plan and conduct inspections, administer postmarket surveillance, generate estimates of the number of businesses that are affected by our rulemaking, and to otherwise exercise competent oversight of the device industry.

The quality and completeness of these databases depends on prompt

[1] ERG memorandum from Cal Franz, et al., September 15, 2008 (hereinafter referred to as ERG Memo), p. 1.

submission of information and the immediate inclusion of the data in our system. Under a paper-based registration and listing system, we were unable to readily verify the accuracy of the information submitted and, in some instances, manufacturers were not timely in informing us of changes. In addition, because we were using physical paper forms, it was possible for information to be mishandled or lost before being added to the system, thereby further reducing the reliability of the databases.

In accordance with FDAAA, the Agency began collecting device establishment registration and device listing information using FURLS, FDA's new Internet-based electronic device establishment registration and device listing system which became operational on October 1, 2007. The electronic submission of information makes the registration and listing process more efficient for industry and allows us to review and use such information more quickly, thus helping to ensure that medical devices will be safe and effective.

Despite the obvious public health advantages to society of using an electronic device registration and listing system, the private returns alone would not be adequate to move the entire device industry to a new registration and listing format that would meet the requirements of section 510(i) and (p) of the FD&C Act. Because the social benefits are largely external to the firms, the large number of entities operating individually cannot be expected to voluntarily move to a new uniform standard. Few entities would choose to adopt a new format without significant private benefits.

B. Background

Revisions to the existing device registration and listing regulations would affect owner-operators of all registered device establishments. Based on a review of our internal databases on September 12, 2011, there are approximately 21,254 owner-operators of approximately 24,000 registered device establishments, and 121,300 listed devices. Of the 24,000 registered establishments, approximately 14,000 are registered as domestic and 10,000 are registered as foreign.

Under the existing regulations, with certain exceptions, owners or operators of establishments that engage in the manufacture, preparation, propagation, compounding, assembly, or processing of a device intended for human use must, in addition to other requirements, register their establishments and submit listing information for each of their devices in commercial distribution. Foreign device establishments engaged in the manufacture, preparation, propagation, compounding, or processing of a device that is imported or offered for import into the United States must comply with the registration and listing requirements, including the requirement to identify a U.S. agent. Until the recent change to electronic submissions mandated by section 224 of FDAAA, all domestic and foreign registration and listing information was submitted using paper forms.

C. The Final Regulation

A major objective of this final rule is to update FDA's regulations at part 807 to reflect the requirement for electronic submission of establishment registration and device listing information as required by FDAAA. A paper-based system of registering and listing is costly. It does not facilitate timely updates, which does not allow for the best use of these data in inspections and recalls. Electronic submission of registration and listing information improves the quality and timeliness of information available to FDA. In addition, a system of electronic registration and listing improves the quality and timeliness of information available to health care professionals and consumers. Furthermore, to the extent that these quality improvements to the registration and listing process facilitate device recalls, complement postmarketing surveillance programs, help ensure the safety of imported devices, improve the scheduling and planning of inspections, and otherwise assist the Agency in carrying out its statutory and regulatory objectives, there is a broad public health benefit. Moreover, the development and maintenance of high quality databases of information about devices and device establishments would enhance future uses of technology in the delivery of health care. An electronic database that contains current and accurate information about devices could, for example, facilitate the development of technology that would allow for communication among devices, giving them additional functionality and the potential for interoperability.

This final regulation will also slightly modify the types of information that would need to be submitted as registration and listing information. However, these modifications would be minor and are generally consistent with achieving a more accurate and useful database of device industry information.

D. Estimated Impacts

The ERG Memo identifies eight areas where revisions to the current device registration and listing provisions may affect the cost of compliance.[2] These impacts would stem from provisions associated with:

- The creation of an account on FURLS;
- The requirement for submission of additional information as part of the annual registration process;
- Modifications to requirements relating to registration information updates;
- The requirement for submission of additional information when listing a device;
- Changes relating to the requirement for review and update of device listing information;
- The waiver from the requirement to register and list by electronic means;
- The elimination of the exemptions from registration and listing requirements for foreign establishments whose devices enter a foreign trade zone and are re-exported from the foreign trade zone without having entered U.S. commerce and the exemption for devices that are imported under section 801(d)(3) of the FD&C Act (import-for-export provision); and
- The elimination of the exemption from registration and listing requirements for contract manufacturers and contract sterilizers who do not commercially distribute the devices.

Because most of the identified regulatory impacts only slightly increase or decrease the costs of registering and listing, sometimes involving offsetting impacts, we present the impacts grouped by the eight impact areas identified previously, as opposed to trying to present the impacts as distinct groups of costs and benefits.

1. Creation of FURLS Accounts

Under the final rule, establishments go through the one-time process of creating a FURLS account. According to ERG, the costs associated with setting up the FURLS account are negligible.[3]

2. Changes to Annual Registration Information

This final rule could affect the cost to establishments by changing the information they submit in the annual registration process. ERG found that differences in the information collected currently and the requirements under the final rule would be minor and should not increase the time spent

[2] ERG memo, p. 3.

[3] ERG memo, p. 4.

completing the registration.[4] Some of the additional information in the final rule, such as email addresses for the establishment's official correspondent and owner-operator and the universal resource locator (URL) for the establishment's Web site, are currently collected by FDA and there will be little if any additional cost for those establishments not currently providing this information. There will be modest savings associated with the annual registration process, as establishments will be able to access and edit registration information online and will no longer have to wait for physical forms to be mailed from FDA, review them, make edits, and mail the forms back to FDA.

As amended by section 321 of the Bioterrorism Act, section 510(i) of the FD&C Act requires foreign establishments whose devices are imported or offered for import to the United States to identify and provide contact information for importers of the establishment's device that are known to the establishment and also those persons who import or offer for import the device into the United States. According to the ERG memo, foreign establishments identifying importers known to them and persons who import or offer for import the establishments' devices would typically be identifying one or two entities of each type with readily available contact information, so the impact would be negligible.[5] OMB Circular A–4 directs us to carefully evaluate new U.S. rules that might act as non-tariff barriers to imported goods. As the cost to these foreign establishments will be quite small and will not have a significant adverse effect on trade, the impact on U.S. consumers from this provision will be negligible.

3. Changes Relating to the Requirement To Update Registration Information

Under § 807.22(b)(2), establishments would be required to update their registration within 30 days if their registration information were to change. Current § 807.26 requires that establishments update registration information for a change in ownership or a change in the location of the establishment. As the final rule includes a broader set of circumstances requiring a mandatory update, it has the potential to be slightly more costly. Under the final rule, however, establishments will provide updates electronically, as opposed to submitting such information to FDA using a paper form as required by current § 807.26. ERG found that the ability to submit updated information through FURLS rather than completing and mailing paper forms to result in a net reduction in administrative burden and, therefore, a cost savings to establishments. ERG did not quantify the savings, but we estimate it will negate any cost increase from the greater likelihood of a mandatory update.

4. Requirement for Additional Device Listing Information

Under § 807.25, establishments will be required to submit additional information, including 510(k) numbers and HDE numbers among the types of premarket submission numbers submitted to FDA for non-exempt devices. Establishments will also submit all proprietary and brand names under which each device is marketed. Although the Agency already collects proprietary or brand names as part of device listings, the device listing form specified for use under the existing regulation has a single block of 80 characters for proprietary and brand names. which may have been restricting the amount of information establishments have been providing. Establishments using FURLS to list their devices electronically have an unlimited amount of space to provide information and could submit more data. According to the ERG memo, electronic device listings will rarely have more than three proprietary or brand names, so the additional information that establishments will be providing under the final rule is limited.[6]

Under § 807.25(g)(4), establishments will be required to submit 510(k) and HDE numbers for non-exempt devices as part of the listing process. We do not attempt to quantify this very small burden, as owners or operators need only a few minutes to retrieve this information from readily available sources.[7] Many establishments are already submitting this information electronically and others have been voluntarily submitting this information since FDA began to collect it on a voluntary basis in 2005. The inclusion of the 510(k) number in the device listing will result in significant benefits. Such information would improve our postmarket surveillance efforts by permitting devices to be tracked based on the submission number assigned to the particular device. Absent the 510(k) number, tracking would be done by reported product codes, which do not necessarily correspond to the product codes under which a device was cleared. The process of having the registrant supply the premarket submission number and FDA determine the appropriate product code saves time and saves costs FDA had been incurring addressing incorrectly entered product codes.

5. Changes Relating to Review and Update of Device Listings

Section 510(j)(2) of the FD&C Act, as amended by section 223 of FDAAA, now requires device listings to be updated once each year during the period beginning on October 1 and ending on December 31. Previously, as reflected in the current registration and listing regulations, registrants had to review and update their device listings on a semiannual basis, during June and December. FDA had not strictly enforced this requirement but did encourage establishments to update their listings throughout the year whenever information had changed. The required updates under this final rule are less frequent. Despite this, there is a potential increase in cost from increased enforcement. Any additional impact will be too small to reliably quantify.

6. Requests for a Waiver From Submitting Information Electronically

Under the final rule, parties for whom registering and listing by electronic means is not reasonable may request a waiver from FDA. Because one would only need to have access to a computer, Internet access, and an email address to register and list by electronic means, we do not anticipate many requests for waivers.

For the first few months of operation (i.e., October through December 2007) of the Web-based system, FDA received fewer than 10 requests for waivers from the requirement to submit registration and listing information electronically. As FDA received electronic submissions for more than 16,000 establishments over that period, these requests amount to about 0.06 percent of the total number of establishments that responded.

Based on information taken from our databases as of September 2011, FDA estimated there were 21,254 owners or operators who collectively registered a total of 24,000 device establishments. If 0.06 percent of the 24,000 total device establishments would request waivers from FDA, there would be 14 requests ($24{,}000 \times 0.0006$). We estimate submitting a waiver requires an hour of time from a mid-level manager to draft, approve, and mail a letter. At a benefit-adjusted hourly wage of $41 for a

[4] ERG memo, p. 4.

[5] ERG memo, p. 5.

[6] ERG memo, p. 5.

[7] ERG memo, p. 6.

regulatory affairs official, 14 waivers cost $583.[8]

Additional firms will enter the device industry over the next several years and would need to list and register. Some may request waivers, resulting in small additional costs in the future.

7. Elimination of Exemptions for Some Foreign Establishments

Under current § 807.40(a), foreign establishments are not required to comply with the registration and listing requirements if their device enters a foreign trade zone and is re-exported from that foreign trade zone without having entered U.S. commerce. This final rule revises this section to eliminate the exemption.

Current § 807.40(c) exempts devices imported under section 801(d)(3) of the FD&C Act (''import-for-export'' provision) from registration and listing requirements. This final rule eliminates this exemption; devices currently exempted will have to be listed and the foreign establishments that manufacture these devices will have to register with FDA. Listing a device requires approximately 2.5 hours.[9] At $41 per hour, the cost of listing a device is $103.

We do not possess a precise estimate of the number of devices affected by the loss of these exemptions. According to the databases maintained by FDA's Division of Import Operations and Policy, 1,344 shipments of devices entered the United States under the ''import-for-export'' provision in 2006, about 0.13 percent of device shipments.[10] Using 1,344 as a rough estimate of the devices affected by the loss of the ''import for export'' exemption, the cost to foreign exporters is about $138,000 (1,344 shipments × 2.5 hours per shipment × $41/hour). These are one-time costs, as subsequent shipments of the same device would not require an additional registration and listing. The continuing introduction of new devices from foreign exporters will result in some additional costs each year. These additional annual costs, which we do not quantify, will be a small fraction of the one-time $138,000 cost to foreign exporters.

We do not have a reliable estimate for the number of devices and firms affected by the loss of the exemption for devices imported into foreign trade zones. We expect the number of affected devices and firms to be small. We believe the overall impact on individual foreign firms from the loss of this exemption will be very small.

The elimination of these exemptions will not be costly for domestic device establishments. As these devices are not intended for U.S. commerce, there will be no impact on the domestic market for these devices. The cost per affected device will be small, so the elimination of these exemptions will have a negligible impact on U.S. industries doing ''import-for-export'' and operating in foreign trade zones. There would potentially be a cost to U.S. industry if an affected foreign establishment was actually a foreign presence of a domestic entity, but we have no knowledge of such establishments.

8. Elimination of Registration and Listing Exemptions for Contract Manufacturers and Sterilizers Who Do Not Commercially Distribute the Devices

Under current § 807.20(a)(2), (c)(1), and (c)(2), contract manufacturers and contract sterilizers are exempt from registration and listing obligations if they make or sterilize a device according to another person's specifications for commercial distribution by the person who developed the specifications. This final rule will eliminate the exemption from registration and listing for contract manufacturers and contract sterilizers who do not commercially distribute. Contract manufacturers and contract sterilizers not currently registering will be required to do so. Registration and listing is a recurring obligation, so there are annual costs associated with this impact.

As of October 2007, there were 1,304 registered contract manufacturers in our registration and listing database who had not previously listed any products. Of these 1,304 establishments, 736 re-registered in 2006. A small number of additional contract manufacturers may not be in our database, but will be registering for the first time because of the loss of an exemption. We use the 736 establishments as our estimate for the contract manufacturers that will need to register and initially list products.

The registration and listing database in September 2011 contained about 121,300 listed devices and 24,000 registered establishments, or about 5.05 devices per establishment. If the estimated 736 affected contract manufacturers have an average of 5.05 devices, there will be 3,717 additional device listings.

Between 1999 and 2006, there was an average of 306 initial contract manufacturer registrations each year. Assuming 306 contract manufacturers initially register each year and there are 5.05 devices per establishment, there will be 1,545 additional listings each year. In the first year of our analysis, we assume 736 existing contract manufacturers and 306 contract manufacturers initially registering for a total of 1,042. At 5.05 devices per establishment, there would be 1,566 additional listings for a total of 5,262 the first year.[11]

There are 116 registered establishments that perform contract sterilizations only and have no listed devices. Our databases also include 114 contract sterilizers associated with 533 device listings, an average of 4.68 listings per establishment. We assume that the 116 contract sterilizers with no listed devices are establishments currently not required to list but will be required to list under the final rule. Assuming these establishments also have an average of 4.68 listings, there will be 543 additional listings from the loss of the exemption for contract sterilizers.

We assume registration and listing requires 2.5 hours of time per listed device each year.[12] At a labor rate of $41 per hour, including benefits, registration and listing costs $103 per device or $520 per contract manufacturing establishment ($103 per listing × 5.05 listings) and $482 per contract sterilizing establishment ($103 per listing × 4.68 listings). Across all affected contract manufacturers the cost will be a recurring $539,000 ($41 per hour × 2.5 hours × 5,262 listings). For contract sterilizers, the cost will be $56,000 ($41 per hour × 2.5 hours × 543 listings). Thus, the impact on contract manufacturers and contract sterilizers will be an annual $595,000 ($539,000 + $56,000). We may not be aware of some contract sterilizers that have never registered, but there are likely few such firms and do not account for them in our analysis.

The loss of the exemption for contract manufacturers and sterilizers who do not commercially distribute the devices will not only result in social economic costs, but will also result in transfers associated with the payment of user fees. Contract manufacturers and sterilizers that are required to register

[8] 2010 National Industry-Specific Occupational Employment and Wage Estimates, U.S. Department of Labor Statistics, last modified May 17, 2011 (*www.bls.gov/oes/current/naics4_339100.htm*); mean compliance officer wage rate of $31.68 for medical equipment and supplies manufacturing industry (NAICS 339100) plus a 30-percent increase for benefits.

[9] ERG source on listing time.

[10] ERG memo, p. 10.

[11] We do not follow the assumption in the ERG memo that half of these contract manufacturers would not register and pay user fees.

[12] ERG memo, p. 9.

will be required to pay user fees. According to section 212 of FDAAA, the FY 2012 establishment registration fee is $2,029. At that rate, we estimate FY 2012 fees of $2.35 million, $2.11 million paid by the 1,042 contract manufacturers and $235,000 paid by the 116 contract sterilizers.

Table 1 of this document summarizes the projected quantified impacts of this final rule. The total annual costs are $340,000. Foreign establishments will face an additional annual burden of $138,000 due to the loss of the exemptions from registration and listing requirements relating to devices entering a foreign trade zone that are later re-exported without having entered U.S. commerce and devices that are imported into the United States under section 801(d)(3) of the FD&C Act. There would also be a transfer of $2.14 million in additional user fees paid by contract manufacturers and sterilizers.

TABLE 1—PROJECTED IMPACTS OF THE FINAL RULE

Establishment category	No. of affected establishments/devices	Incremental time	Cost per hour [1]	Total annual cost [3]
Requests for a Waiver from Submitting Information Electronically.	14 establishments	1 hr	$41	$583
Foreign establishments shipping to United States under import-for-export and to foreign trade zones.	none [2]	2.5 hrs	41	0 [2]
Elimination of Exemptions for Contract Manufacturers.	5,262 devices, 1,042 establishments	2.5 hrs	41	539,000
Elimination of Exemptions for Contract Sterilizers.	543 devices, 116 establishments	2.5 hrs	41	56,000
All other	negligible			negligible [3]
Total	1,172 establishments 5,805 devices			598,000

[1] Average hourly wage for medical equipment and supplies compliance officer, adjusted for benefits.
[2] Provision would not be expected to affect U.S. establishments. An estimated 1,344 foreign establishments would face additional annual costs of $138,000.
[3] Estimated incremental time costs are offset by incremental time savings.

TABLE 2—ECONOMIC TRANSFERS ASSOCIATED WITH THE FINAL RULE

From	To	Description	Cost per entity	Total cost
1,042 Contract Manufacturers and 116 Contract Sterilizers.	U.S. Government	Establishment Registration Fees	$2,029	$2.35 million.

The final rule will result in benefits associated with an electronic registration and listing database that would provide more up-to-date and complete information. The electronic registration and listing database system could also support future medical and health information technology initiatives. The final rule will increase the efficiency of the registration and listing process by eliminating all or nearly all paper submissions. With registration and listing in an electronic format, we are able to review the submitted information more quickly and can contact submitting firms immediately through email if any additional information is needed. In addition, a more accurate and more complete database of registered establishments and listed devices benefits patient safety by facilitating timely notification of recalls of certain unsafe devices and prompt identification of the affected manufacturers.

Although the scope of the final rule does not extend beyond registration and listing, the resulting high-quality, electronic database will facilitate future uses of technology for the public benefit. A current electronic database of device information could, for example, facilitate the development of future devices utilizing wireless connectivity and the interoperation of such devices with hospital information systems, or with handheld personal digital assistant (PDA)-type clients used by health care providers or those managing hospital inventories.

Additionally, having a paper-based registration and listing system is inconsistent with section 510(p) of the FD&C Act, as amended by section 224 of FDAAA, and might deter the medical device industry and healthcare providers from investing in new initiatives that would make use of electronic device listing and establishment registration data.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The impact of this final rule is almost entirely attributable to the requirement that contract manufacturers and contract sterilizers register and list. We have estimated the impacts on small entities and find that the costs associated with registering and listing will not be a significant burden for even the smallest of contract manufacturers and contract sterilizers. Moreover, failing to remove this exemption for contract manufacturers and sterilizers would reduce the benefits of this final rule. These benefits include improving the quality and timeliness of information, facilitating device recalls, complementing postmarket surveillance programs, ensuring the safety of imported devices, and improving the scheduling and planning of inspections. Requiring contract manufacturers and sterilizers to register and list allows for the appropriate oversight of these types of facilities. For other elements of this final rule, the costs per entity are very small and we do not believe that this final rule will have a significant economic impact on a substantial number of small entities.

As described earlier in this preamble, this final rule will revise the Agency's regulations at part 807 to make them consistent with the requirement under FDAAA that the Agency shift to an

electronic registration and listing format. The incremental costs to establishments making this switch to electronic registration and listing are so small as to be difficult to quantify. Certain elements of the final rule may be costly to some entities, but the actual incremental costs are estimated to be extremely small. We estimate the cost of submitting a waiver claiming electronic listing and registration to be $41. The cost of registering and listing a device because of the loss of the exemptions from registration and listing requirements for devices imported into foreign trade zones or imported under section 801(d)(3) of the FD&C Act is not expected to have an effect on domestic establishments. Other elements of the final rule involve the submission of information not currently required but readily available and the estimated cost of compliance will be so small as to be difficult to estimate.

Contract manufacturers and contract sterilizers who do not commercially distribute the devices they make or sterilize will be faced with a new requirement to register and list. We do not know how many of the affected contract manufacturers and contract sterilizers would be categorized as small. As shown in table 1 of this document, we estimate 1,042 affected contract manufacturers and 116 affected contract sterilizers. Our internal databases include some contract manufacturers and sterilizers that have in the past voluntarily registered. A review of the contract sterilizers in this database indicate many are described in external databases as being part of NAICS code 339113 (Surgical Appliance and Supplies Manufacturing). Because of the specific expertise, capital requirements, and economies of scale associated with contract sterilization, we expect contract sterilizers will have more employees and more revenues per employee than would a typical establishment in this class. Medical device contract manufacturers fit in NAICS code 339112 (Surgical and Medical Instrument Manufacturing). For both of these industry classifications, the U.S. Small Business Administration has defined a small business as one with 500 or fewer employees.[13]

According to the U.S. Census there are 1,340 establishments in class 339112 with 1,293 of them (96 percent) having fewer than 500 employees.[14] Census information on class 339113 lists 2,219 establishments, with 2,189 of them (99 percent) having fewer than 500 employees.[15] Applying these profiles to our estimated contract manufacturers and contract sterilizers, there would be 1,000 small affected contract manufacturers (96 percent of 1,042) and 116 small affected contract sterilizers (99 percent of 118).

For class 339112, we consider the establishment group of establishments with 10 to 19 employees, the smallest group for which data are provided. According to Census data, there are 183 establishments with a total value of shipments of $468 million. The average value of shipments is $2.6 million. As discussed in section V.D of this document, establishment registration user fees are $2,029 for FY 2012, and as shown in table 1 of this document, the estimated annual burden of listing a device is 2.5 hours at $41 per hour, or $103. A small contract manufacturer with a single listed device would face an annual burden of $2,029 plus $103, or $2,132, which is 0.08 percent of annual revenues.

TABLE 3—SMALL ENTITY CHARACTERISTICS AND THE IMPACT OF THE FINAL RULE

	Surgical and Medical Instrument Manufacturing (NAICS 339112)	
Number of Employees	10 to 19	20 to 49
Total Value of Shipments ($1000)	468,343	1,293,992
Number of Establishments	183	183
Average Value of Shipments ($)	2,559,000	7,071,000
Annual Costs as a Percentage of the Average Value of Shipments	0.08%	0.03%

For class 339113, considering establishments with 10 to 19 employees, the smallest group for which data are provided, there are 302 establishments a total value of shipments of approximately $798 million. The average value of shipments is $2.6 million. Contract sterilizers will face an annual establishment fee of $2,029 plus a cost of $103 per listed device. A small contract sterilizer with 2 listed devices will face an annual burden of $2,029 plus $206, $2,235. This amount is equal to 0.17 percent of annual revenues, well below typical thresholds cited for significant impacts.

TABLE 4—SMALL ENTITY CHARACTERISTICS AND THE IMPACT OF THE FINAL RULE

	Surgical Appliance and Supplies Manufacturing (NAICS 339113)	
Number of Employees	10 to 19	20 to 49
Total Value of Shipments ($1000)	797,774	1,686,427
Number of Establishments	302	324
Average Value of Shipments ($)	2,642,000	5,205,000
Annual Costs as a Percentage of the Average Value of Shipments	0.08%	0.04%

A $41 burden associated with a waiver request is be about 0.01 percent of revenues for a small entity with revenues in the hundreds of thousands of dollars. As discussed earlier in section V.D of this document, other impacts associated with this final rule are all extremely small. We therefore conclude that the final rule will not have a significant impact on a substantial number of small entities. Affected entities currently possess the skills required to comply with the provisions of this final rule.

FDA considered regulatory alternatives such as not regulating and not requiring registration and listing by contract manufacturers and contract sterilizers who do not commercially distribute devices. As explained earlier in this preamble, the electronic submission of information is mandated under FDAAA. The benefits associated with Agency oversight of contract manufacturers and contract sterilizers justify the estimated costs of requiring that they register and list.

VI. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the

[13] U. S. Small Business Administration, ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes,'' March 26, 2012. *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[14] U.S. Census Bureau, 2007 Economic Census, ''Surgical and Medical Instrument Manufacturing,'' released November 16, 2010, *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-ds_name=EC0731SG3&-ib_type=NAICS2007&-NAICS2007=339112.*

[15] U.S. Census Bureau, 2007 Economic Census, ''Surgical Appliance and Supplies Manufacturing,'' released November 16, 2010, *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-ds_name=EC0731SG3&-ib_type=NAICS2007&-NAICS2007=339113.*

information collection provisions are shown in the following paragraphs with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Implementation Electronic Submission of Medical Device Registration and Listing (OMB Control No. 0910–0625)—Revision

Description: In accordance with the collection of information entitled ''Electronic Submission of Medical Device Registration and Listing,'' medical device establishment owners and operators will be required to electronically submit establishment registration and device listing information.

Section 510(c) of the FD&C Act requires owners or operators of domestic establishments upon first engaging in the ''manufacture, preparation, propagation, compounding, or processing'' of a device or devices in those establishments to immediately register their name and place of business and such establishment. Section 510(a)(1) of the FD&C Act defines the term ''manufacture, preparation, propagation, compounding, or processing'' to include ''repackaging or otherwise changing the container, wrapper, or labeling of any * * * device package in furtherance of the distribution of the * * * device from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user.''

Section 510(a)(2) of the FD&C Act mandates that the term ''name'' include, among other things, the name of each partner of a partnership, and the name of each corporate officer and director of a corporation. An owner or operator of a registered establishment must also immediately register any additional establishment that he owns or operates in any State and in which he begins the ''manufacture, preparation, propagation, compounding, or processing'' of a device (section 510(d) of the FD&C Act). An owner or operator of any establishment that engages in these activities must also re-register its establishment once each year during the period beginning on October 1 and ending on December 31 of each year (section 510(b) of the FD&C Act, as amended by FDAAA).

Section 510(i) of the FD&C Act contains certain registration requirements pertaining to foreign establishments (e.g., submission of the name of each importer of the establishment's device in the United States that is known to the establishment, submission of the name of each person who imports or offers for import the establishment's device to the United States for purposes of importation). Section 510(g) of the FD&C Act provides for certain exemptions from the registration requirements. In addition, section 510(p) of the FD&C Act, as amended by FDAAA, requires the electronic submission of device registration and listing information unless the Secretary grants a request for a waiver because use of electronic means is not reasonable for the person requesting the waiver.

Section 510(j)(1) of the FD&C Act requires that every person who registers must, at the time of registration, submit a list of all devices that are being manufactured, prepared, propagated, compounded, or processed by him or her for commercial distribution which have not been previously listed by him or her. This information must be submitted in the form and manner prescribed by the Secretary (section 510(j)(1) of the FD&C Act). Prior to FDAAA, section 510(j)(2) of the FD&C Act required certain changes in listing information to be reported every June and December, including any material changes in information previously submitted under the listing provisions. This information must now be provided only once each year during the period beginning on October 1 and ending on December 31.

Section 510(e) of the FD&C Act permits the Secretary to prescribe a uniform system for the identification of devices intended for human use and may require that persons who are required to list such devices under section 510(j) shall list such devices in accordance with such a system. The disclosure provision in section 510(f) of the FD&C Act requires the Secretary to make available for inspection any registration filed under section 510. Section 510(f) also provides that certain listing information must be exempt from disclosure unless the Secretary finds that such exemption would be inconsistent with protection of the public health.

Complete and accurate registration and listing information is necessary to accomplish a number of statutory and regulatory objectives, such as: Identification of establishments producing marketed medical devices, identification of establishments producing a specific device when that device is in short supply or is needed for national emergency, facilitation of recalls for devices marketed by owners and operators of device establishments, identification and cataloguing of marketed devices, administering postmarketing surveillance programs for devices; identification of devices marketed in violation of the law; identification and control of devices imported into the country from foreign establishments; and scheduling and planning inspections of registered establishments under section 704 of the FD&C Act.

The electronic collection of establishment registration and device listing information from medical device establishment owners and operators also furthers the purpose of several statutes, including: The FDAAA, the Bioterrorism Act, MDUFMA, and GPEA.

Description of Respondents: Owners or operators of establishments that engage in the manufacturing, preparation, propagation, compounding, or processing of a device or devices must register their establishments and submit listing information for each of their devices in commercial distribution. Notwithstanding certain exceptions, foreign device establishments that manufacture, prepare, propagate, compound, or process a device that is imported or offered for import into the United States must also comply with the registration and listing requirements.

The total annual estimated burden imposed by this collection of information is 99,470 hours annually.

FDA estimates the burden of this collection of information as follows:

TABLE 5—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	FDA Form number	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
807.20(a)(5)[2] Submittal of Manufacturer Information by Initial Importers	3673	8,594	1	8,594	1.75	15,040

TABLE 5—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	FDA Form number	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
807.20(a)(5)[3] Submittal of Manufacturer Information by Initial Importers	3673	8,594	3	25,782	0.1	2,578
807.21(a)[3] Creation of Electronic System Account	3673	3,559	1	3,559	.5	1,780
807.21(b)[2] Annual Request for Waiver From Electronic Registration & Listing		14	1	14	1	14
807.21(b)[3] Initial Request for Waiver From Electronic Registration & Listing		4	1	4	1	4
807.22(a)[3] Initial Registration & Listing	3673	3,539	1	3,539	0.5	1,770
807.22(b)(1)[3] Annual Registration	3673	20,335	1	20,335	0.75	15,266
807.22(b)(2)[3] Other Updates of Registration	3673	4,176	1	4,176	0.5	2,088
807.22(b)(3)[3] Annual Update of Listing Information	3673	19,875	1	19,875	1	19,875
807.26(e)[3] Labeling & Advertisement Submitted at FDA Request		71	1	71	1	71
807.34(a)[2] Initial Registration & Listing When Electronic Filing Waiver Granted		14	1	14	1	14
807.34(a)[3] Annual Registration & Listing When Electronic Filing Waiver Granted		4	1	4	1	4
807.40(b)(2)[3] Annual Update of U.S. Agent Information	3673	1,615	1	1,615	0.5	808
807.40(b)(3)[3] U.S. Agent Responses to FDA Requests for Information	3673	1,535	1	1,535	0.25	384
807.41(a)[3] Identification of Initial Importers by Foreign Establishments	3673	10,329	1	10,329	0.5	5,165
807.41(b)[3] Identification of Other Parties That Facilitate Import by Foreign Establishments	3673	10,329	1	10,329	0.5	5,165
Total One Time Burden						15,068
Total Recurring Burden						54,958

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] One Time Burden.
[3] Recurring Burden.

TABLE 6—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of respondents	Annual frequency per recordkeeper	Total annual records	Hours per record	Total hours
807.25(d)[2] List of Officers, Directors & Partners	23,806	1	23,806	.25	5,952
807.26[2] Labeling & Advertise-ments Available for Review	11,746	4	46,984	.5	23,492
Total					29,444

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Recurring burden.

The reporting and recordkeeping estimated burden for electronic registration and listing under OMB number 0910–0625 for the proposed rule is larger for reporting and smaller for recordkeeping than the burden estimated for the final rule (7,911 and 11,977 smaller, respectively) because of more accurate re-estimates using information from our FURLS database.

The currently approved reporting and recordkeeping burden for electronic registration and listing under OMB number 0910–0625 is 71,319. The estimated reporting and recordkeeping burden for electronic registration and listing under the rule is 99,470 hours, an increase of 28,151 hours. This increase is due to the incremental increase of respondents no longer exempt from these requirements weighed against the change in reporting requirements for all owner operators and the decrease in the overall number of device establishments that have registered since OMB approved the collection of information under control number 0910–0625.

Burden estimates are based on recent experience with the existing medical device registration and listing program and the economic analysis provided by ERG. The changes to the actual data collected are very minor, with one exception. We are assuming that it will take approximately the same amount of time to enter the data online using FURLS as it does to use the portable document format (PDF)-enabled forms that had been used for initial establishment registration prior to FURLS becoming operational in October 2007. Any additional burden associated with creating and using the Web-based system accounts (as shown in table 3 of this document under § 807.21(a)) should be offset by the elimination of the need to re-enter identifying information concerning the establishment or product every time registration or listing information is updated, which was the case when updating such information using the PDF-enabled forms.

The recurring burden for the new data collection under § 807.41 (import-related information provided by foreign companies exporting to the United States) was estimated based on the ERG

memo. This report stated that foreign establishments would typically be identifying one or two importers and one or two persons who import or offer for import with readily available contact information.

The estimates for creation of new user accounts under § 807.21(a) are based on the current number of owners or operators, and experience in account creation using the existing FURLS for Food Facility Registration. The estimates for the recurring years assume a similar increase in the number of new owner or operator numbers as were created in FY 2006.

The estimate for § 807.25(d) in table 5 of this document (recordkeeping burden) reflects the requirement that owners or operators keep a list of officers, directors, and partners for each establishment. Owners or operators will need to provide this information only when requested by FDA. However, it is assumed that some effort will need to be expended to keep such lists current.

The requirements shown in table 5 for § 807.26 (renumbered from § 807.31), have not changed based on this revision to the registration and listing regulations. They reflect other recordkeeping requirements for devices listed with FDA, and the requirement to provide these records when requested by FDA. They are based on experience FDA has had with the existing regulation.

This final rule refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 807.35(b) refer to currently approved collections in 21 CFR part 607 OMB control number 0910–0052 and 21 CFR part 207 OMB control number 0910–0045. This rule will not impact the burden in 0910–0052 and 0910–0045 which are already accounted for in those information collections.

Before the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

VII. Environmental Impact

The Agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that 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. Accordingly, the Agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.

1. Bureau of Labor Statistics, May 2008, National Industry-Specific Occupational Employment and Wage Estimates, NAICS 339100—Medical Equipment and Supplies Manufacturing, Occupation (SOC code): (131041) *http://www.bls.gov/oes/current/naics4_339100.htm*.

2. Eastern Research Group memorandum from Cal Franz, Derek Singer, and John Eyraud to FDA, September 15, 2008.

3. Office of Management and Budget, Circular A–4, Regulatory Analysis, Washington, DC, 2003, *http://www.whitehouse.gov/omb/circulars_a004_a-4/Circular* A–4 The White House.

List of Subjects in 21 CFR Part 807

Confidential business information, Imports, Medical devices, Reporting and Recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 807 is amended as follows:

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND INITIAL IMPORTERS OF DEVICES

■ 1. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374, 381, 393; 42 U.S.C. 264, 271.

■ 2. Amend § 807.3 by:
■ a. Adding ''and'' at the end of paragraph (e)(3);
■ b. Removing ';and'' at the end of paragraph (e)(4) and adding a period in its place;
■ c. Removing paragraph (e)(5);
■ d. Revising paragraph (i);
■ e. Redesignating paragraphs (k) through (s) as paragraphs (l) through (t), respectively; and
■ f. Adding a new paragraph (k) and adding paragraphs (u) through (y).

The revisions and additions read as follows:

§ 807.3 Definitions.

* * * * *

(i) *Restricted device* means a device for which a requirement restricting sale, distribution, or use has been established by a regulation issued under section 520(e) of the act, by order as a condition of premarket approval under section 515(d)(1)(B)(ii) of the act, or by a performance standard issued in accordance with sections 514(a)(2)(B)(v) and 514(b) of the act.

* * * * *

(k) *Product code* means the code used by FDA to identify the generic category of a device.

* * * * *

(u) *Fiscal year* means the FDA fiscal year, which runs from October 1 through September 30.

(v) *FURLS* means the Food and Drug Administration's Unified Registration and Listing System,

(w) *FDA premarket submission number* means the number assigned by FDA to a premarket device submission, such as a Premarket Approval Application (PMA); Humanitarian Device Exemption (HDE); New Drug Application (NDA); Biologics License Application (BLA); de novo classification petition; or Premarket Notification (510(k)).

(x) *Importer* means, for purposes of this part, a company or individual in the United States that is an owner, consignee, or recipient, even if not the initial owner, consignee, or recipient, of the foreign establishment's device that is imported into the United States. An importer does not include the consumer or patient who ultimately purchases, receives, or uses the device, unless the foreign establishment ships the device directly to the consumer or patient.

(y) *Person who imports or offers for import* means, for purposes of this part, an agent, broker, or other entity, other than a carrier, that the foreign establishment uses to facilitate the

import of its device into the United States.

■ 3. Revise § 807.20 to read as follows:

§ 807.20 Who must register and submit a device list?

(a) An owner or operator of an establishment not exempt under section 510(g) of the Federal Food, Drug, and Cosmetic Act or subpart D of this part who is engaged in the manufacture, preparation, propagation, compounding, assembly, or processing of a device intended for human use shall register and submit listing information for those devices in commercial distribution, except that registration and listing information may be submitted by the parent, subsidiary, or affiliate company for all the domestic or foreign establishments under the control of one of these organizations when operations are conducted at more than one establishment and there exists joint ownership and control among all the establishments. The term ''device'' includes all in vitro diagnostic products and in vitro diagnostic biological products not subject to licensing under section 351 of the Public Health Service Act. An owner or operator of an establishment located in any State as defined in section 201(a)(1) of the Federal Food, Drug, and Cosmetic Act shall register its name, places of business, and all establishments and list the devices whether or not the output of the establishments or any particular device so listed enters interstate commerce. The registration and listing requirements shall pertain to any person who is engaged in the manufacture, preparation, propagation, compounding, assembly, or processing of a device intended for human use, including any person who:

(1) Initiates or develops specifications for a device that is to be manufactured by a second party;

(2) Sterilizes or otherwise makes a device for or on behalf of a specifications developer or any other person;

(3) Repackages or relabels a device;

(4) Reprocesses a single use device that has previously been used on a patient;

(5) Acts as an initial importer as defined in § 807.3(g), except that initial importers may fulfill their listing obligation for any device for which they did not initiate or develop the specifications for the device or repackage or relabel the device by submitting the name and address of the manufacturer. Initial importers shall also be prepared to submit, when requested by FDA, the proprietary name, if any, and the common or usual name of each device for which they are the initial importer;

(6) Manufactures components or accessories that are ready to be used for any intended health-related purpose and are packaged or labeled for commercial distribution for such health-related purpose, e.g. blood filters, hemodialysis tubing, or devices which of necessity must be further processed by a licensed practitioner or other qualified person to meet the needs of a particular patient, e.g., a manufacturer of ophthalmic lens blanks.

(b) Registration or listing does not constitute an admission or agreement or determination that a product is a device within the meaning of section 201(h) of the Federal Food, Drug, and Cosmetic Act.

(c) Registration and listing requirements shall not pertain to any person who acts as a wholesale distributor, as defined in § 807.3(t), and who does not manufacture, repackage, process, or relabel a device.

(d) Owners and operators of establishments or persons engaged in the recovery, screening, testing, processing, storage, or distribution of human cells, tissues, and cellular and tissue-based products, as defined in § 1271.3(d) of this chapter, that are regulated under the Federal Food, Drug, and Cosmetic Act must register and list those human cells, tissues, and cellular and tissue-based products with the Center for Biologics Evaluation and Research on Form FDA 3356 following the procedures set out in subpart B of part 1271 of this chapter, instead of the procedures for registration and listing contained in this part, except that the additional listing information requirements of § 807.26 remain applicable.

(e) Owners and operators of establishments that manufacture devices licensed under section 351 of the Public Health Service Act as well as licensed biological products used in the manufacture of a licensed device must register and list following the procedures set out in part 607 of this chapter, instead of the procedures for registration and listing contained in this part.

§ 807.22 [Removed]

■ 4. Remove § 807.22.

§ 807.21 [Redesignated as § 807.22]

■ 5. Redesignate § 807.21 as § 807.22.

■ 6. Add new § 807.21 to subpart B to read as follows:

§ 807.21 How to register establishments and list devices.

(a) Owners or operators of establishments that are subject to the registration and listing requirements of this part must provide the following information to us using our electronic device registration and listing system, except as provided in paragraphs (b), (c), and (d) of this section:

(1) Initial establishment registration information as required by §§ 807.22(a) and 807.25;

(2) Updates to registration information as required by §§ 807.22(b) and 807.25;

(3) Initial device listing information as required by §§ 807.22(a), 807.25, and 807.28;

(4) Updates to device listing information as required by §§ 807.22(b), 807.25, and 807.28, including updates to reflect the discontinuance or resumption of the commercial distribution of a previously-listed device as specified at paragraphs (d) and (e) of § 807.28.

(b) If the information under § 807.21(a) cannot be submitted electronically, a waiver may be requested. Waivers will be granted only if use of electronic means is not reasonable for the person requesting the waiver. To request a waiver, applicants must send a letter to the Office of Compliance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 2621, Silver Spring, MD 20993–0002, that includes the following information:

(1) The name and address of the device establishment(s) to be registered, a contact person for the owner or operator of the establishment, and the telephone number at which that person can be reached. If the establishment has already registered in the past, the letter should also include the owner or operator number, registration number, and any listing numbers previously assigned by FDA for devices manufactured at that establishment.

(2) Information about whether the company is an initial importer as defined in § 807.3(g) and, if so, whether it also conducts any other activities or operations relating to devices.

(3) A statement that use of the Internet is not reasonable for the person requesting the waiver, and an explanation of why such use is not reasonable. The statement must be signed by the owner or operator of the establishment, or by a person employed by the owner or operator who is authorized to make the declaration on behalf of the owner or operator.

(c) Those owners or operators who have obtained a waiver from filing

registration and listing information electronically should refer to § 807.34 for information on how to submit such information by postal mail.

(d) When additional device listing information (e.g., copies of labeling or advertisements) is requested by FDA as described at § 807.26(e), such information may be submitted by postal mail or electronically by email, but will not be submitted using the FDA electronic device registration and listing system.

■ 7. Revise newly redesignated § 807.22 to read as follows:

§ 807.22 Times for establishment registration and device listing.

(a) *Initial registration and listing.* An owner or operator of an establishment who has not previously entered into an operation described in § 807.20(a) shall register within 30 days after entering into such an operation and submit device listing information at that time.

(b) *Registration and listing updates.* Owners or operators shall review and update all of their establishment registration and device listing information that is on file at FDA, documenting any changes that were not previously reported as follows:

(1) Annual registration for each fiscal year is required for all establishments. Annual registration shall take place during the period beginning on October 1 and ending on December 31 of each fiscal year;

(2) Updates to the registration information as described in § 807.25(b) shall be made within 30 days of any change to such information;

(3) Every fiscal year, during the period beginning on October 1 and ending on December 31, owners or operators shall review and update all of their device listing information that is on file at FDA, reporting any changes or deletions to listings and any new listings that were not previously reported. The accuracy of all information on file must be confirmed each year regardless of whether any changes were made to the owner or operator's list of devices; and

(4) Changes to listing information may also be made at other times, such as when a device is introduced into commercial distribution, when a change is made to a previously-listed device, or when a previously-listed device is removed from commercial distribution.

(c) *Failure to submit required information.* Failure to submit any of the required information on time, as specified in paragraphs (a) and (b) of this section, will put the establishment in a ''failed to register'' or ''failed to list'' status as applicable. The establishment will not be considered active and the establishment registration and device listing information may not appear on the FDA Web site until such time as the owner or operator submits and FDA processes the required information.

■ 8. Revise § 807.25 to read as follows:

§ 807.25 Information required for device establishment registration and device listing.

(a) All owners or operators that are subject to the registration and listing requirements of this part shall provide such information to us by using the FDA electronic device registration and listing system, unless granted a waiver from electronic submission in accordance with § 807.21(b). Electronic submissions of registration and listing information must comply with part 11 of this chapter, except for the requirements in § 11.10(b), (c), and (e), and the corresponding requirements in § 11.30 of this chapter. Those owners or operators granted a waiver from electronic submission should refer to paragraphs (c) and (g) of this section and § 807.34 for instructions on how to submit device registration and listing information.

(b) Registration information required to be submitted includes: The name and mailing address of the device establishment; the Web site address of the device establishment, if any; the name, address, phone number, fax number, and email address of the owner or operator; the name, address, phone number, fax number, and email address of the establishment's official correspondent; and all trade names used by the establishment.

(c) Owners or operators who have been granted a waiver from electronic filing must submit the establishment registration information described in paragraph (b) of this section, except for the Web site and email address information, in paper form using the procedures set forth in § 807.34.

(d) Each owner or operator is required to maintain a listing of all officers, directors, and partners for each establishment registered by the owner or operator and to furnish this information to FDA upon request.

(e) For each establishment, an official correspondent must be designated by the owner or operator to serve as a point of contact with FDA on matters relating to the registration of device establishments and the listing of device products. Each owner or operator shall also provide FDA with the name of a contact person at the owner or operator's offices who will be responsible for identifying the official correspondent for each establishment. The owner or operator contact person will be the official correspondent in the event no one else has been properly designated. The official correspondent is responsible for:

(1) Providing FDA with all required registration and listing information electronically unless a waiver from electronic submission has been granted in accordance with § 807.21(b);

(2) Receiving all correspondence from FDA concerning registration and listing;

(3) Supplying, when requested by FDA, the names of all officers, directors, and partners; and

(4) Receiving communications from FDA by email, or by postal mail if the owner or operator has been granted a waiver from the requirement to file registration and listing information electronically.

(f) The designation of an official correspondent does not in any manner affect the liability of the owner or operator of the establishment or any other individual under section 301(p) or any other provision of the Federal Food, Drug, and Cosmetic Act.

(g) Device listing information must be submitted to FDA electronically unless a waiver from electronic submission has been granted in accordance with § 807.21(b). Owners or operators who have been granted a waiver must submit the required device listing information, including information required by this paragraph, § 807.28, and any listing information requested by FDA under § 807.26(e), in paper form using the procedures set forth in § 807.34. The information required for each device listed includes:

(1) The current registration number and name of each establishment under the ownership and control of the owner or operator where the device is manufactured, repackaged, relabeled, or otherwise processed, or where specifications are developed.

(2) The product code for each device that is exempt from premarket notification and approval or which was in commercial distribution prior to May 28, 1976.

(3) The proprietary or brand name(s) under which each device is marketed.

(4) The FDA-assigned premarket submission number of the approved application, cleared premarket notification, granted de novo classification petition, or approved humanitarian device exemption for each device listed that is subject to sections 505, 510(k), 513(f)(2), 515, or 520(m) of the Federal Food, Drug, and Cosmetic Act, which includes devices that are not exempt from premarket notification and approval.

(5) Each activity or process that is conducted on or done to the device at

each establishment, such as manufacturing, repacking, relabeling, developing specifications, remanufacturing, single-use device reprocessing, contract manufacturing, contract sterilizing, or manufacturing for export only.

§ 807.26 [Removed and Reserved]

■ 9. Remove and reserve § 807.26.

§ 807.31 [Redesignated as § 807.26]

■ 10. Redesignate § 807.31 as § 807.26.

■ 11. Amend newly redesignated § 807.26 by adding paragraph (f) to read as follows:

§ 807.26 Additional listing information.

* * * * *

(f) Labeling, advertisements, and other information to be submitted upon request in accordance with paragraph (e) of this section may be submitted by postal mail or electronically by email, but will not be submitted using the FDA electronic device registration and listing system. Electronic submissions of such information must comply with part 11 of this chapter, except for the requirements in § 11.10 (a), (c) through (h), and (k), and the corresponding requirements in § 11.30 of this chapter. The information provided in electronic format must be in a form that we can process, review, and archive.

§ 807.30 [Redesignated as § 807.28]

■ 12. Redesignate § 807.30 as § 807.28.

■ 13. Revise newly redesignated § 807.28 to read as follows:

§ 807.28 Updating device listing information.

(a) Updating of device listing information is required if an additional establishment begins to engage in any of the activities described in § 807.3(d) with respect to a listed device, such as manufacturing, developing specifications, repackaging, relabeling, or otherwise processing the device. Updating of the listing is also required if an establishment begins performing another activity on or to the device, or ceases to perform an activity on or to the device that had previously been identified on the device listing.

(b) An owner or operator shall create a new device listing using the FDA electronic device registration and listing system:

(1) If introducing into commercial distribution an exempt device identified with a product code that is not currently listed by the owner or operator; or

(2) If introducing into commercial distribution a non-exempt device with an FDA premarket submission number that is not currently listed by the owner or operator.

(c) All device listings for foreign establishments must be submitted before the device may be imported or offered for import into the United States.

(d) An owner or operator who discontinues commercial distribution of a device shall discontinue the device listing using the FDA electronic device registration and listing system. A device listing is considered discontinued if:

(1) All devices under an exempt product code have been discontinued or

(2) All devices associated with an FDA premarket submission number have been discontinued.

(e) If commercial distribution of a discontinued device is resumed, the owner or operator must reactivate the previously-discontinued listing using the electronic device registration and listing system. Any changes to the listing information for the product that is the subject of the listing such as a new establishment, new activity, or new proprietary name must be made using the electronic device registration and listing system at the time the listing is reactivated.

(f) FDA will assign one listing number for all devices exempt from premarket notification requirements under a single product code. For products not exempt from premarket notification requirements, a single listing number will be assigned by FDA for each FDA premarket submission number.

■ 14. Add § 807.34 to subpart B to read as follows:

§ 807.34 Summary of requirements for owners or operators granted a waiver from submitting required information electronically.

(a) For initial registration and listing, owners or operators who have been granted a waiver from electronic filing using the procedures set forth in § 807.21(b) must send a letter containing all of the registration and listing information described in §§ 807.22, 807.25, (and § 807.26 when such information is requested by FDA), at the times described in § 807.22, to: The Office of Compliance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 3521, Silver Spring, MD 20993–0002.

(b) As specified in § 807.22(b)(1) and (b)(3), all owners or operators shall update their establishment registration and device listings annually during the period beginning on October 1 and ending on December 31 of each fiscal year.

(c) Failure to submit any of the required information on time, as specified in § 807.22(a) and (b), will put the establishment in a ''failed to register'' or ''failed to list'' status as applicable.

The establishment will not be considered active and the establishment registration and device listing information may not appear on the FDA Web site until the required information is submitted to and processed by FDA.

■ 15. Amend § 807.35 by revising paragraphs (a) and (b) to read as follows:

§ 807.35 Notification of registrant.

(a) The Food and Drug Administration will assign each device establishment a registration number after verifying the initial establishment registration information that has been submitted. The owner or operator of the establishment will also be assigned an identifying number. Both numbers will be sent to the official correspondent by email, or by postal mail if the owner or operator has been granted a waiver from the requirement to file registration and listing information electronically.

(b) Owners or operators of device establishments who also manufacture or process biological products (including devices licensed under section 351 of the Public Health Service Act) or drug products at the same establishment must also register and list those products under part 607 or part 207 of this chapter, as appropriate. Registration and listing for human blood and blood products, devices licensed under section 351 of the Public Health Service Act, and licensed biological products used in the manufacture of a device licensed under section 351 of the Public Health Service Act, are subject to part 607 of this chapter; registration and listing for all other drug products (including other biological products that are also regulated as drug products) are subject to part 207 of this chapter.

* * * * *

■ 16. Revise § 807.37 to read as follows:

§ 807.37 Public availability of establishment registration and device listing information.

(a) Establishment registration and device listing information is available for public inspection in accordance with section 510(f) of the Federal Food, Drug, and Cosmetic Act and will be posted on the FDA Web site, with the exception of the information identified in paragraph (b) of this section. Requests for information by persons who do not have access to the Internet should be directed to the Office of Compliance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New

Hampshire Ave., Bldg. 66, rm. 3521, Silver Spring, MD 20993–0002. In addition, there will be available for inspection at each of the Food and Drug Administration district offices the same information for firms within the geographical area of such district offices. Upon request, verification of a registration number or location of a registered establishment will be provided.

(b) The following listing information will not be available for public inspection or posted on the FDA Web site:

(1) For contract manufacturers, contract sterilizers, and private label manufacturers, the proprietary or brand name(s) under which a device is marketed and the FDA-assigned premarket submission number, if this information would reveal a confidential business relationship;

(2) FDA-assigned listing numbers.

■ 17. Revise the heading of subpart C to read as set forth below:

Subpart C—Procedures for Foreign Device Establishments

■ 18. Amend § 807.40 by revising paragraphs (a) and (c) and by adding paragraph (d) to read as follows:

§ 807.40 Establishment registration and device listing for foreign establishments importing or offering for import devices into the United States.

(a) Any establishment within any foreign country engaged in the manufacture, preparation, propagation, compounding, or processing of a device that is imported or offered for import into the United States shall register such establishment and list such devices using the FDA electronic device registration and listing system in conformance with the procedures in this section, § 807.41, and subpart B of this part. The official correspondent for the foreign establishment shall facilitate communication between the foreign establishment's management and representatives of FDA for matters relating to the registration of device establishments and the listing of device products.

* * * * *

(c) No device may be imported or offered for import into the United States unless it is the subject of a device listing as required under subpart B of this part and is manufactured, prepared, propagated, compounded, or processed at a registered foreign establishment; however, this restriction does not apply to devices imported or offered for import under the investigational use provisions of part 812 of this chapter.

(d) The device establishment registration and device listing information shall be in the English language.

■ 19. Add § 807.41 to subpart C to read as follows:

§ 807.41 Identification of importers and persons who import or offer for import.

(a) Upon initial registration, annually, and at the time of any changes, each foreign establishment required to register and list as provided in § 807.40(a) must, using the FDA electronic device registration and listing system, submit the name, address, telephone and fax numbers, email address, and registration number, if any has been assigned, of any importer (defined in § 807.3(x)) of the establishment's devices that is known to the foreign establishment. The foreign establishment must also specify which of the establishment's listed products each importer receives from the foreign establishment.

(b) Upon initial registration, annually, and at the time of any changes, each foreign establishment required to register and list as provided in § 807.40(a) must, using the FDA electronic device registration and listing system, submit the name, address, telephone and fax numbers, email address, and registration number, if any has been assigned, of each person who imports or offers for import the establishment's devices into the United States. The term ''person who imports or offers for import,'' which is defined in § 807.3(y), includes agents, brokers, or other parties used by the foreign establishment to facilitate the import of its device into the United States.

(c) For each individual or organization identified by the foreign establishment under paragraphs (a) and (b) of this section, the foreign establishment must submit to FDA electronically the current FDA premarket submission number and any other identifying information that is known to the establishment for each device being imported or offered for import by the named individuals or organizations.

Dated: July 27, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–18764 Filed 8–1–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

Final Priorities and Definitions; State Personnel Development Grants

CFDA Number: 84.323A.

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

ACTION: Final priorities and definitions.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces two priorities for State Personnel Development Grants (SPDGs): Effective and Efficient Delivery of Professional Development (Priority 1) and Targeting Teachers' Professional Development Needs Based on Student Growth (Priority 2). The Assistant Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2012 and later years. The Assistant Secretary also announces definitions applicable to this program and these priorities. We take this action to assist State educational agencies (SEAs) to make their systems of professional development more effective and efficient by providing evidence-based and ongoing professional development that uses technology to support the implementation of evidence-based practices and to assist local educational agencies (LEAs) in providing professional development targeted to meet the specific needs of teachers identified by teacher evaluation systems that take into account student growth as a significant factor in determining performance levels. We intend to use these priorities to improve educational services and outcomes for children with disabilities.

DATES: *Effective Date:* These priorities and definitions are effective September 4, 2012.

FOR FURTHER INFORMATION CONTACT: Jennifer Coffey, U.S. Department of Education, 400 Maryland Avenue SW., room 4097, Potomac Center Plaza (PCP), Washington, DC 20202–2600. Telephone: (202) 245–6673 or by email: *jennifer.coffey@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice announces definitions and two priorities that the Office of Special Education Programs (OSEP) intends to use for the SPDG competition in FY 2012 and possibly later years. However, nothing precludes OSEP from publishing additional priorities,

requirements, definitions, or selection criteria, if needed. Furthermore, OSEP is under no obligation to make an award for these priorities. The decision to make an award will be based on the quality of applications received and available funding.

Purpose of Program: The purpose of this program is to assist SEAs in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

Statutory Requirements: Applicants under the SPDG program must meet the statutory requirements in sections 651 through 654 of the Individuals with Disabilities Education Act (IDEA), including the application requirements in section 653 and the use of funds requirements in section 654. Because the priorities and definitions in this notice supplement these statutory requirements, applicants should familiarize themselves with the statutory requirements they must also meet to receive funding under this program.

In addition, section 651(b) of the IDEA defines the term ''personnel'' as it is used in connection with the SPDG program. This definition applies to the priorities in this notice as well. ''Personnel'' means special education teachers, regular education teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel serving infants, toddlers, preschoolers, or children with disabilities, except where a particular category of personnel, such as related services personnel, is identified.

Program Authority: 20 U.S.C. 1451–1455.

We published a notice of proposed priorities and definitions for the SPDG program in the **Federal Register** on April 13, 2012 (77 FR 22306). That notice contained background information and our reasons for proposing these particular priorities and definitions.

Public Comment: In response to our invitation in the notice of proposed priorities and definitions, 11 parties submitted comments.

We group major issues according to subject. Generally, we do not address technical and other minor changes. In addition, we do not address comments that raised concerns not directly related to the proposed priorities and definitions.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities or definitions since publication of the notice of proposed priorities and definitions follows.

General Comments

Comment: Two commenters recommended that we include all school personnel in both priorities. One commenter recommended that OSEP use the term ''school personnel'' instead of ''teacher'' throughout the two priorities to ensure that all school personnel, as the IDEA defines the term, have access to evidence-based professional development.

Discussion: For Priority 1, we are using the definition of ''personnel'' from section 651(b) of the IDEA because Priority 1 is designed broadly to focus on the effective and efficient delivery of professional development using evidence-based professional development practices. This priority would apply to all personnel defined in section 651(b) of the IDEA, not just to teachers. Priority 2, however, is limited to the specific professional development needs of general and special education teachers identified by teacher evaluation systems that take into account student growth as a significant factor in determining performance levels. Therefore, it would not be appropriate to apply the definition of ''personnel'' in section 651(b) of the IDEA to Priority 2.

Changes: None.

Comment: One commenter noted that rural school personnel would especially benefit from using technology to provide professional development in the form of coaching.

Discussion: OSEP agrees that the use of technology can improve the delivery of professional development in rural areas and that technology could provide a means of coaching school personnel in rural areas in using and maintaining new skills. These activities can be supported under Priority 1.

Changes: None.

Comment: One commenter recommended that OSEP add to the priorities a focus on personnel preparation.

Discussion: The primary focus of the SPDG program is to improve professional development for personnel so that they have the knowledge and skills to improve results for children with disabilities. High-quality, comprehensive professional development programs are essential to ensure that school personnel possess the skills and knowledge necessary to address the early intervention, educational, and related services needs of infants, toddlers, and children with disabilities. The Department's intent in publishing this priority is to allow States to make their systems of professional development for personnel serving children with disabilities more effective and efficient through the use of evidence-based practices. OSEP appreciates the commenter's suggestion to expand Priority 1 to include a focus on personnel preparation. However, OSEP believes that other funding opportunities can address States' personnel preparation needs, such as grants under section 662 of IDEA, and that the more limited resources under the SPDG program, 90 percent of which must be used for professional development as provided for in section 654(d)(1) of the IDEA, should be used primarily for professional development activities.

Changes: None.

Comment: Several commenters requested that Priority 1 include particular practices as areas for professional development. For example, some commenters recommended including references to universal design for learning, multi-tiered systems of support, and positive behavioral interventions and supports to the description of evidence-based professional development practices.

Discussion: The primary focus of this priority is on the use of evidence-based professional development practices that increase the implementation of evidence-based instructional practices to improve outcomes for children with disabilities. Accordingly, applicants that wish to address particular practices in their proposed projects may do so, provided they can demonstrate that these practices are evidence-based and will improve outcomes for children with disabilities.

Changes: None.

Priority 1—Effective and Efficient Delivery of Professional Development

Comment: Multiple commenters supported the focus in Priority 1 on evidence-based and ongoing professional development that makes use of technology to reach school personnel. However, one commenter stated that the definition of technology is unclear and asked for clarification regarding the ''newer technologies'' referred to under the ''Use of Technology'' in the background section for Priority 1. This commenter stated that the background section refers to the use of bug-in-the ear technology for coaching and distance education technology for providing professional development to remote areas.

Discussion: OSEP appreciates commenters' support for the use of technology under Priority 1 to more efficiently and effectively provide

ongoing evidence-based professional development to personnel. The discussion on the use of technology in the background section of the notice was intended to highlight the fact that the introduction of new technologies (e.g., online project management tools, wikis for communication and collaboration, and Web cast programs) has greatly enhanced the capacity to provide ongoing professional development and that applicants should consider the use of these technologies to increase the efficiency and effectiveness of their professional development. However, applicants may propose to use the technologies that best suit their needs in providing more efficient and effective professional development.

Changes: None.

Comment: One commenter requested that the Department clarify the intent of the language in the background section of the notice of proposed priorities, published at 77 FR 22306 regarding the importance of high quality professional development to improve the skills of personnel who work with infants and toddlers. The commenter was concerned that this language focused the priority on the provision of professional development for early intervention and early childhood educators.

Discussion: We believe that the language of the priority is clear and that no further clarification is needed. The purpose of Priority 1 is to ensure that personnel possess the skills and knowledge necessary to address the early intervention, educational, and related services needs of infants, toddlers, and children with disabilities and is not intended to focus only on providers of early childhood or early intervention services. In addition, it is not necessary to change the background section because it is not included in the final priority.

Changes: None.

Comment: One commenter described the importance of providing professional development that helps school personnel become culturally competent.

Discussion: OSEP agrees that providing professional development to help school personnel gain cultural competence is important. Under this priority, applicants may propose a project that helps school personnel serving children with disabilities to become culturally competent, provided the project is designed to improve professional development in this area through the use of evidence-based practices.

Changes: None.

Proposed Priority 2—Targeting Teachers' Professional Development Needs Based on Student Growth

Comment: One commenter expressed concern that using student growth data to determine professional development needs would exclude teachers whose responsibilities are not related to subjects that are part of the statewide assessment system. The commenter recommended that Priority 2 allow for the use of other types of data, such as staff surveys, supervisory conferencing, and observations, to determine professional development needs.

Discussion: The teacher evaluation systems implemented by States and LEAs use multiple measures of professional practice and student growth to determine performance levels and identify professional development needs. In particular, States and LEAs may use other measures of student learning in addition to the State's assessment data under the Elementary and Secondary Education Act of 1965, as amended (ESEA) (see the definition of ''student achievement'' in the Definitions section of this notice). For teachers of non-tested grades or subjects, alternative measures of student learning and performance can be used, such as student scores on pre-tests and end-of-course tests, student performance on English language proficiency assessments, and other measures of student achievement that are rigorous and comparable across schools. States and their LEAs may use other sources of data in addition to student growth data, as a part of their teacher evaluation system, to assist in determining professional development needs.

Changes: None.

Comment: One commenter approved of this priority because it encourages school personnel to analyze student performance data using objective measures to assess growth in student achievement. The commenter stated that these data could be useful at a school and district level for planning professional development and coaching. However, the commenter expressed concerns about student performance data being part of a teacher evaluation system, stating there is insufficient evidence to prove that teacher performance significantly affects student achievement.

Discussion: We appreciate the comment; however, we disagree that there is no evidence demonstrating that teacher performance has an effect on student achievement. There is a substantial body of evidence that teacher performance significantly affects student achievement. Please see Chetty, Friedman, & Rockoff, 2011; Hanushek, 2010; Hanushek, 2011; Hanushek & Rivkin, 2010; Kane & Staiger, 2008; Kane, Taylor, Tyler, & Wooten, 2010; Rockoff 2004.

Changes: None.

Comment: One commenter stated that there is no evidence that student growth can be effectively measured through an alternate assessment or testing with accommodations.

Discussion: Under section 612(a)(16)(B) of the IDEA, States must develop guidelines for the provision of appropriate accommodations for students with disabilities, and those accommodations may not operate to invalidate test results. States must ensure that teachers and other staff know how to administer assessments, including how to use appropriate accommodations, for students with the most significant cognitive disabilities. Appropriate accommodations that do not interfere with the testing construct can serve as a component of a well-designed assessment system to measure student growth. In addition, an alternate assessment that meets established technical adequacy requirements for test reliability and validity can provide data that can be included as a component of a well-designed assessment system to measure student growth.

The Department is currently funding the development of two alternate assessments for students with the most significant cognitive disabilities. The assessments will measure the knowledge and skills of those students against a common set of college- and career-ready content standards in mathematics and English language and will provide an accurate measure of student growth over a full academic year or course. These alternate assessments developed with General Supervision Enhancement Grants (GSEG) will permit the assessment of all eligible students with significant cognitive disabilities, and they will produce data (including student achievement data and student growth data) that can be used to inform (a) Determinations of school effectiveness; (b) determinations of individual principal and teacher effectiveness for purposes of evaluation; (c) determinations of principal and teacher professional development and support needs; and (d) teaching, learning, and program improvement.

Changes: None.

Comment: Multiple commenters shared concerns that their States would not be eligible for this priority because their data systems do not currently have the ability to link student performance to teacher performance.

Discussion: The Department understands that some States and their LEAs may need time to make the changes in their data systems necessary to use student growth data for decision-making purposes. Accordingly, the Department has revised Priority 2 to provide greater flexibility for States currently in the planning or initial stages of implementing teacher evaluation systems.

Revised Priority 2 will allow States to begin using the results from their teacher evaluation systems to identify the professional development needs of teachers of students with disabilities no later than the beginning of the third year of the grant's project period. To meet this priority, an applicant must include, as part of its application, a plan describing how it will use the results of teacher evaluation systems to identify the professional development needs of teachers of students with disabilities and the applicant's timeline for using the results. We believe it is important to have a competitive preference priority in this area to encourage States to build their capacity to use their evaluation systems to identify and better target the professional development needs of teachers of students with disabilities and help them to develop the knowledge and skills required to deliver evidence-based instruction.

Changes: Priority 2 has been revised to allow States to begin using their evaluation system results to identify the professional development needs of teachers of students with disabilities no later than the beginning of the third year of the grant's project period rather than at the beginning of the project period.

Comment: One commenter asked whether the teacher evaluation system must already be fully functional at the school, LEA, and State levels in order for the applicant to be eligible to receive competitive preference under this priority.

Discussion: If LEAs have teacher evaluation systems that meet State guidelines, it would be appropriate for the SPDG project to work with these LEAs. As stated in the discussion in response to the previous comment, the State must be able to use teacher evaluation systems that take into account student growth as a significant factor in determining performance levels to identify professional development needs by the beginning of the third year of the grant.

Changes: Priority 2 has been revised to allow States to begin using their evaluation system results to identify the professional development needs of teachers of students with disabilities no later than the beginning of the third year of the grant's project period rather than at the beginning of the project period.

Comment: One commenter noted the difficulty in ascribing the performance of a student with disabilities to a particular teacher because the student will likely be served by multiple professionals (i.e., a regular education teacher, a special education teacher, and a related services provider).

Discussion: While it can be difficult to ascribe the growth of students with disabilities to individual teachers, States are taking different approaches and working to ensure that their evaluation systems validly and reliably ascribe growth data to individual teachers. States and LEAs also have developed more sophisticated data systems that link teacher and student data and that are able to identify with more specificity the amount of time that teachers serve individual students.

Changes: None.

Comment: One commenter recommended that we provide in the priority that SPDG projects in States whose LEAs do not have teacher evaluation systems that take into account student growth (as defined in the notice) be allowed to establish these evaluation systems in order to determine teacher performance levels and target professional development to the specific needs of each of the teachers in participating schools or districts.

Discussion: We do not believe that SPDG funds should be used to develop or implement systems to evaluate special education teachers using student growth data. States participating in the State Fiscal Stabilization Fund (SFSF) program committed to establishing longitudinal data systems that would have the ability to link data on students and teachers. Currently, 45 States have reported they have such a system in place. The remaining five participating States have until the end of 2013 to establish their systems. Also, many States committed to measuring student growth for particular teachers and linking those data back to teacher preparation programs. While we recognize the wide variation among States in the use of longitudinal and other data on student outcomes to evaluate teacher performance, especially special education teacher performance, and there is considerable work to be done, we do not think that SPDG funds should be used to match student and teacher data or to conduct teacher evaluations.

Instead, these projects should focus on the use of teacher evaluation information to identify and address professional development needs. Under section 654(a) of the IDEA, funds could be used by projects to help LEAs to target their professional development, including identifying the type of professional development that would be most useful for their teachers. In addition, we encourage SPDG project staff to participate in State efforts to improve and expand evaluative systems to ensure their design facilitates the use of teacher performance information, which is linked to student outcome data, to identify special education teachers' professional development needs.

Under section 654(b) of the IDEA, SPDG funds can be used for purposes other than professional development, such as developing and implementing mechanisms to assist LEAs and schools in effectively recruiting and retaining highly qualified special education teachers, and could potentially be used to enhance a State's teacher evaluation system that uses student growth data for students with disabilities. However, these funds should not be used by schools or districts to gather performance information or conduct evaluations of individual teachers.

Changes: None.

Definitions

Comment: Three commenters recommended that OSEP strengthen the definition of ''evidence-based practices'' to include causality and the demonstration of effect on student outcomes.

Discussion: The definition of ''evidence-based practices'' was taken from the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637). OSEP appreciates the commenter's concerns, but the Department has developed the definition to be applicable to a broad range of programs, and it was previously the subject of public comment. Therefore, OSEP does not believe it is necessary to alter the definition in this notice.

Changes: None.

Comment: Two commenters recommended that OSEP strengthen its definition of ''fidelity'' and stated that fidelity to the components of a practice or program is key to improving student outcomes.

Discussion: Although we agree with the commenters that fidelity to the components of a program or practice is key to improving student outcomes, we believe that the current definition is sufficient in this regard. In the NPP, we

explained that we based the proposed definition of ''fidelity'' on a definition that is widely accepted in the field (Gresham, MacMillan, Boebe-Frankenberger, & Bocian, 2000), and we believe this definition is sufficient for the purposes of this program.

Changes: None.

Comment: Two commenters recommended that OSEP change the definition of ''student achievement'' to ensure that student achievement data is comparable not only across schools but also across districts within a State.

Discussion: The definition of ''student achievement'' is taken from the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637). The Department has developed this definition to be applicable to a broad range of programs, and it was previously the subject of public comment. To be consistent with the definition being used across the Department, we are using this definition without change.

Changes: None.

Final Priorities

Priority 1—Effective and Efficient Delivery of Professional Development

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority to assist SEAs in reforming and improving their systems for personnel (as that term is defined in section 651(b) of the IDEA) preparation and professional development of individuals providing early intervention, educational, and transition services in order to improve results for children with disabilities.

In order to meet this priority an applicant must demonstrate in the SPDG State Plan it submits as part of its application under section 653(a)(2) of the IDEA that its proposed project will—

(1) Use evidence-based (as defined in this notice) professional development practices that will increase implementation of evidence-based practices and result in improved outcomes for children with disabilities;

(2) Provide ongoing assistance to personnel receiving SPDG-supported professional development that supports the implementation of evidence-based practices with fidelity (as defined in this notice); and

(3) Use technology to more efficiently and effectively provide ongoing professional development to personnel, including to personnel in rural areas and to other populations, such as personnel in urban or high-need LEAs (as defined in this notice).

Priority 2—Targeting Teachers' Professional Development Needs Based on Student Growth

The Assistant Secretary establishes a priority for projects that are designed to provide professional development targeted to meet specific needs of teachers identified by teacher evaluation systems that take into account student growth (as defined in this notice) as a significant factor in determining performance levels.

To meet this priority, an applicant must include, as part of its application, a plan describing how it will use the results of teacher evaluation systems to identify the professional development needs of teachers of students with disabilities to ensure that such teachers develop the knowledge and skills required to deliver evidence-based instruction to students with disabilities. The teacher evaluation systems used to make these determinations must be based on student growth in significant part, and must include students with disabilities.

The plan must describe the applicant's timeline for using the results of evaluation systems to identify the professional development needs of teachers of students with disabilities. Under this timeline, the applicant must begin using the evaluation system results to identify the professional development needs of teachers of students with disabilities no later than the beginning of the third year of the grant's project period.

Types of Priorities

When inviting applications for a competition using one or more priorities, 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)).

Final Definitions

The Assistant Secretary establishes the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

Evidence-based refers to practices for which there is strong evidence or moderate evidence of effectiveness.

Fidelity means the delivery of instruction in the way in which it was designed to be delivered.

High-need LEA means, in accordance section 2102(3) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), an LEA—

(a) That serves not fewer than 10,000 children from families with incomes below the poverty line (as that term is defined in section 9101(33) of the ESEA), or for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line; and

(b) For which there is (1) a high percentage of teachers not teaching in the academic subjects or grade levels that the teachers were trained to teach; or (2) a high percentage of teachers with emergency, provisional, or temporary certification or licensing.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Student growth means the change in student achievement (as defined in this notice) for an individual student between two or more points in time.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities and definitions, we invite applications through a notice in the **Federal Register.**

Executive Orders 12866 and 13563

Regulatory Impact Analysis

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.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action 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 upon 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 final priorities and definitions 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.

We have also determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

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) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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: July 30, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–18907 Filed 8–1–12; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0866; FRL–9705–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Preconstruction Requirements-Prevention of Significant Deterioration and Nonattainment New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving several revisions to the Maryland State Implementation Plan (SIP) submitted by the Maryland Department of the Environment (MDE). These revisions pertain to preconstruction requirements under the Prevention of Significant Deterioration (PSD) and non-attainment New Source Review (NSR) programs. The SIP revisions satisfy the following required SIP elements: NSR Reform, oxides of nitrogen (NO_X) as a precursor to ozone, $PM_{2.5}$, and Greenhouse Gases (GHGs). Additionally, EPA is approving, as a separate action, Maryland's submittals for purposes of meeting the infrastructure requirements of the Clean Air Act (CAA) which relate to

Maryland's PSD permitting program and are necessary to implement, maintain, and enforce the 1997 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS) and the 2006 $PM_{2.5}$ NAAQS. This action is being taken under the CAA.

DATES: *Effective Date:* This final rule is effective on September 4, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2011–0866. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On March 19, 2012 (77 FR 15985), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of three SIP revision requests submitted by MDE, as described below.

II. Summary of SIP Revision

A. SIP Revision #07–13

On October 24, 2007 MDE submitted a SIP revision request to EPA which included amendments to Regulations .01–.03, repeal of existing Regulations .04 and .05, and the adoption of new Regulations .04–.09 under COMAR 26.11.17, Nonattainment Provisions for Major New Sources and Major Modifications. This SIP submittal revises the previously-approved versions of these rules as approved into the Maryland SIP on February 12, 2001 for COMAR 26.11.17 Regulations .02, .04, and .05 (66 FR 9766) and September 20, 2004 for COMAR 26.11.17 Regulations .01 and .03 (69 FR 56170). These amendments were adopted by Maryland on September 18, 2007 and became effective on October 22, 2007. The State adopted these regulations in order to meet the relevant plan requirements of Title 40 of the Code of Federal Regulations (CFR) 51.165 and the CAA. EPA is approving these amendments.

B. SIP Revision #09–03

On July 31, 2009, MDE submitted a SIP revision request to EPA that consisted of the incorporation by reference of the Federal PSD requirements at 40 CFR 52.21 as codified in the July 1, 2008 edition of the CFR. The SIP revision request included amendments to the MDE Regulation .01 under COMAR 26.11.01 (General Administrative Provisions) and Regulation .14 under COMAR 26.11.06 (General Emission Standards, Prohibitions, and Restrictions). On June 23, 2011, MDE submitted a letter, retracting the part of submission #09–03 which updated the incorporation by reference date. Since originally submitting #09–03, Maryland has adopted the federal regulations as they appear in the July 1, 2009 version of the CFR (See State Submission #11–02, below). Today's action approves only that part of the submission which clarifies the definitions of ''Administrator'' and ''reviewing authority''.

This SIP submittal revises the previously-approved versions of these rules as approved into the Maryland SIP on May 28, 2002 (67 FR 36810). These amendments were adopted by Maryland on June 11, 2009 and became effective on July 16, 2009. The State adopted these regulations in order to meet the relevant plan requirements of 40 CFR 51.166 and the CAA. EPA is approving these amendments.

C. SIP Revision #11–02

On June 23, 2011, MDE submitted a SIP revision request to EPA that consisted of the incorporation by reference of the federal PSD requirements at 40 CFR 52.21 as codified in the July 1, 2009 edition of the CFR, as well as the incorporation of the revisions to 40 CFR 52.21 promulgated on May 13, 2010 in the Greenhouse Gas Tailoring Rule (75 FR 31514). The SIP revision request included amendments to the MDE Regulation .01 under COMAR 26.11.01 (General Administrative Provisions), Regulations .01 and .12 under COMAR 26.11.02 (Permits, Approvals, and Registration), and Regulation .14 under COMAR 26.11.06 (General Emission Standards, Prohibitions, and Restrictions).

This SIP submittal revises the previously-approved versions of these rules, approved as follows: COMAR 26.11.01.01 and COMAR 26.11.06.14 were adopted into the Maryland SIP on May 28, 2002 (67 FR 36810). COMAR 26.11.02.01 and .12 were adopted into the Maryland SIP on February 27, 2003 (68 FR 9012). These amendments were adopted by Maryland on April 14, 2011 and became effective on May 16, 2009. The State adopted these regulations in order to meet the relevant plan requirements of 40 CFR 51.166 and the CAA. EPA is approving these amendments.

As stated above, the SIP revisions submitted by MDE satisfy several required SIP elements: NSR Reform, NO_X as a precursor to ozone, $PM_{2.5,}$ and Greenhouse Gases (GHGs). Additionally, EPA is approving, as a separate action, Maryland's submittals for purposes of meeting the infrastructure requirements of the CAA which relate to Maryland's PSD permitting program and are necessary to implement, maintain, and enforce the 1997 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS) and the 2006 $PM_{2.5}$ NAAQS. Other specific requirements of MDE's SIP revisions and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

III. EPA's Response to Comments Received on the Proposed Action

EPA received a single set of relevant comments on its March 19, 2012 (77 FR 15985) proposed action to approve revisions to the Maryland SIP. These comments, provided by Mr. Robert Ukeiley on behalf of the Sierra Club, (hereinafter referred to as ''the Commenter''), raised concerns about EPA's March 19, 2012 proposed action. A full set of these comments is provided in the docket for today's final action. A summary of the comments and EPA's responses are provided below.

Generally, the Commenter raises three areas of concern. First, the Commenter asserts that the proposed revisions to Maryland's nonattainment program cannot be approved into the Maryland SIP because the ''reasonable possibility'' requirements are not included in the proposed regulations. Second, the Commenter asserts that ''NSR Reform'' cannot be approved into the Maryland SIP because EPA has failed to demonstrate that the new program ''ensures equivalent or greater emissions reductions * * *'' in accordance with CAA section 193. Finally, the Commenter asserts that EPA cannot approve the 2006 $PM_{2.5}$ Infrastructure

SIP because Maryland's incorporation by reference of the Federal regulations is ambiguous with respect to the regulation of NO_X and volatile organic compounds (VOC's) as precursors to $PM_{2.5}$, and because the proposed SIP revision does not include the $PM_{2.5}$ increments that were promulgated by EPA on October 20, 2010 (75 FR 64864). EPA's response to these comments is provided below.

Comment 1: The commenter asserts that the proposed SIP revision cannot be approved because it does not specifically contain the ''reasonable possibility'' provisions of 40 CFR 51.165(a)(6).

Response 1: As we noted in the notice of proposed rulemaking, EPA promulgated the ''reasonable possibility'' provisions of 40 CFR 51.165(a)(6) on December 21, 2007 (72 FR 72607), after MDE submitted the revisions that are the subject of this action. However, we also noted that while the reasonable possibility provisions are a required program element, permitting authorities can meet the requirements with equivalent regulations (*See* 77 FR 15988). Contrary to the assertions of the commenter, we look for equivalence of a state's provisions and do not impose a requirement that ''ever[y] piece of information that is required by 'reasonable possibility' requirements is required by [the State].'' Maryland's robust minor NSR program contains provisions which are equivalent to 40 CFR 51.165(a)(6). The Code of Maryland Administrative Regulations (COMAR) lists the activities MDE deems to be ''insignificant'' and thus exempt from permitting requirements (*See,* COMAR 26.11.02.10). It is highly unlikely that any facility exceeding the 50 percent significant emissions rate threshold which triggers the requirements of 40 CFR 51.165(a)(6) would escape some level (major or minor) of preconstruction review under Maryland's regulations. Once a facility is subject to preconstruction review, Maryland's record keeping and reporting regulations meet or exceed all of the reasonable possibility requirements. MDE uses the authority under the general administrative provisions of COMAR 26.11.01 to require testing and monitoring (26.11.01.04), and recordkeeping and reporting (26.11.01.05). Thus, sources in Maryland that escape major NSR are not required merely to calculate baseline and projected actual emissions and keep records of those calculations onsite. Rather, for all but the most insignificant sources, those calculations are reviewed by MDE under their minor NSR program, and the testing, monitoring, recordkeeping and reporting requirements of COMAR 26.11.01 are incorporated into their preconstruction and operating permits. Additionally, the permit application requirements of 26.11.02.11, as well as MDE's general authority under 26.11.02.06 to deny an application that has failed to demonstrate compliance with Maryland's nonattainment NSR provisions (.06B(4)) or protection of the NAAQS (.06B(5)) all support a finding that Maryland has met the statutory requirements with regard to the reasonable possibility provisions.

Comment 2: The Commenter asserts that EPA cannot approve the 2002 NSR provisions into the Maryland SIP without demonstrating that the proposed revisions insure equivalent or greater emissions reductions than the previous program, in accordance with CAA section 193. Citing to the June 16, 2011 U.S. Court of Appeals for the Seventh Circuit (Seventh Circuit) decision in *NRDC* v. *Jackson,* the Commenter further asserts that in order provide such a demonstration, EPA must analyze data from states which have already adopted the NSR Reform provisions: ''EPA can start by reviewing minor source permits for major sources of pollution in Georgia, New York, and North Carolina. EPA would need to determine which of these minor source permits would have triggered NA NSR under the old rules, using the actual to potential test and the shorter look back period. If any sources would have triggered [nonattainment] NSR under the old rules but did not trigger it under the 'Reform' than (*sic*) the Reform did not provide equivalent or greater emission reductions'' (*See* Comments at 2).

Response 2: The NSR Reform provisions at issue here have repeatedly withstood judicial review, and as we noted in our proposal, the revisions to the Maryland SIP largely mirror the Federal program. We disagree that the kind of analysis described by the Commenter is required in order to approve the revisions at issue into the SIP. We acknowledge the Seventh Circuit's admonishment against perpetual reliance on predictions over available data, as cited by the Commenter. However, as discussed below, EPA did not rely on the 2002 ''Supplemental Environmental Analysis'' which contained the predictions that were at issue in *NRDC* v. *Jackson* as the basis for approving these revisions into the Maryland SIP. Moreover, the number of permits that would have been required under pre-reform regulations is not determinative of whether a permitting authority has met its obligation with regard to CAA section 193: ''* * * the statutes concern the quantity of emissions, not the quantity of permits'' (*See NRDC* v. *Jackson* at 6). Additionally, it should be noted that the type of analysis recommended by the commenter fails to take into consideration the emission avoidances that occur when a source obtains a federally enforceable limit on its potential to emit (PTE) in order to avoid major NSR.

The primary Reform provision with which the Commenter takes issue is the actual-to-projected actual test. Our basis for approving these revisions rests upon the fact that this applicability test can only be utilized by a fraction of sources in the permitting universe. As we noted in our proposal, only modifications to existing emission units at major stationary sources can use the baseline-to-projected actual test. The list of sources potentially affected by the revisions being proposed in this action is further shortened by the fact that electric generating units were already permitted to use this test because of the regulations arising from litigation in the Wisconsin Electric Power Company (WEPCO) case. This is commonly referred to as the ''WEPCO rule'' (*See,* 57 FR 32314). Furthermore, any modification that did manage to avoid the requirement to obtain a major NSR permit using the test would still be subject to the preconstruction permit requirements of Maryland's minor NSR program, including any of the attendant testing, monitoring, recordkeeping and reporting requirements. Based on the limited number of potentially affected sources and the stringency of Maryland's minor NSR program, we stand behind our determination that approving the NSR Reform provisions into the SIP will have, at worst, a neutral impact on emissions in Maryland. We disagree with the Commenter's assertion that additional analysis is required.

Comment 3: The third comment relates to EPA's proposed approval of the portions of Maryland's 2006 $PM_{2.5}$ infrastructure SIP which relate to the PSD requirements of CAA section 110(a)(2). The Commenter asserts that EPA cannot approve the infrastructure SIP without: (A) clarifying the $PM_{2.5}$ precursor requirements for NO_X and VOC's, and (B) including the $PM_{2.5}$ increments which were promulgated by EPA on October 20, 2010.

Response 3: EPA believes Maryland has a PSD permitting program that is sufficient to meet the requirements in section 110(a)(2)(C), (D)(i)(II) and (J) of the CAA. In this final action, EPA is

approving COMAR 26.11.06.14 which incorporates by reference 40 CFR section 52.21 (2009) which includes the Federal regulations identified by the Commenter. This final action incorporates into the Maryland SIP 40 CFR 52.21(b)(50)(i)(c) (providing NO_X is a precursor to $PM_{2.5}$) and 40 CFR 52.21(b)(50)(i)(d) (providing VOC's are presumed not to be precursors to $PM_{2.5}$) (*See also* May 18, 2008 ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$),'' (73 FR 28321)). With respect to the $PM_{2.5}$ increments, as the Commenter noted, states have until July 20, 2012 to submit SIP revisions which incorporate the October 20, 2011 $PM_{2.5}$ increment requirements (*See* 75 FR 64864). Therefore, the Commenter's assertion is not relevant to this SIP action. EPA believes that it is unreasonable not to approve the 2006 $PM_{2.5}$ Infrastructure SIP because the State's SIP lacks requirements that EPA has not even required the State to submit yet. Instead, the EPA believes that it is appropriate for the EPA to take into consideration the timing and sequence of related SIP submissions as part of determining what it is reasonable to expect a State to have addressed in an infrastructure SIP for a NAAQS at the time when the EPA acts on such submission. Such an approach is reasonable, and to adopt a different approach by which the EPA could not act on an infrastructure SIP, or at least could not approve an infrastructure SIP, whenever there was any impending or future revision to the SIP that will be required by another collateral rulemaking action would result in regulatory gridlock. The EPA believes that such an outcome would be an unreasonable reading of the statutory process for the SIP's contemplated in section 110(a)(1) and (2). Based upon EPA's review of Maryland's PSD program, including the revisions subject to this action, Maryland has met its obligations pursuant to the portions of CAA section 110(a)(2) relating to PSD for the 1997 $PM_{2.5}$ NAAQS, the 1997 Ozone NAAQS, and the 2006 $PM_{2.5}$ NAAQS.

IV. Final Action

EPA is approving MDE's July 31, 2009 and June 23, 2011 SIP submittals as a revision to the Maryland SIP.

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 1, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to preconstruction permitting requirements under Maryland's PSD and nonattainment NSR programs may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: July 11, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

Therefore, 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. In § 52.1070:

■ a. The table in paragraph (c) is amended by:

■ 1. Adding an entry for COMAR 26.11.01.01 after the existing entry for COMAR 26.11.01.01.

■ 2. Adding an entry for COMAR 26.11.02.01 after the existing entry for COMAR 26.11.02.01.

■ 3. Revising the existing entries for COMAR 26.11.02.12, 26.11.06.14, and 26.11.17.01 through 26.11.17.05.
■ 4. Adding entries for COMAR 26.11.17.06 through 26.11.17.09 in numerical order.
■ b. The table in paragraph (e) is amended by revising the entries for section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS, section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS, and section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS at the end of the table.

The revised and added text reads as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
26.11.01 General Administrative Provisions				
*	*	*	*	*
26.11.01.01	Definitions	5/16/09	8/2/12 *[Insert page number where the document begins].*	Added .01 B(6–1), and (18–1); Revised .01B(37).
*	*	*	*	*
26.11.02 Permits, Approvals, and Registration				
*	*	*	*	*
26.11.02.01	Definitions	5/16/11	8/2/12 *[Insert page number where the document begins].*	Added .01B(44)(f), .01C(1)(d).
*	*	*	*	*
26.11.02.12	Procedures for Obtaining Approvals of PSD Sources and NSR Sources, Permits to Construct, Permit to Construct MACT Determinations On a Case-by-Case Basis in Accordance with 40 CFR part 63, subpart B, and Certain 100-Ton Sources.	5/16/11	8/2/12 *[Insert page number where the document begins].*	Added .12A(2)
*	*	*	*	*
26.11.06 General Emission Standards, Prohibitions, and Restrictions				
*	*	*	*	*
26.11.06.14	Control of PSD Sources	7/16/09; 5/16/11	8/2/12 *[Insert page number where the document begins].*	
*	*	*	*	*
26.11.17 Nonattainment Provisions for Major New Sources and Major Modifications				
26.11.17.01	Definitions	10/22/07	8/2/12 *[Insert page number where the document begins].*	
26.11.17.02	Applicability	10/22/07	8/2/12 *[Insert page number where the document begins].*	
26.11.17.03	General Conditions	10/22/07	8/2/12 *[Insert page number where the document begins].*	
26.11.17.04	Creating Emission Reduction Credits (ERCs).	10/22/07	8/2/12 *[Insert page number where the document begins].*	Revised; Former Regulation .04 is repealed and replaced in its entirety.
26.11.17.05	Information on Emission Reductions and Certification.	10/22/07	8/2/12 *[Insert page number where the document begins].*	Revised; Former Regulation .05 is repealed and replaced in its entirety.
26.11.17.06	Transferring Emission Reduction Credits.	10/22/07	8/2/12 *[Insert page number where the document begins].*	Added.
26.11.17.07	Plantwide Applicability Limit (PAL)—General.	10/22/07	8/2/12 *[Insert page number where the document begins].*	Added.
26.11.17.08	Plantwide Applicability Limit (PAL)—Permits.	10/22/07	8/2/12 *[Insert page number where the document begins].*	Added.

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—Continued

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
26.11.17.09	Plantwide Applicability Limit (PAL)—Monitoring, Record Keeping, and Reporting.	10/22/07	8/2/12 *[Insert page number where the document begins].*	Added.
*	*	*	*	*

* * * * * (e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 1997 8–Hour Ozone NAAQS.	Statewide	7/27/07, 11/30/07,	11/25/11, 76 FR 72624	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
		7/31/09, 6/23/11	8/2/12 *[Insert page number where the document begins*].	This action addresses the following CAA elements or portions thereof: 110(a)(2)(C), (D)(i)(II), and (J).
Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS.	Statewide	4/3/08, 4/16/10	11/25/11, 76 FR 72624	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
		7/31/09, 6/23/11	8/2/12 *[Insert page number where the document begins*].	This action addresses the following CAA elements or portions thereof: 110(a)(2)(C), (D)(i)(II), and (J).
Section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS.	Statewide	4/16/10, 7/21/10	11/25/11, 76 FR 72624	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
		7/31/09, 6/23/11	8/2/12 *[Insert page number where the document begins*].	This action addresses the following CAA elements or portions thereof: 110(a)(2)(C), (D)(i)(II), and (J).

[FR Doc. 2012–18656 Filed 8–1–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0153; FRL–9708–2]

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 and 2006 24–Hour Fine Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making 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 determining that the Area has attained the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS or ''standard''). Second, EPA is determining that the Area has attained the 2006 24-hour $PM_{2.5}$ NAAQS. These determinations of attaining data are based upon 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. The requirements for the Area to submit an attainment demonstration 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: *Effective Date:* This final rule is effective on September 4, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R04–OAR–2010–0153. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business

information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours 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.

FOR FURTHER INFORMATION CONTACT: Sara Waterson, 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.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?
II. What is the effect of this action?
III. What is EPA's final action?
IV. Statutory and Executive Order Reviews

I. What actions is EPA taking?

EPA is determining that the Knoxville Area (comprised of Anderson, Blount, Knox, and Loudon Counties in their entireties and a portion of Roane County) has monitored attaining data for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. These determinations are based upon quality-assured, quality-controlled and certified ambient air monitoring data that shows the Area has monitored attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS based on the 2009–2011 data.

Other specific requirements of the determinations and the rationale for EPA's action are explained in the notice of proposed rulemaking (NPR) published on June 6, 2012 (77 FR 33360), and will not be restated here. The comment period closed on July 6, 2012. No comments, adverse or otherwise, were received in response to the NPR.

II. What are the effects of these actions?

The determinations of attaining data, in accordance with 40 CFR 51.1004(c), suspends the requirements for this Area to submit attainment demonstrations, 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 for so long as the Area continues to attain the applicable $PM_{2.5}$ NAAQS. Finalizing these actions does not constitute a redesignation of the Knoxville Area to attainment for the 1997 annual or 2006 24-hour $PM_{2.5}$ NAAQS under section 107(d)(3) of the Clean Air Act (CAA). Further, finalizing these actions does not involve approving maintenance plans for the Area as required under section 175A of the CAA, nor does it involve a determination that the Area has met all requirements for a redesignation.

III. What are EPA's final actions?

EPA is determining that the Knoxville Area has data demonstrating that it has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. These determinations are based upon quality-assured, quality-controlled, and certified ambient air monitoring data showing that this Area has monitored attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS during the period of 2009–2011. This final action, in accordance with 40 CFR 51.1004(c), will suspend the requirements for this Area to submit attainment demonstrations, 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 for so long as the Area continues to attain the applicable $PM_{2.5}$ NAAQS. These actions are being taken pursuant to section 179(c)(1) of the CAA and are consistent with the CAA and its implementing regulations.

IV. Statutory and Executive Order Reviews

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

- *Are* not a ''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 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 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 actions do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the impacted area is not in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 1, 2012. Filing a petition for reconsideration by the Administrator of these final rules does

not affect the finality of these actions for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. These actions, pertaining to the determination of attaining data for the 1997 annual and 2006 24-hour fine particulate matter standard for the Knoxville Area, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: July 20, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart RR—Tennessee

■ 2. Section 52.2231 is amended by adding paragraphs (d) and (e) to read as follows:

§ 52.2231 Control strategy: Sulfur oxides and particulate matter.

* * * * *

(d) *Determination of attaining data.* EPA has determined the Knoxville, Tennessee, nonattainment area has attaining data for the 1997 annual $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 annual $PM_{2.5}$ NAAQS.

(e) *Determination of attaining data.* EPA has determined Knoxville-Sevierville-La Follette, Tennessee, nonattainment area has attaining data for the 2006 24-hour $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2006 24-hour $PM_{2.5}$ NAAQS.

[FR Doc. 2012–18663 Filed 8–1–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0336; FRL–9708–5]

Approval and Promulgation of Implementation Plans; Kentucky; Louisville; Fine Particulate Matter 2002 Base Year Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve the 1997 annual fine particulate matter ($PM_{2.5}$) 2002 base year emissions inventory portion of the State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky on December 3, 2008. The emissions inventory is part of Kentucky's December 3, 2008, attainment demonstration SIP revision that was submitted to meet the nonattainment requirements related to the Commonwealth's portion of the bi-state Louisville, Kentucky-Indiana nonattainment area for the 1997 annual $PM_{2.5}$ national ambient air quality standards (NAAQS), hereafter referred to as ''the bi-state Louisville Area'' or ''Area.'' The bi-state Louisville Area is comprised of Clark and Floyd Counties in Indiana, in their entireties; the Madison Township portion of Jefferson County, Indiana; and Bullitt and Jefferson Counties in Kentucky, in their entireties. This final action only relates to the Kentucky portion (i.e., Bullitt and Jefferson Counties) of this Area. This action is being taken pursuant to section 110 of the Clean Air Act (CAA or Act).

DATES: This rule will be effective September 4, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2012–0336. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Wong, 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) 562–8726. Mr. Wong can be reached via electronic mail at *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Analysis of the Commonwealth's Submittal
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter based on a three-year average of annual mean $PM_{2.5}$ concentrations. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 annual $PM_{2.5}$ NAAQS based upon air quality monitoring data for calendar years 2001–2003. These designations became effective on April 5, 2005. The bi-state Louisville Area was designated nonattainment for the 1997 annual $PM_{2.5}$ NAAQS. *See* 40 CFR 81.318 for Kentucky and 40 CFR 81.315 for Indiana.

Designation of an area as nonattainment starts the process for a state to develop and submit to EPA a SIP under title I, part D of the CAA. This SIP must include, among other elements, a demonstration of how the NAAQS will be attained in the nonattainment area as expeditiously as practicable, but no later than the date required by the CAA. Under CAA section 172(b), a state has up to three years after an area's designation as nonattainment to submit its SIP to EPA. For the 1997 annual $PM_{2.5}$ NAAQS, these SIPs were due April 5, 2008. *See* 40 CFR 51.1002(a).

On December 3, 2008, Kentucky submitted an attainment demonstration and associated reasonably available control measures (RACM), a reasonable

further progress (RFP) plan, contingency measures, a 2002 base year emissions inventory and other planning SIP revisions related to attainment of the 1997 annual $PM_{2.5}$ NAAQS in the Commonwealth's portion of the bi-state Louisville Area. Subsequently, on March 9, 2011 (76 FR 12860), EPA determined that the bi-state Louisville Area attained the 1997 annual $PM_{2.5}$ NAAQS. The determination of attainment was based upon complete, quality-assured and certified ambient air monitoring data for the 2007–2009 period, showing that the Area had monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. The requirements for the Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and other planning SIP revisions related to attainment of the standard were suspended as a result of the determination of attainment, so long as the Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1004(c).

On September 30, 2011, Kentucky withdrew the attainment demonstration submission (everything with the exception of the 2002 base year emissions inventory) for its portion of the bi-state Louisville Area as allowed by 40 CFR 51.1004(c). EPA notes that the determination of attainment does not suspend the emissions inventory requirement found in CAA section 172(c)(3), and as such, Kentucky did not withdraw this portion of its December 3, 2008, SIP revision. Section 172(c)(3) of the CAA requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions.

On May 25, 2012, EPA published a proposed rulemaking to approve Kentucky's 1997 annual $PM_{2.5}$ emissions inventory for its portion of the bi-state Louisville Area. *See* 77 FR 31262. Comments on the proposed rulemaking were due on or before June 25, 2012. No comments, adverse or otherwise, were received on EPA's May 25, 2012, proposed rulemaking. Pursuant to section 110 of the CAA, EPA is now taking final action to approve the Kentucky's 1997 annual $PM_{2.5}$ emissions inventory as provided in EPA's May 25, 2012, proposed rulemaking. A summary of the background for today's final action is provided below. For more detail, please refer to EPA's proposed rulemaking at 77 FR 31262.

II. Analysis of the Commonwealth's Submittal

As discussed above, section 172(c)(3) of the CAA requires areas to submit a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area. Kentucky selected 2002 as the base year for the emissions inventory per 40 CFR 51.1008(b). Emissions contained in Kentucky's December 3, 2008, SIP revision cover the general source categories of point sources, non-road mobile sources, area sources, and on-road mobile sources. A detailed discussion of the emissions inventory development can be found in Appendix H of the Kentucky submittal; a summary is provided below.

The table below provides a summary of the annual 2002 emissions of nitrogen oxides (NOx), sulfur dioxide (SO_2), and $PM_{2.5}$ included in the Kentucky submittal.

TABLE 1—2002 ANNUAL EMISSIONS FOR THE KENTUCKY PORTION OF THE LOUISVILLE AREA

[Tons per year]

County	Point Sources		
	NO_X	SO_2	$PM_{2.5}$
Bullitt	221	391	56
Jefferson	25,915	41,483	830
	Non-Road Sources		
Bullitt	578	50	44
Jefferson	10,989	1,429	720
	Area Sources		
Bullitt	51	93	804
Jefferson	234	0	1,083
	Mobile Sources		
Bullitt	2,979	89	43
Jefferson	25,864	917	369

The 172(c)(3) emissions inventory is developed by the incorporation of data from multiple sources. States were required to develop and submit to EPA a triennial emissions inventory according to the Consolidated Emissions Reporting Rule for all source categories (i.e., point, area, nonroad mobile, and on-road mobile). This inventory often forms the basis of data that are updated with more recent information and data that also are used in their attainment demonstration modeling inventory. Such was the case in the development of the 2002 base year emissions inventory that was submitted in the Commonwealth's attainment SIP for its portion of the bi-state Louisville Area. The 2002 emissions inventory was based on data developed with the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) contractors and submitted by the states to the 2002 National Emissions Inventory. Several iterations of the 2002 inventories were developed for the different emissions source categories resulting from revisions and updates to the data. This resulted in the use of version G2 of the updated data to represent the point sources' emissions. Data from many databases, studies, and models (e.g., Vehicle Miles Traveled, fuel programs, the NONROAD 2002 model data for commercial marine vessels, locomotives, and Clean Air Market Division, etc.) resulted in the inventory submitted in this SIP. The data were developed according to current EPA emissions inventory guidance ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations'' (August 2005) and a quality assurance project plan that was developed through VISTAS and approved by EPA. EPA agrees that the process used to develop this inventory was adequate to meet the requirements of CAA section 172(c)(3) and the implementing regulations.

EPA has reviewed Kentucky's 2002 base year emissions inventory and has determined that it is adequate for the purposes of meeting section 172(c)(3) emissions inventory requirement. Further, EPA has made the determination that the emissions were developed consistent with the CAA, implementing regulations and EPA guidance for emission inventories.

III. Final Action

EPA is taking final action to approve the 2002 base year emissions inventory portion of the attainment demonstration SIP revision submitted by the Commonwealth of Kentucky on December 3, 2008. EPA has made the determination that this action is consistent with section 110 of the CAA.

IV. Statutory and Executive Order Reviews

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

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 F43255, August 10, 1999);

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

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

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

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

In addition, this final 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 EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 1, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: July 20, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

■ 2. Section 52.920(e) is amended by adding a new entry for ''Louisville; 1997 Annual Fine Particulate Matter 2002 Base Year Emissions Inventory'' to the end of the table to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanations
*	*	*	*	*
Louisville; 1997 Annual Fine Particulate Matter 2002 Base Year Emissions Inventory.	Bullitt and Jefferson Counties.	12/03/2008	8/2/12 [Insert citation of publication]..	

[FR Doc. 2012–18784 Filed 8–1–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0285; FRL–9705–7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve in part, and conditionally approve in part, the State Implementation Plan (SIP) submission, submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), as demonstrating that the State meets the SIP requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). Section 110(a) of

the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP. Tennessee certified that the Tennessee SIP contains provisions that ensure the 1997 annual and 2006 24-hour PM_2 NAAQS are implemented, enforced, and maintained in Tennessee (hereafter referred to as ''infrastructure submission''). With the exception of element 110(a)(2)(E)(ii), which pertains to the requirements of section 128(a)(1) of the CAA, Tennessee's infrastructure submissions, provided to EPA on December 14, 2007, and October 19, 2009, addresses all the required infrastructure elements for the 1997 annual and 2006 24-hour PM_2 NAAQS.

DATES: *Effective Date:* This rule will be effective September 4, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0285. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

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

SUPPLEMENTARY INFORMATION:

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I. Background
II. This Action
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997 (62 FR 36852), EPA promulgated a new annual $PM_{2.5}$ NAAQS and on October 17, 2006 (71 FR 61144), EPA promulgated a new 24-hour NAAQS. On June 11, 2012, EPA proposed to approve Tennessee's December 14, 2007, and October 19, 2009, infrastructure submissions for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS addressing elements 110(a)(2)(A)–(H), (J)–(M), except for section 110(a)(2)(C) nonattainment area requirements, 110(a)(2)(E)(ii)—board requirements; and section 110(a)(2)(D)(i) interstate transport requirements. See EPA's June 11, 2012, proposed rulemaking at 77 FR 34306 for more detail. On March 28, 2012, Tennessee submitted a letter of commitment to EPA to adopt specific enforceable measures related to 128(a)(1) to address current deficiencies in the Tennessee SIP. As a result of Tennessee's March 28, 2012, commitment letter, EPA signed a final rule on June 25, 2012, determining that the conditional approval is appropriate because the State has explicitly committed to address current deficiencies in the Tennessee SIP related to element 110(a)(2)(E)(ii) for the 1997 8-hour ozone NAAQS consistent with the requirements of CAA section 110(k)(4). Tennessee's March 28, 2012, commitment letter related to section 128(a)(1) is also applicable to address 110(a)(2) requirements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. In EPA's June 11, 2012, proposed rulemaking, EPA is also proposed to approve in part and conditionally approve in part Tennessee's 1997 annual and 2006 24-hour $PM_{2.5}$ infrastructure submissions with regards to section 110(a)(2)(E)(ii) based on the State's March 28, 2012, commitment letter. *See* 77 FR 34306. A summary of the background for today's final action is provided below.

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. The data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous PM NAAQS.

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

- 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]

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

Continued

- 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.

As mentioned above, with respect to element 110(a)(2)(E)(ii), on June 11, 2012, EPA proposed to approve Tennessee's December 14, 2007, and October 19, 2009, infrastructure submissions and proposed to approve in part, and conditionally approve in part, infrastructure element 110(a)(2)(E)(ii) for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. *See* 77 FR 34306. EPA proposed conditional approval in part for element 110(a)(2)(E)(ii) because the State's implementation plan does not contain provisions to address the requirements of CAA section 128(a)(1), that requires that each SIP shall contain requirements that any board or body which approves permits or enforcement orders be subject to the described public interest and income restrictions. EPA proposed approval in part, of this element because the State's implementation plan contains provisions to address the requirements of CAA section 128(a)(2), that requires that any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements. *See* 77 FR 34306.

In this action, EPA is taking two actions regarding the section 110(a)(2)(E)(ii) requirements. First, EPA is finalizing its conditional approval for part of Tennessee's infrastructure SIP for element 110(a)(2)(E)(ii) with respect to the applicable section 128(a)(1) requirements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Second, EPA is approving the remaining infrastructure submissions as demonstrating that the State meets the applicable requirements of sections 110(a)(1) and (2) of the CAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

On March 28, 2012, Tennessee submitted a letter of commitment to EPA to adopt specific enforceable measures related to 128(a)(1) to address current deficiencies in the Tennessee SIP. This letter of commitment meets the requirements of section 110(k)(4) of the CAA. As a result of Tennessee's March 28, 2012, commitment letter, EPA signed a final rule on June 25, 2012, determining that the conditional approval is appropriate because the State has explicitly committed to address current deficiencies in the Tennessee SIP related to element 110(a)(2)(E)(ii) for the 1997 8-hour ozone NAAQS consistent with the requirements of CAA section 110(k)(4). Tennessee's March 28, 2012, letter can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2011–0353.

As mentioned above, EPA conditionally approved the Tennessee's infrastructure SIP for the 1997 8-hour ozone NAAQS with respect to the CAA requirement of element 110(a)(2)(E)(ii). EPA anticipates that Tennessee's action with respect to that conditional approval will satisfy today's 110(a)(2)(E)(ii) conditional approval for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Tennessee must submit to EPA (within one year from the date of publication for the final rule that EPA signed on June 25, 2012, for the 1997 8-hour ozone NAAQS), a SIP revision adopting specific enforceable measures related to CAA section 128(a)(1) as described in the State's letter of commitment described above. If the State fails to actually submit this revision within one year from the date of publication for the final rule that EPA signed on June 25, 2012, today's conditional approval will automatically become a disapproval on that date and EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. If the conditional approval is converted to a disapproval, the final disapproval triggers the Federal Implementation Plan requirement under section 110(c). However, if the State meets its commitment within the applicable timeframe, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. A summary of the background for today's final action is provided below. See EPA's June 11, 2012, proposed rulemaking at 77 FR 34306 for more detail.

II. This Action

EPA is taking final action to approve Tennessee's infrastructure submissions as demonstrating that the State meets the applicable requirements of sections 110(a)(1) and (2) of the CAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, with the exception of section 110(a)(2)(E)(ii). 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. Tennessee certified that the Tennessee SIP contains provisions that ensure the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in Tennessee.

On July 16, 2012, EPA signed a final rulemaking action approving revisions to Tennessee's New Source Review (NSR) requirements relating to $PM_{2.5}$. EPA is not taking action today on Tennessee's NSR program, as these requirements are already approved in Tennessee's SIP. Additionally, EPA received no adverse comments on its June 11, 2012, proposed approval of Tennessee's December 14, 2007, and October 19, 2009, infrastructure submissions, which is being finalized today.

Tennessee's infrastructure submissions, provided to EPA on December 14, 2007, and October 19, 2009, address all the required infrastructure elements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, with the exception of CAA section 110(a)(2)(E)(ii), pertaining to section 128(a)(1) requirements. EPA has determined that Tennessee's December 14, 2007, and October 19, 2009, submissions are consistent with section 110 of the CAA, and thus is approving Tennessee's infrastructure submissions, with the exception of CAA section

Tennessee 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 Tennessee's SIP revision, which was submitted to comply with CAIR. *See* 72 FR 46388 (August 20, 2007). In so doing, Tennessee's CAIR SIP revision addressed the interstate transport provisions in Section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ NAAQS. Concerning the 2006 $PM_{2.5}$ NAAQS, EPA has finalized a new rule to address the interstate transport of NO_X and SO_X in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule''). On July 20, 2011 (76 FR 43180), EPA made a finding that Tennessee failed to submit a SIP that addresses the requirements of section 110(a)(2)(D)(i)(I) of the CAA for the revised 2006 24-hour $PM_{2.5}$ NAAQS. This finding created a 2-year deadline for the promulgation of a Federal Implementation Plan (FIP) by EPA for Tennessee unless the State submits a SIP to satisfy these section 110(a)(2)(D)(i)(I) requirements, and EPA approves such submission prior to promulgation of a FIP.

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

110(a)(2)(E)(ii), pertaining to section 128(a)(1) requirements. With respect to CAA section 110(a)(2)(E)(ii), pertaining to section 128(a)(1) requirements, EPA is conditionally approving Tennessee's 1997 annual and 2006 24-hour $PM_{2.5}$ infrastructure submissions.

III. Final Action

As already described, TDEC has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in Tennessee. EPA is taking final action to approve in part, and conditionally approve in part, Tennessee's December 14, 2007, and October 19, 2009, submissions for 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS because these submissions are consistent with section 110 of the CAA.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 1, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: July 16, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. Amend § 52.2219 by designating the existing undesignated paragraph as paragraph (a), and adding paragraph (b) to read as follows:

§ 52.2219 Conditional approval.

(a) * * *

(b) *Conditional Approval*—Submittals from the State of Tennessee, through the Department of Environment and Conservation (TDEC), dated December 14, 2007, and October 19, 2009, to address the Clean Air Act (CAA) infrastructure requirements for the 1997 annual and 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standards. With respect to CAA section 110(a)(2)(E)(ii), specifically related to the adoption of enforceable measures contained in CAA section 128(a)(1), EPA conditionally approved TDEC's March 28, 2012, commitment on June 25, 2012. Tennessee must submit to EPA by July 23, 2013, SIP revisions adopting specific enforceable measures related to CAA sections 128(a)(1) as described in the State's letter of commitment.

■ 3. Section 52.2220(e) is amended by adding two new entries for ''110(a)(1) and (2) Infrastructure Requirements for the 1997 Fine Particulate Matter National Ambient Air Quality Standards'' and ''110(a)(1) and (2) Infrastructure Requirements for the 2006 Fine Particulate Matter National Ambient Air Quality Standards'' at the end of the table to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
* *	*	*	*	* *
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards.	Tennessee	12/14/2007	8/2/2012 [Insert citation of publication].	
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards.	Tennessee	10/19/2009	8/2/2012 [Insert citation of publication].	

[FR Doc. 2012–18797 Filed 8–1–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2011–0194; FRL–9709–5]

Approval and Promulgation of State Implementation Plans: Idaho; Boise-Northern Ada County Air Quality Maintenance Area Second 10-Year Carbon Monoxide Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the State of Idaho (the State). The Idaho State Department of Environmental Quality (IDEQ) submitted the Northern Ada County Air Quality Maintenance Area Second 10-year Carbon Monoxide Maintenance Plan on February 10, 2011. In accordance with the requirements of the Federal Clean Air Act (the Act), EPA is approving the revision because the State adequately demonstrates that the Boise-Northern Ada County Air Quality Maintenance Area will maintain air quality standards for carbon monoxide (CO) through the year 2022.

DATES: This rule is effective on October 1, 2012, without further notice, unless EPA receives adverse comment by September 4, 2012. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2011–0194, by any of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: chi.john@epa.gov.*
- *Mail:* John Chi, U.S. EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* U.S. EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: John Chi, Office of Air, Waste and Toxics, AWT—107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2011–0194. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., 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. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: John Chi at telephone number: (206) 553–1230, email address: *chi.john@epa.gov,* fax number: (206) 553–0110, or Claudia Vergnani Vaupel at telephone number: (206) 553–6121, email address: *vaupel.claudia@epa.gov,* or the above EPA, Region 10 address.

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

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I. What is the purpose of this action?
II. What is the background for this action?
III. How have the public and stakeholders been involved in this rulemaking process?
IV. Evaluation of Idaho's Submittal
V. Transportation and General Conformity
VI. Final Action
VII. Statutory and Executive Order Reviews

I. What is the purpose of this action?

EPA is taking direct final action to approve the second 10-year CO maintenance plan for the Northern Ada County, Idaho Air Quality Maintenance Area. The Northern Ada County Area attained the CO national ambient air quality standards (NAAQS) in 2002 and has not violated the standard since 1986. The second 10-year CO maintenance plan submitted by the State is designed to keep the Northern

Ada County Area in attainment for the CO standard for a second 10-year period beyond redesignation.

II. What is the background for this action?

Under section 107(d)(1)(C) of the Act, any area designated before the date of enactment of the Clean Air Act Amendments of 1990 was to be designated upon enactment by operation of law. CO nonattainment areas that had not violated the CO standard in either year for the two-year period 1988–1989 were to be designated nonattainment and identified as ''not classified'' nonattainment areas. Accordingly, on November 6, 1991, the Boise-Northern Ada County Area was designated nonattainment for the CO NAAQS and identified as ''not-classified'' (56 FR 56746).

On January 17, 2002, the State requested EPA redesignate the Northern Ada County nonattainment area to attainment and submitted a limited maintenance plan to demonstrate maintenance of the standard for a 10-year period. EPA published approval of the redesignation request and maintenance plan on October 28, 2002 (67 FR 65713). The State submitted a second 10-year maintenance plan to EPA on February 10, 2011.

The 8-hour CO standard is attained when the daily average 8-hour CO concentration of 9.0 parts per million (ppm) is not exceeded more than once a year. Since the redesignation of the Northern Ada County Area to attainment for CO on December 27, 2002, the second highest concentration in any calendar year measured by the EPA approved monitoring network was 3.3 ppm, which is less than 9.0 ppm. Therefore the area is attaining the CO NAAQS.

In addition, areas that can demonstrate design values at or below 7.65 ppm (85 percent of exceedance levels of the CO NAAQS) for 8 consecutive quarters may use a limited maintenance plan option. The State has opted to develop a limited maintenance plan to fulfill the second 10-year maintenance plan required by the Act. The base year in the State's second 10-year maintenance plan is 2008, which has a design value of 2.9 ppm. EPA reviewed air quality monitoring data (2010–2011) and the 8-hour CO design value for the Northern Ada County Area is 1.6 ppm. Thus, the area qualifies to use the limited maintenance plan option.

III. How have the public and stakeholders been involved in this rulemaking process?

Section 110(a)(2) of the Act requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to EPA. The State of Idaho held a public hearing on January 26, 2011, in Boise, Idaho. A notice of public hearing was published in the *Idaho Statesman* on December 27, 2010. A notice was also published in the *Valley News* on January 10, 2011. This SIP revision became State effective on February 10, 2011, and was submitted by the Governor's designee to the EPA on February 10, 2011. EPA has evaluated the State's submittal and determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the Act.

IV. Evaluation of Idaho's Submittal

EPA has reviewed the Northern Ada County second 10-year CO maintenance plan and concludes that the submittal meets the requirements of section 175A(b) of the Act. The following is a summary of the requirements and EPA's evaluation of how each requirement is met.

A. Base Year Emissions Inventory

The plan must contain an attainment year emissions inventory to identify a level of emissions in the area which is sufficient to attain the CO NAAQS. The Northern Ada County second 10-year CO maintenance plan contains an emissions inventory for the base year 2008 that is consistent with EPA's most recent guidance on maintenance plan emission inventories. The emissions inventory is a list, by source, of the air contaminants directly emitted into the Northern Ada County CO Area. The data in the emissions inventory is based on calculations and is developed using emission factors, which is a method for converting source activity levels into an estimate of emissions contributions for those sources. Because violations of the CO NAAQS are most like to occur on winter weekdays, the inventory prepared is in a ''typical winter day'' format. The table below shows the tons of CO emitted per winter day in 2008 by source category.

2008 AVERAGE WINTER DAY CO EMISSION INVENTORY

Main source category	CO Emissions tons per winter day
Point Sources	0.5
Major Point Sources w/in 25 miles	4.2
Onroad Mobile Sources	146.1
Non-road Mobile Sources	62.5
Area Sources	49.7
Biogenic	1.5
Total	264.5

B. Demonstration of Maintenance

The maintenance plan demonstration requirement is considered to be satisfied for areas using the limited maintenance plan option, which are required to demonstrate design values at or below 7.65 ppm (85 percent of exceedance levels of the CO NAAQS) for 8 consecutive quarters. The State has opted to develop a limited maintenance plan to fulfill the Northern Ada County Area second 10-year maintenance plam required by the Act.

With the limited maintenance plan option, there is no requirement to project emissions of air quality over the maintenance period. EPA believes that if the area begins the maintenance period at, or below, 85 percent of the level of the CO 8-hour NAAQS, the applicability of prevention of significant deterioration requirements, the control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the 10-year maintenance period. The last monitored violation of the CO NAAQS in the Northern Ada County Area occurred in 1986, the last exceedance was in January 1991, and the monitored CO levels have been steadily in decline ever since. The 8-hour CO design value for Northern Ada County is 1.6 ppm based on 2010–2011 data, which is below the limited maintenance plan requirement of 7.65 ppm. Therefore, the Northern Ada County Area has adequately demonstrated that it will maintain the CO NAAQS into the future.

C. Monitoring Network and Verification of Continued Attainment

To verify the attainment status of the area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA-approved monitoring network in accordance with 40 CFR part 58. The State has an approved monitoring network that includes the Northern Ada County Area. The monitoring network was most recently approved by EPA on September 6, 2011.

In the Northern Ada County second 10-year CO maintenance plan, IDEQ commits to verify continued attainment through the EPA-approved monitoring network in accordance with 40 CFR part 58.

D. Contingency Plan

Section 175A(d) of the Act requires that a maintenance plan include contingency provisions. The Northern Ada County second 10-year CO limited maintenance plan contains a contingency plan that would institute an oxygenated fuels program or another equivalent CO reduction measure based on the EPA's guidance and recommendations. The contingency plan is triggered either when an exceedance of the 8 hour CO standard is recorded on any monitor, or when a monitor records non-overlapping 8 hour CO concentrations of 8 ppm on 4 or more days within a single winter season within the nonattainment area. EPA finds that the contingency measures provided in the maintenance plan are adequate to ensure prompt correction of a violation.

V. Transportation and General Conformity

Transportation conformity is required by section 176(c) of the Act. EPA's conformity rule requires that transportation plans, programs, and projects that are funded under 23 U.S.C. or the Federal Transit Act conform to SIPs. 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 transportation conformity rule (40 CFR parts 51 and 93) and the general conformity rule (40 CFR parts 51 and 93) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a Federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area.

While EPA's limited maintenance plan option does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Under the limited maintenance plan option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the CO NAAQS would result. Similarly, Federal actions subject to the general conformity rule could be considered to satisfy the ''budget test'' specified in section 93.158(a)(5)(i)(A) for the same reasons that the budgets are essentially considered to be unlimited.

While areas with maintenance plans approved under the limited maintenance plan option are not subject to the budget test, the areas remain subject to other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the State must document and ensure that:

a. Transportation plans and projects provide for timely implementation of SIP transportation control measures in accordance with 40 CFR 93.113;

b. Transportation plans and projects comply with the fiscal constraint element per 40 CFR 93.108;

c. The MPO's interagency consultation procedures meet applicable requirements of 40 CFR 93.105;

d. Conformity of transportation plans is determined no less frequently than every four years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104;

e. The latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111;

f. Projects do not cause or contribute to any new localized CO or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and

g. Project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

The lead transportation agency in Northern Ada County is the Community Planning Association of Southwest Idaho (COMPASS), the MPO. COMPASS oversees transportation conformity determinations of the Interagency Consultation Committee established in Idaho Administrative Rule IDAPA 58.01.01.567, which includes IDEQ, the Idaho Transportation Department, the Federal Highway Administration, Ada County Highway District, the City of Boise, Valley Regional Transit, and the EPA; as specified under 40 CFR part 93. Northern Ada County is currently meeting the requirements under 40 CFR part 93, subpart A.

VI. Final Action

In accordance with the requirements of the Act, EPA is approving this revision to the SIP because the State adequately demonstrates that the Northern Ada County Air Quality Maintenance Area will maintain air quality standards for CO through the year 2022. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 1, 2012 without further notice unless the Agency receives adverse comments by September 4, 2012.

If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 1, 2012 and no further action will be taken on the proposed rule.

VII. Statutory and Executive Order Reviews

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

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

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

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

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

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 1, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: July 23, 2012.

Dennis J. McLerran,

Regional Administrator EPA Region 10.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart N—Idaho

■ 2. Amend the table in § 52.670(e) entitled ''EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures'' by adding an entry to the end to read as follows:

§ 52.670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
Northern Ada County Air Quality Maintenance Area Second 10-year Carbon Monoxide Limited Maintenance Plan.	State-wide	2/10/11	8/2/12 [Insert page number where the document begins].	

■ 3. Amend § 52.672 by adding paragraph (a)(2) to read as follows:

§ 52.672 Approval of plans.

(a) * * *

(2) EPA approves as a revision to the Idaho State Implementation Plan, the Northern Ada County Air Quality Maintenance Area Second 10-year Carbon Monoxide Limited Maintenance Plan submitted by the State on February 10, 2011.

* * * * *

[FR Doc. 2012–18787 Filed 8–1–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0234; FRL–9708–4]

Determination of Attainment for the Paul Spur/Douglas PM_{10} Nonattainment Area, Arizona; Determination Regarding Applicability of Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a determination that the Paul Spur/Douglas nonattainment area in Arizona is currently attaining the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM_{10}) based on certified, quality-assured ambient air monitoring data for the years 2009–2011. Given our determination that the Paul Spur/Douglas nonattainment area is currently attaining the PM_{10} NAAQS, EPA is also determining that Arizona's obligation to make submissions to meet certain Clean Air Act requirements related to attainment of the NAAQS is not applicable for as long as the Paul Spur/Douglas nonattainment area continues to attain the NAAQS and that the obligation on EPA to promulgate a Federal Implementation Plan to address the State's attainment-related requirements is also suspended for as

long as Arizona's underlying obligation is suspended.

DATES: *Effective Date:* This rule is effective on September 4, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2012–0234 for this action. The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jerry Wamsley, Air Planning Office, AIR–2, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, telephone number: (415) 947–4111, or email address, *wamsley.jerry@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we'', ''us'' or ''our'' are used, we mean EPA. We are providing the following table of contents for ease of locating information in this proposal.

Table of Contents

I. EPA's Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

I. EPA's Proposed Action

On May 25, 2012, EPA proposed to find that the Paul Spur/Douglas nonattainment area (NA) [1] is currently attaining the 24-hour PM_{10} NAAQS based on certified and quality-assured data from the most recent three-year period, 2009–2011, and to suspend certain Clean Air Act (CAA) requirements related to attainment for so long as the area continues to attain the standard. See 77 FR 31268; (May 25, 2012).

To summarize our proposed rule, we described the 24-hour PM_{10} NAAQS, which is 150 micrograms per cubic meter (μg/m³), and reviewed the designation and classification of the Paul Spur/Douglas NA for that standard. We then discussed how EPA makes attainment determinations for PM_{10} and indicated that the 24-hour PM_{10} NAAQS is attained when the expected number of exceedances averaged over a three-year period is less than or equal to one at each monitoring site within the nonattainment area. See 40 CFR part 50, appendix K.

We described Arizona Department of Environmental Quality's (ADEQ's) two PM_{10} monitoring sites in the Paul Spur/Douglas area. We noted that ADEQ's annual network plans have met the applicable requirements for such plans, and based on the findings of our technical system audit report, ADEQ's monitoring network meets or exceeds the applicable requirements. Finally, we noted that ADEQ has certified the data it submits to EPA's Air Quality System (AQS) database as quality-assured.

Next, we reviewed the ambient PM_{10} data collected at the two PM_{10} monitoring sites in the Paul Spur/Douglas area for the most recent three-year period, 2009–2011. We noted that the highest annual 24-hour average PM_{10} concentrations over the past three years ranged from 46 to 85 μg/m³ at the Paul Spur monitor and from 83 to 138 μg/m³ at the Douglas monitor. As a result, we concluded that the area is attaining the PM_{10} standard because the expected number of exceedances per year for the Paul Spur/Douglas NA was less than 1.0. For additional information on the PM_{10} NAAQS, the designation and classification of the Paul Spur/Douglas NA, ADEQ's monitoring network plans and certifications, the monitoring sites in the Paul Spur/Douglas area, and the data we relied on for our clean data finding, please see 77 FR 31269–31271.

In conjunction with and based on our proposed determination that the Paul Spur/Douglas NA is currently attaining the PM_{10} NAAQS, EPA proposed to determine that Arizona's obligation to submit revisions to the Arizona State Implementation Plan (SIP) to meet the following CAA requirements is not applicable for so long as the Paul Spur/Douglas NA continues to attain the PM_{10} standard: The part D, subpart 4 obligation to provide an attainment demonstration pursuant to section 189(a)(1)(B); the reasonably available control measure (RACM) provisions of section 189(a)(1)(C); the reasonable further progress (RFP) provisions of section 189(c); and, the attainment demonstration, RACM, RFP and contingency measure provisions of part D, subpart 1 contained in section 172. We proposed to suspend these SIP requirements based on application of the Clean Data Policy to the Paul Spur/Douglas NA. In doing so, we noted that our application of the Clean Data Policy to the Paul Spur/Douglas NA is consistent with a number of actions we have taken for other PM_{10} nonattainment areas that we also determined were attaining the NAAQS. For a detailed explanation of our Clean Data Policy and its application to the Paul Spur/Douglas NA, please see 77 FR 31271–31273.

Lastly, we noted that suspension of the State's SIP obligation would also serve to suspend EPA's obligation to promulgate a Federal Implementation Plan (FIP) to address the same attainment-related requirements. See 77 FR 31273–31274.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received a comment from a private citizen expressing a general skepticism of the ability to regulate PM_{10} in a desert environment; no general information and no Paul Spur/Douglas NA specific information was provided to support the comment. Furthermore, no information was provided to dispute either the 2009–2011 Paul Spur/Douglas ambient PM_{10} data, or our proposed suspension of attainment-related SIP obligations or the related FIP obligations. Therefore, no response is necessary. We note, however, that many effective measures exist to reduce dust from anthropogenic sources in desert environments, including paving unpaved roads and other unpaved surfaces used by motor vehicles, restricting off-road vehicle use to a designated time of year and/or location where the effects can be mitigated, and stabilizing soil in areas that have been disturbed by human activity.

III. EPA Action

No comments were submitted that change EPA's assessment of the 2009–2011 ambient PM_{10} data collected in the Paul Spur/Douglas NA and related finding that the area is attaining the NAAQS, or our application of the Clean Data Policy as described in our proposed action. Therefore, EPA is finalizing its determination that the Paul Spur/Douglas NA in Arizona is currently attaining the NAAQS for PM_{10}.

EPA is also taking final action to determine that Arizona's obligation to make SIP submissions to meet the following CAA requirements is not applicable for as long as the Paul Spur/Douglas NA continues to attain the PM_{10} NAAQS: The part D, subpart 4 obligation to provide an attainment

[1] The Paul Spur/Douglas NA covers approximately 220 square miles along the border with Mexico within Cochise County. Cities and towns within this area include Douglas, 2010 population 17,378, (U.S. Census) and Pirtleville, 2010 population 1,744, (U.S. Census). The 2010 population of Agua Prieta, Mexico, just across the border from Douglas, is 78,138 (Instituto Nacional de Estadistica y Geografia).

demonstration pursuant to section 189(a)(1)(B); the reasonably available control measure (RACM) provisions of section 189(a)(1)(C); the reasonable further progress (RFP) provisions of section 189(c); and, the attainment demonstration, RACM, RFP and contingency measure provisions of part D, subpart 1 contained in section 172.

Lastly, EPA finds that our obligation to promulgate a FIP addressing the Paul Spur/Douglas NA attainment-related requirements is suspended for as long as the underlying State obligation is suspended.

This final action does not constitute a redesignation to attainment under CAA section 107(d)(3) because Arizona has not submitted a maintenance plan and EPA has not approved such a plan for the Paul Spur/Douglas NA as meeting the requirements of section 175A of the CAA, nor has EPA determined that Arizona has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 remains moderate nonattainment for the Paul Spur/Douglas NA until such time as EPA determines that Arizona has met the CAA requirements for redesignating the Paul Spur/Douglas NA to attainment.

IV. Statutory and Executive Order Reviews

With this action, we are making a determination regarding attainment of the PM_{10} NAAQS based on air quality data and, based on this determination, suspending certain Federal requirements. Therefore, this action would not impose additional requirements beyond those imposed by State law or by the CAA. For that reason, this action:

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

In addition, this action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes and thus will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 1, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: July 20, 2012.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

[FR Doc. 2012–18666 Filed 8–1–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2009–0234; EPA–HQ–OAR–2011–0044, FRL 9710–1]

RIN 2060–AR62

National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units: Notice of Partial Stay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial stay of effectiveness of final rule.

SUMMARY: This action stays the effectiveness of national new source emission standards for hazardous air pollutants from coal- and oil-fired electric utility steam generating units issued pursuant to Clean Air Act section 112 that were published in the **Federal Register** on February 16, 2012 (77 FR 9304).

DATES: The effective date of 40 CFR 63.9984(a), 63.10005(g), 63.10030(c), Table 1 to subpart UUUUU of 40 CFR part 63, and row 2 of Table 3 to subpart UUUUU of 40 CFR part 63, published in the **Federal Register** on February 16, 2012 (77 FR 9304), is stayed until November 2, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. William Maxwell, Energy Strategies Group, Sector Policies and Programs Division, (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; Telephone number: (919) 541–5430; Fax number (919) 541–5450; Email address: *maxwell.bill@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 16, 2012, the EPA issued the National Emission Standards for Hazardous Air Pollutants from Coal-

and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units, generally referred to as the mercury and air toxics standards (MATS Rule), which established emissions standards for new and existing coal- and oil-fired electric utility steam generating units. The EPA received petitions, pursuant to section 307(d)(7)(B) of the Clean Air Act, from a number of interested parties requesting reconsideration of certain issues in the rule. On July 20, 2012, the EPA issued a letter, stating its intent to grant the petitions for reconsideration on certain new source issues related to the emission standards issued under Clean Air Act section 112, including measurement issues related to mercury and the data set to which the variability calculation was applied when establishing the new source standards for particulate matter and hydrochloric acid.

The Clean Air Act authorizes the EPA to stay the effectiveness of a rule if the Administrator has convened a proceeding to reconsider the rule. Under section 307(d)(7)(B) of the Act, ''The effectiveness of the rule may be stayed during * * * reconsideration * * * by the Administrator or the court for a period not to exceed three months.'' 42 U.S.C.7607(d)(7)(B). In its letter granting the petitions for reconsideration on certain issues relating to the Clean Air Act section 112 new source standards, the EPA stated that it intended to exercise its authority under section 307(d) to stay the effectiveness of those new source standards for 3 months.

II. Issuance of a Partial Stay Relating to Clean Air Act Section 112(d) New Source Standards

Pursuant to section 307(d)(7)(B) of the Clean Air Act, the EPA hereby stays the effectiveness of 40 CFR 63.9984(a), 63.10005(g), 63.10030(c), Table 1 in subpart UUUUU of 40 CFR part 63, and row 2 of Table 3 in subpart UUUUU of 40 CFR part 63 for 3 months. Thus, by this action, we are staying the effectiveness of these provisions of the rule, published in the **Federal Register** on February 16, 2012 (77 FR 9304). Accordingly, this action also stays the effectiveness of any monitoring, recordkeeping, and reporting requirements related to the section 112(d) new source standards. This stay does not apply to any other provisions of the rule.

This stay of effectiveness will remain in place until November 2, 2012.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 27, 2012.

Lisa P. Jackson,

Administrator.

[FR Doc. 2012–18871 Filed 8–1–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1999–0010; FRL 9704–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Eastland Woolen Mill Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 1 is publishing a direct final Notice of Partial Deletion for portions of the Eastland Woolen Mill Superfund Site (Site), located in Corinna, Maine, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final partial deletion is being published by EPA with the concurrence of the State of Maine, through the Maine Department of Environmental Protection, because EPA has determined that all appropriate response actions at these identified parcels under CERCLA, other than five-year reviews, have been completed. However, this partial deletion does not preclude future actions under Superfund.

This partial deletion pertains to all Site media (soil and groundwater) of the properties proposed for deletion.

DATES: This direct final partial deletion is effective October 1, 2012 unless EPA receives adverse comments by September 4, 2012. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1999–0010, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *Email: hathaway.ed@epa.gov.*
- *Fax:* 1–617–918–0372.
- *Mail:* Edward Hathaway, U.S. EPA Remedial Project Manager, 5 Post Office Square (OSRR07–1), Boston, MA 02109–3912.
- *Hand delivery:* Edward Hathaway, U.S. EPA Remedial Project Manager, 5 Post Office Square (OSRR07–1), Boston, MA 02109–3912. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1999–0010. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *http://www.regulations.gov* or email. The *http://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 *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statue. Certain other

material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or on disk or physical copy at:

EPA Region 1 Record Center, 5 Post Office Square, Boston, MA 02109. Phone: 1–617–918–1440. Hours: Mon–Fri 8 a.m. to 5 p.m.

Stewart Free Library, 8 Levi Stewart Drive, Corinna, ME 04928. Phone: 1–207–278–2454. Hours: Tuesday: 9 a.m.–2 p.m.; Wednesday: 1 p.m.–7 p.m.; Thursday: 1 p.m.–7 p.m.; Friday: 9 a.m.–2 p.m.

FOR FURTHER INFORMATION CONTACT:

Edward Hathaway, Remedial Project Manager, U.S. Environmental Protection Agency, Region 1, OSRR07–1, 5 Post Office Square, Boston, MA 02109–3912 (617) 918–1372 email: *hathaway.ed@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Partial Deletion Procedures
IV. Basis for Site Partial Deletion
V. Partial Deletion Action

I. Introduction

EPA Region 1 is publishing this direct final Notice of Partial Deletion for the Eastland Woolen Mill (Site), from the National Priorities List (NPL). This partial deletion pertains to all site media, including soil and groundwater for the following properties:

Properties owned by the Town of Corinna that include properties described in Quitclaim Deed dated August 18, 1997 and recorded in Book 6471, Page 278, also identified as Lot 118 in Tax Map 18 dated 2004 and several additional properties that were part of the former Eastland Woolen Mill complex that were acquired due to a tax foreclosure. The tax foreclosure properties are described in the Penobscot County Registry of Deeds in Condemnation Order dated December 8, 1999 and recorded in Book 7251, Page 47 and a portion of the property has been subdivided in accordance with a plan dated October 19, 2004 entitled, ''Subdivision Plan for the Town of Corinna of Main Street Subdivision on Main Street, Hill Street & St. Albans Road in Corinna, County of Penobscot, Maine,'' recorded in said Registry in Plan File 2004, No. 167 (the ''Subdivision Plan''). Specifically subdivision Lots 2, 3, 4, 5, 6, 8, 9, 10, the portion of Subdivision Lot 1 north of the Central Maine Power property and a portion of Lot 54 on Tax Map 18 along with Lot 53 on Tax Map 18, are proposed for deletion. The portions of Main Street and Hill Street within the subdivision are also proposed for deletion. Lot 53 on Tax Map 18 is also recorded in Book 853, Page 391 as a warranty deed dated September 26, 1913 and is known as ''Winchester Park''.

Property owned by the State of Maine Department of Conservation identified in Release Deed dated December 5, 2003 Book 9114, Page 194, also identified in Tax Map 18 as Map 15 Lot 10 (which a portion of the State of Maine Department of Conservation recreational trail that runs through the Town of Corinna).

Property owned by the State of Maine Department of Transportation described in a Notice of Layout and Taking dated May 3, 2000 and recorded in the Penobscot County Registry of Deeds in Book 7357, Page 29, and being generally depicted on the Survey Plan Showing Property Subject to Proposed Environmental Covenants for Maine Department of Environmental Protection, Corinna, Penobscot County, Maine, which is recorded in the Penobscot County Registry of Deeds as Plan File 2012 No. 20, dated March 29, 2012, but excluding the portion of the Maine Department of Transportation property bounded by Town of Corinna Subdivision Lot 1, the East Branch of the Sebasticook River, Route 7, and Nokomis Road.

Property owned by Central Maine Power identified in indenture dated May 2, 1956 and recorded in the Penobscot County Registry of Deeds in Book 1532, Page 228, and generally depicted as Central Maine Power Company land in the Town of Corinna tax records as Lot 4 on Tax Map 20.

The properties proposed for deletion are shown in Figure 11 of Partial Deletion Technical Memorandum dated June 2012 and will be referred to hereafter as ''the properties proposed for deletion''. All Tax Map references are based on the Town of Corinna 2004 Tax Maps and the ''Survey Plan Showing Property Subject to Proposed Environmental Covenants for Maine Department of Environmental Protection, Corinna, Penobscot County, Maine'' which is recorded in the Penobscot County Registry of Deeds as Plan File 2012 No. 20, dated March 29, 2012.

The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Eastland Woolen Mill Superfund Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995). As described in 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective October 1, 2012 unless EPA receives adverse comments by September 4, 2012. Along with this direct final Notice of Partial Deletion, EPA is co-publishing a Notice of Intent for Partial Deletion in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely withdrawal of this direct final Notice of Partial Deletion before the effective date of the partial deletion and the partial deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the properties proposed for deletion and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete these Site parcels from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants,

or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Partial Deletion Procedures

The following procedures apply to the properties proposed for deletion:

(1) EPA has consulted with the State of Maine prior to developing this direct final Notice of Partial Deletion and the Notice of Intent for Partial Deletion co-published in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent for Partial Deletion prior to their publication today, and the State, through the Maine Department of Environmental Protection, has concurred on the partial deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Partial Deletion, a notice of the availability of the parallel Notice of Intent for Partial Deletion is being published in a major local newspaper, Bangor Daily News. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

(4) The EPA placed copies of documents supporting the partial deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Partial Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for further response actions, should future conditions warrant such actions.

IV. Basis for Site Partial Deletion

The following information provides EPA's rationale for deleting the properties proposed for deletion:

Site Location

The Eastland Woolen Mill Superfund Site (MED980915474) (Site) is located in the center of the Town of Corinna, Penobscot County, Maine, approximately 6 miles north of Newport and 25 miles northwest of Bangor, Maine. Approximately 800 people live within one mile of the Site, and 2,500 people live within four miles.

The Town of Corinna is located within the East Branch of the Sebasticook River (EBSR) watershed, which drains to Sebasticook Lake approximately three miles south of the Town. Topography within the watershed is typified by gently rolling hills to steeply sloping ridges, varying from narrow valleys to fairly expansive low-lying floodplains. Elevations within the immediate vicinity of Corinna range from 200 to 320 feet above mean sea level (msl). The former Eastland Woolen Mill straddled the EBSR and the southern portion of the former Mill Pond.

Site Description

At the time of the placement of the Eastland Woolen Mill on the EPA NPL, the Site included the former Eastland Woolen Mill property and areas where contamination has migrated or otherwise come to be located due to mill operations. The Eastland Woolen Mill property was a 21-acre parcel located on the north side of Main Street, Corinna, in central Maine. There was a 250,000 square foot Mill building, two dams, and several out buildings on site. The mill building straddled the East Branch of the Sebasticook River with one dam located under the building near Main Street; the other dam is located approximately 500 feet north of the mill and maintains the water level of Corrundel Lake, a portion of the EBSR. The two dams also created an on-site mill pond. The Site is bordered to the north by Corundel Lake and residential property, to the south by Main Street, to the east by the Dexter Road and the Methodist Church, and on the west by Route 43 and several residential properties. As a result of the data collected to support the Engineering Evaluation and Cost Analysis (EE/CA) for a non-time-critical removal action (NTCRA) and the remedial investigation (RI) program, the footprint of the Site was better defined to extend south across Main Street and downstream in the EBSR.

Operational History

The Site was formerly dominated by the Eastland Woolen Mill building complex which, before its demolition in 2000, was comprised of a large manufacturing building and several ancillary structures, with a total area of 250,000 square feet. The buildings stood on both sides of and over the EBSR, a State-designated Class C water, which flows north to south through the center of Corinna. The original woolen-mill structure was built in the late 1800s or early 1900s. The property was a woolen mill as far back as 1912. Eastland Woolen Mill owned and operated the mill from 1936 to October 1996, when they closed the mill. Prior to closing in 1996, Eastland Woolen Mill was a manufacturer and finisher of wool and blended woven fabric. Fabric finishing included of the fabric to meet product or customer requirements. This dyeing operation took place in dye kettles and utilized various chemicals, including dyes and dye-aids that reportedly contained biphenyl and chlorinated benzene compounds, including 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,4-dichlorobenzene, and 1,2,4-trichlorobenzene.

Conditions That Led to Placement on National Priorities List (NPL)

Until construction of the Town of Corinna Wastewater Treatment Plant (WWTP) in 1969, liquid wastes from the mill were discharged to the ground surface beneath mill buildings, to Mill Pond Dam tailrace, and ultimately the EBSR. It was not until 1977 that all liquid waste streams were finally directed to the WWTP. As a result of these discharges, overburden soil and bedrock underlying mill buildings and river sediment and underlying soil extending several hundred feet downgradient were contaminated with chlorinated benzene compounds. Groundwater was contaminated at concentrations well above federal drinking water Maximum Contaminant Levels (MCLs) and State of Maine drinking water Maximum Exposure Guidelines (MEGs). Routine pumping of nearby residential bedrock wells spread the contamination laterally along bedrock bedding-plane fractures. Groundwater contamination was first documented in Corinna in 1983, when

a MEDEP employee noticed a strange odor and taste in drinking water at the Gallison Restaurant located across the street from the Mill. Several water samples collected from the restaurant showed the presence of monochlorobenzene, dichlorobenzenes and trichlorobenzenes. Later in 1983, granular activated carbon (GAC) filters were installed on five water supply wells (residential and business) near the Mill to mitigate exposures to chlorinated benzene compounds.

Eastland Woolen Mill initiated formal environmental investigations in 1984 by performing a preliminary hydrogeologic investigation of the downtown area. The work included the completion of soil borings, installation of monitoring wells and piezometers, sampling and analysis of soil and groundwater, and a preliminary fracture-trace analysis. The investigation concluded that additional work was needed to identify a contaminant source area. By 1988, Eastland Woolen Mill had completed a study of residences and businesses at risk from the groundwater contamination and had investigated potential locations for installation of a public water supply system. It was concluded that contamination had likely spread via bedrock fractures and faults. Five additional private water supply wells were fitted with granular activated carbon filters based on results of water supply well sampling performed between 1983 and 1988.

In 1993, Eastland Woolen Mill completed Phase I of a chlorinated benzene contamination investigation in the downtown area. The report identified the tailrace beneath the Eastland Woolen Mill and the UST area where dye-aid had been stored as possible source locations.

Eastland Woolen Mill removed three underground storage tanks (USTs) from the UST Area in 1994. Chlorinated benzene compounds were detected in soil samples collected from the bottom of the excavation. Because free product was reported in the excavation and soil staining was observed, an overburden groundwater recovery well (R–1), consisting of a 30-inch-diameter corrugated metal pipe with slits in the bottom five feet and surrounded by crushed stone, was installed at the Site after removal of the USTs. In addition, a drum containing a dark oil-like substance was unearthed in the UST excavation. Recovery Well R–1 was pumped to collect chlorinated benzene-contaminated groundwater and flush contaminants from the ''smear'' zone between August 1994 and sometime in 1995. In conjunction with the pumping of groundwater from Well R–1, Eastland Woolen Mill instituted pumping of groundwater from the bedrock well on Lot 122, south of Main Street, now referenced as Recovery Well R–2.

In the fall of 1995, during the installation of water supply lines to serve residences affected by contamination, a dense non-aqueous-phase liquid (DNAPL) was reportedly observed within the till material beneath the gravel riverbed just downstream of the Main Street bridge. A consultant for Eastland Woolen Mill, Acheron, Inc., performed additional sampling of the sediments in the riverbed downstream of the Eastland Woolen Mill and found chlorinated benzene compounds and petroleum hydrocarbons both within the silty till layer beneath the rocky gravel riverbed and in a floodplain on the west side of the river.

After closure of the Eastland Woolen Mill in 1996, MEDEP sampled soils around the former USTs to evaluate whether residual soil contamination was present and acting as a source of groundwater contamination. This effort was supplemented in 1998 with additional analytical parameters and sampling of a background location. In 1997, MEDEP performed sediment sampling with field chemical screening to gain information on the magnitude of river bottom contamination documented by Acheron, Inc. in 1995. Additional sediment and surface water samples were collected from the river in 1998 for analysis. These investigations confirmed that high concentrations of chlorinated benzenes were present in the riverbed downstream of the Eastland Woolen Mill complex. This data was used to prepare the Hazard Ranking System scoring package that was submitted to EPA for placement of the Site on the National Priorities List (NPL).

National Priorities List Designation

The Site was proposed for inclusion on the NPL on April 23, 1999 (64 FR 19968). It was listed for final inclusion on the NPL on July 22, 1999 (64 FR 39878–39885).

State Response Action

In 1997, MEDEP performed an emergency response action to remove 54,673 pounds of various hazardous substances from process pipes, containers and vessels located within the Mill.

Land Use Assumptions

Future land use assumptions for the Site and surrounding areas (included the parcels proposed for deletion) are based on the Reuse Plan developed by the Town of Corinna. A large portion of the Site in the center of town has been targeted for a mix of commercial, residential and mixed-use development. The water supply system was expanded by the local water district to support future growth. The land use for properties proposed for deletion include: the Town of Corinna subdivision parcels 2, 3, 4, 5, 6, 8, 9, 10, a portion of Lot 54 on Tax Map 18, and Lot 118 on Tax Map 18, which are part of the targeted mix of commercial, residential, and mixed use development; one property owned by the Town of Corinna (Lot 53 on Tax Map 18) that will remain a public park (Winchester Park); the State of Maine Department of Conservation property which is a mixed use rail-trail that is primarily used for snowmobile travel; the Central Maine Power property that is expected to remain an electrical sub-station; and the State of Maine Department of Transportation property that is essentially right of way property related to Route 7. These land assumptions are expected to be valid for the foreseeable future.

Remedial Investigation and Feasibility Study (RI/FS)

From 1998 to 2002, USEPA performed a Remedial Investigation/Feasibility Study (RI/FS) for Operable Unit I (OUI) at the Eastland Woolen Mill site. OUI is the groundwater operable unit and includes overburden and bedrock groundwater contamination and also includes areas of deep soil contamination remaining after the NTCRA. All of the properties proposed for deletion are within the study area for OUI. The details of the OUI RI/FS can be found in the Remedial Investigation Report, Supplemental Remedial Investigation Report, Human Health Risk Assessment Report, and Baseline Ecological Risk Assessment Report that are included in the Administrative Record for the OUI Record of Decision (ROD). The RI for the OUI Study Area identified two areas where site-related contaminants exceeded federal and state drinking water criteria in overburden groundwater. One area is associated with the UST Area/Building 14 sub-area, and the other is downgradient of the former location of Buildings 1, 1A, and 3 within the Eastland Woolen Mill complex where liquid wastes were discharged. The RI also identified an area of bedrock groundwater contamination associated with the release of contamination from Buildings 1, 1A, and 3 (Area 1). The major groundwater contaminants of concern (COCs) were determined to be benzene, chlorobenzene, 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,4-

dichlorobenzene, and 1,2,4 trichlorobenzene. The OUI RI and ROD also documented that three satellite areas of suspected contamination (School Street Yard, Moosehead Mill, and Bulk Fuels Storage Area) were not considered part of the Site based on the absence of contamination that would represent an unacceptable threat to human health or the environment. A fourth area, known as Lot 88, was also identified as not requiring any further action after the NTCRA removed the soil contamination from this property.

In September 2002, EPA created OUII to address the sediment and associated floodplain areas of the EBSR downstream of NTCRA excavation, as well as an area of solid and liquid waste disposal known as the old dump. During 2002 and 2003, EPA performed a series of studies to better define the potential for ecological impacts in the OUII area. Surface water, sediment, floodplain soil, and crayfish tissue samples were collected, and biological assessments of the benthic macro-invertebrate community were performed. The information from these studies was presented in a Supplemental RI Report. The information was also combined with the initial RI data to prepare a revised Baseline Ecological Risk Assessment Report that found there was no unacceptable risk to ecological receptors in the OUII area. Both reports were released in 2004 as part of the Administrative Record and were available for review during the public comment period for the OUII Proposed Plan. On September 30, 2004, EPA signed a ROD selecting No Further Action for OUII of the Site. EPA activities in the OUII Study Area are complete, and no further activities are anticipated for the OUII study area.

Components of RI Relating to Properties Proposed for Deletion

The RI evaluated the properties proposed for deletion. The Town of Corinna subdivision lots 8, 9, and 10, a portion of Lot 54 on Tax Map 18, along with Winchester Park were outside the footprint of the former Eastland Woolen Mill. The electrical sub-station owner by Central Maine Power was also outside of the footprint of the former Eastland Woolen Mill. Background research and Site reconnaissance activities as part of the RI and NTCRA along with the absence of groundwater contamination in the area led to the conclusion that these properties were not contaminated. Subdivision lots 8, 9 and 10 were included in the areas that were used for soil handling during the NTCRA, and cleanup confirmation work was performed at the completion of the NTCRA. The Town of Corinna subdivision lots 2, 3, 4, 5, and 6 are located in an area that was occupied by the dry processing operations at the Eastland Woolen Mill. This area was known as the ''Slab Area''. As part of the OUI RI, five confirmation soil borings (SB–00–95 through SB–00–99) were completed within Slab Area (Figure 5–5 of the RI). The soil borings were spaced approximately 100 to 120 feet apart in the Slab Area (Figure 5–3 of the RI). One additional soil boring, (SB–01–106), was installed as part of the NTCRA by Weston in 2001. Table 5–3 of the RI provides a summary of volatile organic compounds (VOCs) detected in these Slab Area soil borings. Several VOCs were detected at concentrations that were below levels of concern for human contact. A monitoring well pair was installed to determine if the 1,1-dichloroethene detected in the soil was present in groundwater downgradient of the Slab area. VOCs were not detected in groundwater downgradient of the Slab, confirming that this area was not a significant source of groundwater contamination. The soil treatment facility for the NTCRA was located on the Slab Area. After the completion of the soil treatment, the Slab Area was further characterized to document that absence of significant contamination.

The State of Maine Department of Transportation, State of Maine Department of Conservation, and Town of Corinna (Lot 118 Tax Map 18) all owned property that included the contaminated sections of the EBSR. The extent of the contamination in the EBSR was documented by the NTCRA and RI investigations. In addition, State of Maine Department of Conservation also owned property within the former Eastland Woolen Mill complex near the former pump house and the State of Maine Department of Transportation owned property that was within and adjacent to the former Eastland Woolen Mill Complex. The RI and NTCRA investigation activities documented that these areas contained contaminants of concern above the Site specific cleanup levels.

Selected Remedy

There have been three major decision documents for the Eastland Woolen Mill. The 2004 Record of Decision for Operable Unit II clarified that no action was necessary for the areas within the East Branch of the Sebasticook River study area of the Site located south (downstream) from the OUI area. The 2002 Operable Unit I Record of Decision, which was amended in 2006, and the 1999 Non-Time Critical Removal Action Action Memorandum are the decision documents relevant to the partial delisting.

Non-Time-Critical Removal Action

In January 1999, following the evaluation of data collected during an expanded site inspection, EPA signed an Approval Memorandum authorizing the preparation of an Engineering Evaluation and Cost Analysis (EE/CA) to evaluate potential response alternatives for a NTCRA at the Site. The EE/CA recommended demolishing the mill complex buildings to allow for the excavation and treatment of the contaminated soils on the Site. After completion of a public comment period and consideration of the comments, EPA signed an Action Memorandum in July 1999 to authorize a NTCRA for the Eastland Woolen Mill Superfund Site. The Action Memorandum was amended in June 2000, September 2000, May 2001, and June 2004.

The NTCRA included the removal of the mill buildings (performed during the winter of 1999/2000) and contaminated soils from four areas (performed from 2000–2001). NTCRA work areas include: Area 1: Region underlying Mill Buildings 1, 1A, and 3 (2001); Area 2: River segment down river from the mill to the abandoned railroad trestle (2000); Area 2a: River segment under the abandoned railroad trestle and overlapping Area 2 and Area 3 (2000); Area 3: River segment for a distance several hundred feet beyond the railroad trestle (2000); and Area 4: Lot 88, Building 9, UST Area, and other miscellaneous areas (2000 and 2001).

During 2000 and 2001, approximately 75,000 cubic yards (yd3) of chlorinated-benzene contaminated soils were excavated and stockpiled at the Site in lined containment structures. In 2001, pilot testing of an on-site low temperature thermal soil treatment system was performed. The results of this pilot test indicated that the treatment system could meet established treatment goals. Full-scale on-site treatment of contaminated soil began in October 2002 and was completed in October 2003. Testing of the soil after treatment documented that all of the soil that was used for on-site backfill contained residual levels of contamination below residential cleanup standards and met the NTCRA groundwater leaching criteria that were developed during the NTCRA. To support the NTCRA excavation and thermal treatment activities, a temporary groundwater extraction and treatment system (referred to as the groundwater management system) was constructed to aid in control of

groundwater infiltration during excavation activities. One bedrock well and four overburden wells were connected to a temporary treatment system. The system remained operational until November 2004 to provide hydraulic control over the groundwater plume during the initial phase of the NTCRA. A detailed summary of the NTCRA source removals was presented in the November 2006 Final Overall Completion Report for the NTCRA.

Three areas of contaminated soil were not accessible to the NTCRA excavations. One area was located within Area 1 and the other two were within the Area 4 UST Area and Building 14 Area. These remaining soils are located in the saturated zone between depths of 6 to 40 ft below ground surface (bgs). The final phase of the NTCRA targeted the reduction of contamination in these source areas using in-situ chemical oxidation (ISCO).

ISCO treatment as part of the NTCRA consisted of two full-scale injections of iron-catalyzed sodium persulfate (ICP), followed by confirmatory soil borings and groundwater sampling. These injections were performed in July and October/November 2005. The NTCRA program ended in May 2006 as documented by the Final Pollution Report (POLREP) for the Eastland Woolen Mill NTCRA that was finalized in September 2006.

OUI Record of Decision

EPA signed a ROD in September 2002 OUI ROD to address overburden and bedrock groundwater and the remaining areas of contaminated soil/DNAPL.

Specifically, the 2002 OUI ROD includes the following major components:

- Extraction and treatment of the contaminated overburden and bedrock groundwater. The extraction system will be designed to prevent off-site migration of contaminated groundwater, prevent contaminated groundwater from having an adverse impact on the benthic community in the EBSR, and restore the aquifer to federal and state MCLs, federal non-zero MCLGs and more stringent state MEGs.
- In-situ treatment of the contaminated overburden and bedrock groundwater and remaining areas of contaminated soil and DNAPL. A chemical reagent (e.g., Fenton's Reagent or another oxidizing agent) will be added to the overburden and bedrock aquifer to reduce the mass of contaminants in the system. If the mass reduction is not sufficient to achieve cleanup levels, then enhanced flushing (using surfactants/solvents) and biological degradation (using bio-stimulants) will be attempted to further reduce the mass of contamination.
- Connection of certain residences to the water supply lines to prevent their wells from becoming contaminated, and to prevent expansion of the contamination in the groundwater.
- Implementation, monitoring and maintenance of institutional controls (i.e., deed restrictions) in the form of groundwater use restrictions (e.g., easements or restrictive covenants) to prevent ingestion of groundwater and disturbance of the groundwater extraction and treatment system.
- Long-term monitoring of groundwater, surface water and sediments to evaluate the success of the remedial action.
- Implementation of five-year reviews to assess the protectiveness of the remedy until cleanup goals have been met.

The 2002 OUI ROD was written prior to the completion of the NTCRA that commenced in 1999. Therefore, the impact of the NTCRA-related excavation and treatment of the contaminated overburden source areas was uncertain at the time of the ROD. Subsequent to the signing of the 2002 OUI ROD and the completion of the NTCRA excavation and treatment program, EPA performed assessment monitoring of the groundwater. EPA also developed an improved conceptual site model through additional hydro-geologic investigations and groundwater modeling.

Based on the information developed after the 2002 OUI ROD, EPA decided to amend the 2002 OUI ROD. The September 2006 OUI ROD Amendment eliminated the groundwater extraction and treatment system because the contaminant plume was stable and groundwater extraction was not necessary to contain the plume. The OUI ROD Amendment also eliminated the enhanced flushing component with surfactants or co-solvents because this technology was not considered viable for the fractured bedrock after further evaluation. The OUI ROD Amendment retained the emphasis on the in-situ chemical oxidation, long-term monitoring, and institutional controls.

Based on the groundwater modeling that was performed for the OUI Remedial Design, the OUI ROD Amendment revised the area where institutional controls would be necessary and defined three categories of properties within the institutional control zone. The three property categories were identified as IC Zone A (ICZ–A), IC Zone B (ICZ–B), and IC Zone C (ICZ–C).

ICZ–A identified those properties that will be subject to environmental covenants prohibiting use of groundwater over the entire property. All of the ICZ–A properties had been connected to the water line prior to the OUI ROD. Within the ICZ–A boundary, all existing bedrock and overburden water supply wells will be formally decommissioned, unless the wells are converted to monitoring wells for use in the long-term remedial action. ICZ–B identified those properties where connection to the water line and implementation of an environmental covenant prohibiting use of groundwater over the entire property was determined to be necessary as part of the OUI ROD and Remedial Design. All of these properties were connected to the water line as part of the OUI Remedial Action, moving these properties to ICZ–A; there is therefore no longer a functional application for ICZ–B.

ICZ–C identified those properties where the current well is not contaminated and does not appear to be impacting the groundwater contamination, however, the groundwater modeling suggested that a modification to the existing well to increase yield, or the installation of a new well at locations on the property closer to the Site, could have an adverse impact on the groundwater contamination by inducing migration of the groundwater contamination. The restrictions on these properties will prohibit installation of future groundwater wells in locations or at depths that differ from existing water supply wells located on these properties. ICZ–C properties may continue to use their private water wells within this zone for domestic or other uses. There are two properties included in ICZ–C.

OUI ROD and OUI ROD Amendment Risk Characterization Summary

The 2002 OUI ROD included an assessment of the potential threats to human health in the OUI study area. Based on the Human Health Risk Assessment prepared as part of the RI and the 2002 OUI ROD, the only pathways that exceeded EPA's acceptable cancer risk range and/or a hazard quotient of concern were ingestion of groundwater in the overburden and bedrock plumes by a future resident. The lifetime cancer risk estimate for a combined child and adult exposure to the bedrock plume groundwater is 6×10^{-3}. Seventy-five percent of this risk is due to arsenic, with twenty-five percent attributable to the 1,4-DCB. EPA's hazard index of

concern for non-carcinogenic risk is exceeded for children and adults for several target organs. The major contributors to these exceedances are chlorobenzene, 1,2-DCB, 1,3-DCB, 1,4-DCB, 1,2,4-TCB and arsenic. These COCs also were detected at concentrations above federal and state maximum contaminant levels (MCLs) and any more stringent state maximum exposure guidelines (MEGs). The lifetime cancer risk estimates for the overburden plume groundwater was 2×10^{-3}. Sixty-seven percent of this risk is attributable to 1,4-DCB, with arsenic contributing to the remainder of the cancer risk. EPA's hazard index of concern for non-carcinogenic risk is exceeded for children and adults for several target organs. The major contributors to these exceedances are chlorobenzene, 1,2-DCB, 1,3-DCB, 1,4-DCB, 1,2,4-TCB and arsenic. These COCs also were detected at concentrations above federal and state MCLs and any more stringent state MEGs. The Baseline Human Health Risk Assessment concluded that the estimated risk for the soils, surface water, or sediments within the OUI area do not represent an unacceptable threat to human health. Only groundwater represents a threat to human health. Soil contamination that is causing groundwater contamination is also relevant to the cleanup action.

Based on the OUI Baseline Ecological Risk Assessment, the OUI ROD concluded that contaminant levels in surface waters, surface soils and sediments within the entire OUI area of the EBSR are not sufficiently elevated to pose a substantial risk to invertebrates, fish or wildlife. Exposure to the contaminated water at the groundwater/surface water interface, however, was identified as an unacceptable risk to those organisms dwelling in this zone. Data gathered since the 2002 OUI ROD, however, demonstrates that the concentration of contaminants in the groundwater do not exceed the levels that have the potential for an unacceptable risk to organisms dwelling in the groundwater/surface water interface. Therefore, the successful implementation of the NTCRA and OUI remedy has eliminated this risk.

Based on the successful removal of any soil contamination above the Site-specific contaminants of concern by the NTCRA, the only viable exposure pathway for the properties proposed for deletion is potential future consumption of contaminated groundwater. This would only occur upon the expansion of the groundwater contaminant plume, resulting from a pumping stress from a well that is currently outside the area of groundwater contamination but within the institutional control zone. The OUI ROD and OUI ROD Amendment both identified the need to maintain the water line connections and the implementation of institutional controls to prevent active water supply wells as critical components to protect public health.

OUI ROD and OUI ROD Amendment Remedial Action Objectives

The Remedial Action Objectives in the OUI ROD and OUI ROD Amendment were identical and are listed below:

- Prevent the ingestion of groundwater containing contaminants that exceed federal or state MCLs, federal non-zero MCL Goals (MCLGs) and more stringent state MEGs, or in their absence, an excess cancer risk of 1×10^{-6} or a hazard quotient of 1;
- Prevent, to the extent practicable, the off-site migration of groundwater containing contaminants at a concentration above Site cleanup levels;
- Prevent, to the extent practicable, the discharge of groundwater containing contaminants at a concentration above levels that could impact ecological receptors to the East Branch of the Sebasticook River;
- Restore groundwater to meet federal or state MCLs, federal non-zero MCLGs or state MEGs (whichever is most stringent), or in their absence, an excess cancer risk of 1×10^{-6} or a hazard quotient of 1; and
- Perform long-term monitoring of surface water, sediments and groundwater to verify that the cleanup actions at the Site are protective of human health and the environment.

OUI Remedial Design

The Remedial Design for the OUI Remedial Action was initiated in 2003 and completed in August 2005. The Remedial Design was implemented in close coordination with the final phase of the NTCRA ISCO program since both programs relied on ISCO to reduce the mass of contamination in the overburden soil and bedrock. As such, the NTCRA design support activities and the Remedial Design support activities are complementary. A series of additional studies and investigations were performed between 2003 and 2005 to develop the design for the NTCRA ISCO program and the in-situ treatment portion of the OUI Remedial Action.

The additional studies and investigations most relevant to the properties proposed for deletion were (1) The groundwater monitoring to update the extent of groundwater contamination remaining after the NTCRA, (2) the installation of additional bedrock monitoring wells to refine the aquifer characteristics, and (3) groundwater modeling to refine the properties that would require land use restrictions to prevent consumption of contaminated groundwater and pumping stresses that could cause the expansion of the groundwater plume.

The Remedial Design refined the institutional control zone using numerical modeling of bedrock groundwater flow and contaminant transport to evaluate the potential long-term migration of the bedrock plume under both pumping and non-pumping scenarios. This modeling, along with the groundwater monitoring data, documented that the institutional control zone will adequately protect public health.

OUI Remedial Action

The OUI Remedial Action has three main components. One is the connection of certain residences to the water line and the implementation of institutional controls to prevent exposure to contaminated groundwater or pumping stresses that could cause the expansion of the groundwater plume. A second is the continued treatment of the deep contamination soil and groundwater to achieve aquifer restoration. The third is the long-term monitoring, inspections, and five-year reviews to assure that the remedial action is protective of human health and the environment.

Most of the properties within the institutional control zone were connected to the local water supply line prior to the OUI Remedial Action. Based on the results of ongoing bedrock groundwater monitoring and numerical groundwater modeling performed as part of the Remedial Design, it was determined that certain residences proximal to the Site, including those identified on Map 18 as Lots 39, 43, and 52, were currently impacted by Site contaminants or had the potential to be impacted in the future. These residences were connected to the existing public water supply between September and December 2005. The land use restrictions for the properties proposed for deletion were completed in May 2012 and were recorded in the Penobscot Registry of Deeds on June 5, 2012. The land use restriction, in the form of an environmental covenant, will prevent current and future use of the contaminated groundwater or to prevent pumping stresses that could cause the groundwater contamination plume to migrate.

The RA also continued the in-situ chemical oxidation program initiated by the NTCRA. Several additional in-situ

chemical oxidation injections occurred between 2006 and 2008. The Remedial Action activities were completed in 2008, as documented in the OUI Interim Remedial Action Report and the September 2008 Preliminary Closeout Report. The OUI component of the Site is now in the long-term response action component of the remedial action. The ongoing remedial action activities include: Completion of the land use restrictions; long-term monitoring of groundwater and surface water; well decommissioning; site demobilization; and completion of the in-situ chemical oxidation program. A limited soil gas program is to be implemented in 2012 to address soil vapor issues. The remedial action will be completed by 2018 when the State of Maine will take over the long term operation, maintenance, and monitoring requirements.

Cleanup Goals

The parcels identified for deletion are within the NTCRA and OUI area and, therefore, share the same cleanup goals. The extent of the groundwater contamination above Site-specific cleanup goals has been reduced to an area that is within the boundaries of the Site that will remain after the partial deletion. Groundwater monitoring performed as part of the long-term groundwater monitoring program at the Site confirms that the contaminants of concern are not at concentrations above the Site specific cleanup levels on the properties proposed for deletion. Groundwater data was collected in 2006, 2007, 2009, 2010, and 2011. The data for each sampling event is contained with each annual groundwater monitoring report and is included in the record for the proposed deletion. The area of the Site that included the parcels identified for delisting was located in the dry processing and parking areas of the former Eastland Woolen Mill. The NTCRA program resulted in the excavation and on-site treatment of any soils within the area identified for delisting. The table below documents that the NTCRA successfully treated the Site soil to levels that would allow for unrestricted use.

NTCRA SOIL CLEANUP ANALYTICAL SUMMARY

Contaminant	NTCRA soil cleanup level (µg/kg)	95% Upper confidence level concentration of soil used as backfill after treatment (µg/kg) based on 4,200 soil samples
1,2,4 Trichlorobenzene	5,000	4,451
1,2,3 Trichlorobenzene	.....	1,408
1,2 Dichlorobenzene	17,000	610
1,3 Dichlorobenzene	41,000	285
1,4 Dichlorobenzene	2,000	563
Chlorobenzene	1,000	169
Benzene	30	*

* **Note:** Benzene was only detected twice in 4,183 samples.

Operation and Maintenance

Operation and maintenance activities for the parcels proposed for deletion include monitoring and maintenance of the institutional controls to ensure they effectively prohibit private well installation. In addition, the groundwater underlying these parcels continues to be monitored as part of the site-wide groundwater monitoring plan.

Summary of the Data Documentation That the Deletion Criteria Have Been Met

The OUI Record of Decision documented that the soil and surface water for the entire OUI area, including the properties proposed for deletion, do not represent an unacceptable threat to human health. The OUI Record of Decision identified groundwater as the only remaining threat to human health after the NTCRA. Groundwater discharge to surface water was the only ecological threat identified for the OUI. The supporting data for the characterization of the area to be delisted can be found in both the RI Report and NTCRA Documentation. In addition, long-term groundwater monitoring data documents that the properties proposed for deletion do not contain groundwater above the Site-specific cleanup goals established in the 2002 OUI ROD and 2006 OUI ROD Amendment. The properties proposed for deletion at the Eastland Woolen Mill Superfund Site do not contain soil or groundwater contamination above the Site specific cleanup levels.

The properties proposed for deletion that are identified in the Town of Corinna subdivision plan as Lots 2, 3, 4, 5, 6, 8, 9, and 10, portions of Lot 54 on Tax Map 18, the property identified as Lot 53 on Tax Map 18, and the property owned by Central Maine Power were not within the areas where substantial contamination was located. These properties contained open space, the dry processing portions of the former Eastland Woolen Mill, and office space. The concrete foundation where the dry processing of the woolen products was conducted was referred to as the ''Slab Area'' in the RI and NTCRA.

As part of the OUI RI, five confirmation soil borings (SB–00–95 through SB–00–99) were completed within Slab Area (see Figure 5–5 of the RI). One additional soil boring, (SB–01–106), was installed as part of the NTCRA by Weston in 2001. Table 5–3 of the RI provides a summary of volatile organic compounds (VOCs) detected in these Slab Area soil borings. Low levels of several VOCs were detected. The concentrations were below levels of concern for human contact. A monitoring well pair was installed to determine if the 1,1-dichloroethene detected in the soil was present in groundwater downgradient of the Slab area. VOCs were not detected in groundwater downgradient of the Slab, confirming that this area was not a significant source of groundwater contamination.

The Slab was not removed until after the ex-situ soil treatment phase of the NTCRA. Prior to the removal of the concrete pad, one sample was collected per 500 ft^2 using an excavator bucket to access the soil located below the concrete pad. A few areas with petroleum contamination were identified, and these soils were removed to allow for Site restoration. A total of 176 samples were collected prior to concrete pad removal. A map showing

the locations of these samples is presented in Figure 17 of Appendix J in the November 2006 Final Overall Completion Report for the NTCRA, and analytical results are presented in Table 27 of this report. All of the results from these initial 176 samples collected prior to the concrete pad removal confirmed that the soil concentrations were below the Site-specific cleanup levels. An additional five locations were sampled and characterized during concrete pad and footer wall removal due to staining or suspected contamination in the soil. Samples were analyzed for VOCs, DRO, polychlorinated biphenyls and/or metals based on the type and location of the staining. A summary of analytical results is shown in Table 28 of Appendix J in the November 2006 Final Overall Completion Report for the NTCRA, and sample locations are shown in Figure 18 of this report. Three of these locations contained Diesel Range Organic contamination. The contamination was removed because the soil was in an area where grading was necessary.

In addition to the Slab Area, a portion of the properties to be deleted were used to store contaminated soil in a stockpile prior to treatment. After completion of the treatment of the contaminated soil, 22 soil samples were collected below the contaminated soil stockpile to verify that the soil did not contain the COCs at levels above the site cleanup levels. A map detailing sample locations within the stockpile footprint is shown in Figure 16 of Appendix J in the November 2006 Final Overall Completion Report for the NTCRA. The analytical results for all samples collected from the below the stockpile footprint are presented in Table 26 of this report. Sample location 21, initially sampled on 9 October 2003, showed 1,2,4-TCB at levels above the Site specifc soil excavation goal of 5,000 microgram per kilogram (µg/kg). Therefore, a 6-inch layer of soil was removed from this grid of the stockpile footprint and processed through the LTTT system. A subsequent sample of this location was collected on 10 October 2003. Results from this sample were well below Site specific cleanup levels.

In summary, the Town of Corinna subdivision lots 2, 3, 4, 5, 6, 8, 9, and 10, the portion of Subdivision Lot 1 north of the Central Maine Power property, a portion of Lot 54 on Tax Map 18, the property identified at Map 18 Lot 53 (Winchester Park) and the property owned by Central Maine Power have been evaluated during the RI and NTCRA activities. The RI documented that the area was not a substantial threat to groundwater. The NTCRA sampling further documented that these properties do not contain soil contamination above the Site specific cleanup levels.

Portions of the property owned by the State of Maine Department of Transportation, State of Maine Department of Conservation, and the Town of Corinna property described in Quitclaim Deed dated August 18, 1997 and recorded in Book 6471, Page 278, also identified as Lot 118 in Tax Map 18 dated 2004 were within the area subject to the excavation of contaminated soil and sediment as part of the NTCRA.

A portion of the State of Maine Department of Conservation property crossed the former Eastland Woolen Mill property near the area known as the pump house. The soil excavation and cleanup confirmation for this area can be found in Appendix H of the November 2006 Final Overall Completion Report for the NTCRA. Appendix H is titled: *Areas 1 and 4 Soil Remediation and River Restoration Final Completion Report, Eastland Woolen Mill Superfund Site, Corinna, Maine, February 2004.* Figures 2a–3b and Tables B–6 and B–7 of this report document that the cleanup was successful for those properties.

A portion of the State of Maine Department of Transportation property that is proposed for de-listing was within the Area 1 excavation area. The soil excavation and cleanup confirmation for this area can be found in Appendix H of the November 2006 Final Overall Completion Report for the NTCRA. Appendix H is titled: *Areas 1 and 4 Soil Remediation and River Restoration Final Completion Report, Eastland Woolen Mill Superfund Site, Corinna, Maine, February 2004.* Figures 4a–4b and Tables B–9 of this report document that the cleanup was successful for these properties.

A portion of the State of Maine Department of Transportation, State of Maine Department of Conservation, and Town of Corinna properties included the East Branch of the Sebasticook River. Appendix G in the November 2006 Final Overall Completion Report for the NTCRA documents the excavation and cleanup confirmation activities for these areas. Appendix G is titled: *Areas 2, 3, 4—Lot 88, and 4—Building 4 Soil Remediation Final Completion Report, Eastland Woolen Mill Superfund Site, Corinna, Maine, June 2001.* Specifically, Figures A–3A through A–4B and Tables B–7 and B–8 of Appendix G show the location and data that document that the cleanup was successful for these properties.

In summary, the property owned by the State of Maine Department of Transportation, State of Maine Department of Conservation, and the Town of Corinna property described in Quitclaim Deed dated August 18, 1997 and recorded in Book 6471, Page 278, also identified as Lot 118 in Tax Map 18 dated 2012 that are proposed for de-listing no longer contain contamination above the Site specific cleanup levels as documented by the completion report for the NTCRA.

Five-Year Review

The assessment of the first five-year review performed in 2010 found that the remedy was constructed in accordance with the requirements of the Record of Decision (ROD) issued in 2002 and amended in 2006. The LTRA remedy is functioning as designed. As a result of the response actions at the Site, there is no current exposure to contaminants at the Site. A water line provides clean water and planned ICs will ensure appropriate future use of potentially contaminated groundwater. The remedy at the Eastland Woolen Mill Superfund Site currently protects human health and the environment because the contamination accessible to ecological receptors has been removed, there is no current human exposure to contamination, the groundwater contamination is not migrating, clean water is available to all locations within the extent of the groundwater contamination, and EPA is actively treating and monitoring the groundwater as part of the on-going Long-Term Response Action. However, in order for the remedy to be protective in the long-term, the institutional controls to prevent future groundwater use need to be in place to ensure long-term protectiveness. As part of this five-year review, a preliminary assessment of the potential for vapor intrusion to present a threat at the Site was performed. There are no structures above areas of the plume that exceed vapor intrusion screening criteria, so the pathway is not complete. Further investigations regarding the vapor intrusion pathway will be completed prior to the next five-year review. Further investigation regarding the vapor intrusion pathway will be completed on properties that are not subject to the partial deletion.

Since the completion of the five-year review, the institutional controls, that are in the form of environmental covenants, have been completed for the properties that will remain within the Site and the properties that are proposed for deletion. The only institutional controls that remain to be

completed are for properties that are off-site. The groundwater under these remaining properties is not contaminated but a pumping well on these properties could cause the contaminated groundwater plume to expand. In addition, the properties proposed for deletion are not in the area where the vapor intrusion evaluation is being re-evaluated. The ICs for the properties proposed for deletion and the properties that will remain within the boundaries of the Site were signed in May 2012 and recorded in June 5, 2012. The next five-year review will take place in 2015.

Community Involvement

Throughout the EPA cleanup of the Site, community concern and involvement has been high. The local Selectboard actively sought EPA's involvement at the Site to address the contamination left behind by the closure of the mill in 1996. EPA has kept the community and other interested parties informed of Site activities through informational meetings, fact sheets, press releases and public meetings. Information about the Site is posted on EPA's Web site. EPA has met regularly with the community and Selectboard to keep them informed and to seek their input regarding Site activities. The community has also benefited from a Web site (*www.cattailpress.com*), which was developed and is maintained by a local resident. The Web site contained daily photographs of Site activities during the NTCRA demolition and excavation activities and has provided a forum for community dialogue regarding the Site. EPA's public notices and fact sheets have been posted on this Web site as well. EPA provided the community with a Technical Assistance Grant (TAG) and a Redevelopment Pilot Grant. EPA identified the potential for partial delisting of the Eastland Woolen Mill in a community update issues in 2006. EPA issues a fact sheet in 2010 to announce the performance of the Five Year Review. EPA met with the community in May 2010 to discuss the Site status and Five Year Review. All Community Involvement activities required and associated with this proposed partial deletion have been completed, including the publication of a notice in a local newspaper of general circulation regarding this proposed deletion and the availability of documents located in the Deletion Docket.

Determination That the Criteria for Deletion Have Been Met

The NCP specifies that EPA may delete a site from the NPL if ''all appropriate responsible parties or other persons have implemented all appropriate response actions required'' or ''all appropriate fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate'' or ''the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate''. For the partial deletion proposed at the Eastland Woolen Mill Superfund Site:

- All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; as required by 40 CFR 300.425(e)(1)(ii). An Interim Remedial Action Report was completed in 2008 to document the completion of the Remedial Action activities, including the area subject to de-listing.

EPA, with the concurrence of the State of Maine through the Maine DEP by a letter dated June 14, 2012, believes these criteria for deletion have been satisfied. Therefore, EPA is proposing the deletion of certain properties at the site from the NPL. All of the completion requirements for the properties proposed for deletion at the Site have been met.

V. Partial Deletion Action

The EPA, with concurrence of the State of Maine through the Maine Department of Environmental Protection, on June 14, 2012, has determined that all appropriate response actions under CERCLA have been completed for the properties proposed for deletion. Therefore, EPA is deleting the following properties:

Properties owned by the Town of Corinna that include properties described in Quitclaim Deed dated August 18, 1997 and recorded in Book 6471, Page 278, also identified as Lot 118 in Tax Map 18 dated 2004 and several additional properties that were part of the former Eastland Woolen Mill complex that were acquired due to a tax foreclosure. The tax foreclosure properties are described in the Penobscot County Registry of Deeds in Condemnation Order dated December 8, 1999 and recorded in Book 7251, Page 47 and a portion of the property has been subdivided in accordance with a plan dated October 19, 2004 entitled, ''Subdivision Plan for the Town of Corinna of Main Street Subdivision on Main Street, Hill Street & St. Albans Road in Corinna, County of Penobscot, Maine,'' recorded in said Registry in Plan File 2004, No. 167 (the ''Subdivision Plan''). Specifically, subdivision Lots 2, 3, 4, 5, 6, 8, 9, 10, the portion of Subdivision Lot 1 north of the Central Maine Power property, and a portion of Lot 54 on Tax Map 18, along with Lot 53 on Tax Map 18, are proposed for deletion. The portions of Main Street and Hill Street within the subdivision are also proposed for deletion. Lot 53 on Tax Map 18 is also recorded in Book 853, Page 391, as a warranty deed dated September 26, 1913 and is known as ''Winchester Park''.

Property owned by the State of Maine Department of Conservation identified in Release Deed dated December 5, 2003 Book 9114, Page 194, also identified in Tax Map 18 as Map 15 Lot 10 (which a portion of the State of Maine Department of Conservation recreational trail that runs through the Town of Corinna).

Property owned by the State of Maine Department of Transportation described in a Notice of Layout and Taking dated May 3, 2000, and recorded in the Penobscot County Registry of Deeds in Book 7357, Page 29, and being generally depicted on the Survey Plan Showing Property Subject to Proposed Environmental Covenants for Maine Department of Environmental Protection, Corinna, Penobscot County, Maine which is recorded in the Penobscot County Registry of Deeds as Plan File 2012 No. 20 dated March 29, 2012, but excluding the portion of the Maine Department of Transportation property bounded by Town of Corinna Subdivision Lot 1, the East Branch of the Sebasticook River, Route 7, and Nokomis Road.

Property owned by Central Maine Power identified in indenture dated May 2, 1956 and recorded in the Penobscot County Registry of Deeds in Book 1532, Page 228, and generally depicted as Central Maine Power Company land in the Town of Corinna tax records as Lot 4 on Tax Map 20.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective October 1, 2012 unless EPA receives adverse comments by September 4, 2012. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of partial deletion before the effective date of the partial deletion and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 16, 2012.

Ira W. Leighton,

Regional Administrator. Region 1.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by revising the entry under ''Eastland Woolen Mill'', ''ME'' to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes (a)
*	*	*	*
ME	Eastland Woolen Mill	Corinna	P
*	*	*	*

(a) * * *
P = Sites with partial deletion(s).

[FR Doc. 2012–18660 Filed 8–1–12; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 77, No. 149
Thursday, August 2, 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–2012–0731; Directorate Identifier 2012–CE–020–AD]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Piper Aircraft, Inc. (type certificate previously held by The New Piper Aircraft Inc.) PA–28, PA–32, PA–34, and PA–44 airplanes. This proposed AD was prompted by reports of control cable assembly failures that may lead to failure of the horizontal stabilator control system and could result in loss of pitch control. This proposed AD would require inspections of the stabilator control system and replacement of parts as necessary. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by September 17, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; Internet: *www.piper.com*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Hector Hernandez, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5587; fax: (404) 474–5606; email: *hector.hernandez@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0731; Directorate Identifier 2012–CE–020–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received reports of control cable assembly failures that may lead to failure of the horizontal stabilator control system on Piper PA–28, PA–32, PA–34, and PA–44 airplanes. We have had reports of cracks, corrosion, failure of the turnbuckle, control cable fraying, the cable swage end broken and the system being held together by turnbuckle safety wire. In one report, an elevator cable was found broken at the terminal end near the turnbuckle, and, in another report, the elevator cable failed at the fitting that treads into the turnbuckle. This condition, if not corrected, could result in failure of the horizontal stabilator control system with subsequent loss of pitch control.

Relevant Service Information

We reviewed Piper Aircraft, Inc. Mandatory Service Bulletin No. 1245, dated May 3, 2012. That service information describes procedures for inspections of the stabilator control system.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require inspections of the stabilator control system and replacement of parts as necessary. We are proposing this AD to correct the unsafe condition on these products.

Costs of Compliance

We estimate that this proposed AD affects 34,013 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of the horizontal stabilator control system.	5 work-hours × $85 per hour = $425	Not applicable	$425	$14,455,525

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of all stabilator control cable system—per set of cables.	10 work-hours × $85 per hour = $850	$608	$1,458

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Piper Aircraft, Inc.: Docket No. FAA–2012–0731; Directorate Identifier 2012–CE–020–AD.

(a) Comments Due Date

We must receive comments by September 17, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Model PA–28–236, PA–28–140, PA–28–150, PA–28–151, PA–28–160, PA–28–161, PA–28–180, PA–28–181, PA–28–201T, PA–28R–201, PA–28–235, PA–28R–201T, PA–28S–160, PA–28S–180, PA–28R–180, PA–28R–200, PA–28RT–201, PA–28RT–201T, PA–32–260, PA–32–301, PA–32–301T, PA–32–300, PA–32R–300, PA–32R–301T, PA–32R–301 (SP), PA–32R–301 (HP), PA–32RT–300, PA–32RT–300T, PA–32S–300, PA–32–301FT, PA–32–301XTC, PA–34–200, PA–34–200T, PA–34–220T, PA–44–180, and PA–44–180T airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 2740, Stabilizer Control System.

(e) Unsafe Condition

This AD was prompted by reports of control cable assembly failures that may lead to failure of the horizontal stabilator control system and could result in loss of pitch control. This proposed AD would require inspections of the stabilator control system and replacement of parts as necessary. We are issuing this AD to correct the unsafe condition on these products.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection

(1) As of the effective date of this AD, if the age of the airplane is at or exceeds 15 years, then at the next annual inspection or within the next 12 months after the effective date of this AD, whichever occurs later, do an initial inspection of the stabilator control system following instructions 1 through 10 of Piper Aircraft, Inc. Mandatory Service Bulletin No. 1245, dated May 3, 2012.

(2) As of the effective date of this AD, if the age of the airplane is less than 15 years, then, upon the age of the airplane reaching 15 years, at the next annual inspection or within the next 12 months after the effective date of this AD, whichever occurs later, do an initial inspection of the stabilator control system following instructions 1 through 10 of Piper Aircraft, Inc. Mandatory Service Bulletin No. 1245, dated May 3, 2012.

(3) As of the effective date of this AD, if the age of the airplane cannot be determined, then at the next annual inspection or within the next 12 months after the effective date of this AD, whichever occurs later, do an initial inspection of the stabilator control system following instructions 1 through 10 of Piper Aircraft, Inc. Mandatory Service Bulletin No. 1245, dated May 3, 2012.

Note for paragraph (g)(1), (g)(2) and (g)(3) of this AD: To assist in determining the age of the airplane, you may contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach,

Florida 32960; telephone: (772) 567–4361; Internet: *www.piper.com;* or access the FAA airplane registry database at: *http://registry.faa.gov/aircraftinquiry/Serial_Inquiry.aspx.*

(4) After the applicable initial inspection required in paragraph (g)(1), (g)(2) or (g)(3) of this AD, repetitively thereafter at intervals not to exceed 2,000 hours time-in-service or 7 years, whichever occurs first, inspect the stabilator control system following instructions 1 through 10 of Piper Aircraft, Inc. Mandatory Service Bulletin No. 1245, dated May 3, 2012.

(h) Repair

If any cracks, corrosion, or cable fraying are found during any inspection required in paragraphs (g)(1), (g)(2), (g)(3) or (g)(4) of this AD, before further flight, replace the damaged part with an airworthy part.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact Hector Hernandez, Aerospace Engineer, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5587; fax: (404) 474–5606; email: *hector.hernandez@faa.gov.*

(2) For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; Internet: *www.piper.com.* You may review copies of the service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on July 25, 2012.

James Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–18618 Filed 8–1–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0726; Directorate Identifier 2012–NM–023–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This proposed AD was prompted by cases of on-ground failure of the screw cap or end cap of hydraulic accumulators on other airplane models, resulting in high-energy impact damage to adjacent systems and structure. This proposed AD would require inspecting for a part number and replacing the affected parking brake hydraulic accumulator, and relocating the parking brake accumulator, on the subject airplanes. We are proposing this AD to prevent failure of the screw caps and/or end caps of the parking brake hydraulic accumulator, which could result in damage to the airplane's primary structures, with potential adverse effect on the airplane's controllability.

DATES: We must receive comments on this proposed AD by September 17, 2012.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; *email thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0726; Directorate Identifier 2012–NM–023–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2012–04, dated January 13, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Seven cases of on-ground hydraulic accumulator/screw cap/end cap failure have been experienced on CL–600–2B19 (CRJ) aeroplanes, resulting in loss of the associated hydraulic system and high-energy impact

damage to adjacent systems and structure. To date, the lowest number of flight cycles accumulated at the time of failure has been 6991.

Although there have been no failures to date on any DHC–8 aeroplanes, similar accumulators to those installed on the CL–600–2B19, Part Number (P/N) 08–60197–001 (Parking Brake Accumulator), are installed on the aeroplanes listed in the Applicability section of this Airworthiness Directive (AD). It was also found that some of these accumulators may be affected by manufacturing non-conformances.

A detailed analysis of the systems and structure in the potential line of trajectory of a failed screw cap/end cap for the accumulator has been conducted. It has been identified that the worst-case scenarios would be the damage to the aeroplane's primary structures, which could have an adverse effect on the controllability of the aeroplane.

This AD mandates the [inspection for part and serial numbers and] replacement of the affected hydraulic accumulators and the relocation of the parking brake accumulator.

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

Relevant Service Information

Bombardier, Inc. has issued Service Bulletin 84–32–87, Revision B, dated November 22, 2011; and Service Bulletin 84–32–88, dated February 16, 2011. Goodrich has issued Service Bulletin 08 60197 001–32–70 R2, dated February 1, 2011. 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 83 products of U.S. registry. We also estimate that it would take about 17 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $5,205 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 $551,950, or $6,650 per product.

In addition, we estimate that any necessary follow-on actions would take about 3 work-hours and require parts costing $4,643, for a cost of $4,898 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2012–0726; Directorate Identifier 2012–NM–023–AD.

(a) Comments Due Date

We must receive comments by September 17, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001 through 4346 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 32: Landing Gear.

(e) Reason

This AD was prompted by cases of on-ground hydraulic accumulator/screw cap/end cap failure, resulting in high-energy impact damage to adjacent systems and structure. We are issuing this AD to prevent failure of the screw caps and/or end caps of the hydraulic and parking brake accumulators, which could result in damage to the airplane's primary structures, with potential adverse effect on the airplane's controllability.

(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) Inspect/Replace the Parking Brake Hydraulic Accumulator

For airplanes having serial numbers 4001 through 4337 inclusive: Within 1,200 flight hours or 6 months after the effective date of this AD, whichever comes first, inspect the parking brake hydraulic accumulator to determine the part number and serial number. Inspect to determine the part number and serial number in accordance with the Accomplishment Instructions of

Bombardier Service Bulletin 84–32–88, dated February 16, 2011.

(1) If the part number of the parking brake hydraulic accumulator can be determined by the inspection required by paragraph (g) of this AD; and is not identified in paragraph 1., Effectivity, of Goodrich Service Bulletin 08 60197 001–32–70 R2, dated February 1, 2011: No further action is required by this paragraph.

(2) If the part number and serial number of the parking brake hydraulic accumulator cannot be determined by the inspection required by paragraph (g) of this AD; or is identified in paragraph 1., Effectivity, of Goodrich Service Bulletin 08 60197 001–32–70 R2, dated February 1, 2011: Before further flight, replace the parking brake hydraulic accumulator, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–88, dated February 16, 2011.

(h) Relocate the Parking Brake Hydraulic Accumulator

(1) For airplanes having serial numbers 4001 through 4068 inclusive, 4070 through 4214 inclusive, 4214, 4216, 4219 through 4261 inclusive, and 4263 through 4346 inclusive: Within 6,000 flight hours after the effective date of this AD, relocate the parking brake hydraulic accumulator, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–87, Revision B, dated November 22, 2011.

(2) Accomplishing the actions specified in paragraph (h)(1) of this AD in accordance with previous revisions of Bombardier Service Bulletin 84–32–87 does not meet the requirements of paragraph (h)(1) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(j) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2012–04, dated January 13, 2012, and the service information identified in paragraphs (j)(1) through (j)(3) of this AD, for related information.

(1) Bombardier Service Bulletin 84–32–87, Revision B, dated November 22, 2011.

(2) Bombardier Service Bulletin 84–32–88, dated February 16, 2011.

(3) Goodrich Service Bulletin 08 60197 001–32–70 R2, dated February 1, 2011.

Issued in Renton, Washington, on July 20, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–18588 Filed 8–1–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0652; Airspace Docket No. 12–ACE–4]

Proposed Amendment of Class E Airspace; Anthony, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Anthony, KS. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Anthony Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Comments must be received on or before September 17, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2012–0652/Airspace Docket No. 12–ACE–4, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2012–0652/Airspace Docket No. 12–ACE–4.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Anthony Municipal Airport, Anthony, KS. Controlled airspace is needed for the safety and management of IFR operations at the airport.

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

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Anthony Municipal Airport, Anthony, KS.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE KS E5 Anthony, KS [Amended]

Anthony Municipal Airport, KS
(Lat. 37°09′31″ N., long. 98°04′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Anthony Municipal Airport, and within 2 miles each side of the 000° bearing from the airport extending from the 6.4-mile radius to 12 miles north of the airport.

Issued in Fort Worth, TX, on June 22, 2012.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012–18917 Filed 8–1–12; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2011–1404; Airspace Docket No. 11–AGL–30]

Proposed Amendment of Class E Airspace; Ontonagon, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Ontonagon, MI. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Ontonagon County–Schuster Field Airport. Also, this action would rename the airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Comments must be received on or September 17, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA 2011–1404/Airspace Docket No. 11–AGL–30, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA 2011–1404/Airspace Docket No. 11–AGL–30.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Ontonagon County—Schuster Field Airport, Ontonagon, MI. The airport name would also be updated from Ontonagon County Airport to Ontonagon County- Schuster Field airport to coincide with the FAA's aeronautical database. Controlled airspace is needed for the safety and management of IFR operations at the airport

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

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Ontonagon County—Schuster Field Airport, Ontonagon, MI.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL MI E5 Ontonagon, MI [Amended]

Ontonagon County—Schuster Field Airport, MI

(Lat. 46°50′44″ N., long. 89°22′02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Ontonagon County—Schuster Field Airport; and that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 46°38′04″ N, long. 89°52′32″ W; to lat. 46°43′44″ N, long. 89°53′15″ W; to lat. 46°48′35″ N, long. 89°50′26″ W; to lat. 47°02′15″ N, long. 89°14′40″ W; to lat. 47°05′33″ N, long. 89°10′19″ W; to lat. 47°04′11″ N, long. 89°08′23″ W; to lat. 47°03′51″ N, long. 89°03′48″ W; to lat. 47°01′42″ N, long. 88°58′43″ W; to lat. 46°55′42″ N, long. 88°55′25″ W; to lat. 46°51′04″ N, long. 89°00′15″ W; to lat. 46°45′14″ N, long. 89°12′25″ W; to lat. 46°35′09″ N, long. 89°37′28″ W; to lat. 46°34′26″ N, long. 89°44′19″ W; thence to the point of beginning.

Issued in Fort Worth, TX on July 25, 2012.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012–18919 Filed 8–1–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0764; Airspace Docket No. 12–ANE–12]

Proposed Amendment of Class E Airspace; Lincoln, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Lincoln, ME, as the Lincoln Non-Directional Radio Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures have been developed at Lincoln Regional Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before September 17, 2012.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–

0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2012–0764; Airspace Docket No. 12–ANE–12, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2012–0764; Airspace Docket No. 12–ANE–12) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2012–0764; Airspace Docket No. 12–ANE–12.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface to support new Standard Instrument Approach Procedures developed at Lincoln Regional Airport, Lincoln, ME. Airspace reconfiguration is necessary due to the decommissioning of the Lincoln NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport.

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

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace at Lincoln Regional Airport, Lincoln, ME.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANE ME E5 Lincoln, ME [Amended]

Lincoln Regional Airport, ME
(Lat. 45°21′44″ N., long. 68°32′05″ W.)

That airspace extending upward from 700 feet above the surface within an 11.8-mile radius of Lincoln Regional Airport.

Issued in College Park, Georgia, on July 27, 2012 .

Barry A. Knight,

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

[FR Doc. 2012–18926 Filed 8–1–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1436; Airspace Docket No. 11–ACE–29]

Proposed Amendment of Class E Airspace; Guthrie, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Guthrie, IA. Decommissioning of the Guthrie Center non-directional radio beacon (NDB) at Guthrie County Regional Airport, Guthrie, IA, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport. Geographic coordinates of the airport would also be adjusted.

DATES: 0901 UTC. Comments must be received on or before September 17, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–1436/Airspace Docket No. 11–ACE–29, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–1436/Airspace Docket No. 11–ACE–29.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Guthrie County Regional Airport, Guthrie, IA. Airspace reconfiguration is necessary due to the decommissioning of the Guthrie Center NDB and the cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of IFR operations at the airport. Geographic coordinates of the airport would also be adjusted to coincide with the FAA's aeronautical database.

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

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Guthrie County Regional Airport, Guthrie, IA.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE IA E5 Guthrie, IA [Amended]

Guthrie County Regional Airport, IA
(Lat. 41°41′13″ N., long. 94°26′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Guthrie County Regional Airport.

Issued in Fort Worth, TX, on July 25, 2012.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012–18916 Filed 8–1–12; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[USCG–2012–0152]

RIN 1625–AA01

Anchorage Regulations; Great Chebeague Island, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish six special anchorage areas in the vicinity of Great Chebeague Island, Maine. This proposed action is necessary to facilitate safe navigation in that area and provide safe and secure anchorages for vessels not more than 20 meters in length. This action is intended to increase the safety of life and property surrounding Great Chebeague Island, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: Comments and related material must be received by the Coast Guard on or before October 1, 2012. Requests for public meetings must be received by the Coast Guard on or before August 23, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0152 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Petty Officer William Ferretti, Waterways Management Branch, First Coast Guard District, telephone 617–223–8351, email *William.M.Ferretti@uscg.mil;* or Lieutenant Isaac Slavitt, Waterways Management Branch, First Coast Guard District, telephone 617–223–8385, email *Isaac.M.Slavitt@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:

Public Participation and Request for Comments

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

Submitting Comments

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

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2012–0152] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number [USCG–2012–0152] in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received into any of

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

Public Meeting

We do not now plan to hold a public meeting. But, you may submit a request for one on or before August 23, 2012 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The legal basis for the proposed rule is: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define anchorage grounds.

The rule is intended to reduce the risk of vessel collisions by creating six special anchorage areas surrounding Great Chebeague Island. This proposed rule would establish special anchorage areas in the northern, southern, eastern and western portions of Great Chebeague Island.

Discussion of Proposed Rule

The proposed rule would create six new special anchorage areas surrounding Great Chebeague Island, Maine. These six new special anchorage areas surrounding Great Chebeague Island will be referred to as Anchorages ''A'' through ''F''. The anchorages are lettered in alphabetical order moving counter-clockwise around the island starting at the west side of the northern tip of the island. All proposed coordinates are North American Datum 1983 (NAD 83).

Vessels not more than 20 meters in length are not required to sound signals as per Rule 35 of the Inland Navigation Rules (33 U.S.C. 2035) nor exhibit anchor lights or shapes as per Rule 30 of the Inland Navigation Rules (33 U.S.C. 2030) when at anchor in a special anchorage area. Additionally, mariners utilizing the anchorage areas are encouraged to contact local and state authorities, such as the local harbormaster, to ensure compliance with any additional applicable state and local laws. Such laws may involve, for example, compliance with direction from the local harbormaster when placing or using moorings within the anchorage.

Regulatory Analyses

We developed this proposed 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.

Executive Order 12866 and Executive Order 13563

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, 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.

We expect minimal additional cost impacts on fishing or recreational boats anchoring because this rule would not affect normal surface navigation. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons: Normal surface navigation will not be affected as this area has been historically used as a mooring field by the Town of Chebeague Island and the number of vessels using the anchorage is limited due to depth (less than or equal to 18 feet).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of recreational and small fishing vessels intending to anchor in the waters surrounding Great Chebeague Island. The proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: Normal surface navigation will not be affected as this area has been historically used as a mooring field by the Town of Chebeague Island and the number of vessels using the anchorage is limited due to depth (less than or equal to 18 feet).

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 want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Robert Lubicz-Nawrocki, Waterways Management Branch, First Coast Guard District; telephone 617–223–8351, email *Robert.J.Lubicz-Nawrocki@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call 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 proposed 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 INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

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

List of Subjects in 33 CFR Part 110

Anchorage grounds.

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

PART 110—ANCHORAGE REGULATIONS

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

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

2. Add § 110.3 to subpart A to read as follows:

§ 110.3 Great Chebeague Island, Maine.

(a) *Anchorage ''A''.* All of the waters enclosed by a line beginning at latitude 43°45′25.7″ N, longitude 070°06′00.0″ W; thence to latitude 43°45′32.5″ N, longitude 070°06′06.7″ W; thence to latitude 43°45′19.4″ N, longitude 070°06′35.5″ W; thence to latitude 43°45′6.2″ N, longitude 70°06′23.1″ W; thence to the point of beginning. This area is approximately 5,500 sq. yards, encompassing the northwestern coast of Great Chebeague Island.

(b) *Anchorage ''B''.* All of the waters enclosed by a line beginning at latitude 43°45′01.1″ N, longitude 070°06′26.1″ W; thence to latitude 43°45′17.0″ N, longitude 070°06′41.0″ W; thence to latitude 43°45′10.9″ N, longitude 070°07′01.4″ W; thence to latitude 43°44′59.7″ N, longitude 070°06′52.0″ W; thence to the point of beginning. This area is approximately 9,000 sq. yards, encompassing the northwestern coast of Great Chebeague Island.

(c) *Anchorage ''C''.* All of the waters enclosed by a line beginning at latitude 43°44′46.8″ N, longitude 070°07′22.6″ W; thence to latitude 43°44′58.1″ N, longitude 070°07′40.6″ W; thence to latitude 43°43′59.9″ N, longitude 070°08′15.1″ W; thence to latitude 43°43′54.9″ N, longitude 070°08′04.1″ W; thence to the point of beginning. This area is approximately 15,500 sq. yards, encompassing the western coast of Great Chebeague Island.

(d) *Anchorage ''D''.* All of the waters enclosed by a line beginning at latitude 43°43′42.1″ N, longitude 070°08′09.2″ W; thence to latitude 43°43′43.9″ N, longitude 070°08′20.7″ W; thence to latitude 43°43′30.6″ N, longitude 070°08′25.1″ W; thence to latitude 43°43′13.5″ N, longitude 070°08′33.9″ W; thence to latitude 43°43′12.4″ N, longitude 070°08′26.5″ W; thence to the point of beginning. This area is approximately 3,000 sq. yards, encompassing the southwestern coast of Great Chebeague Island.

(e) *Anchorage ''E''.* All of the waters enclosed by a line beginning at latitude 43°43′06.8″ N, longitude 070°08′05.4″ W; thence to latitude 43°42′57.1″ N, longitude 070°07′41.6″ W; thence to latitude 43°43′00.5″ N, longitude 070°07′37.9″ W; thence to latitude 43°42′59.8″ N, longitude 070°07′31.2″ W; thence to the point of beginning. This area is approximately 2,400 sq. yards, encompassing the southern coast of Great Chebeague Island.

(f) *Anchorage ''F''.* All of the waters enclosed by a line beginning at latitude 43°42′49.4″ N, longitude 070°07′08.8″

W; thence to latitude 43°42′56.7″ N, longitude 070°06′49.2″ W; thence to latitude 43°43′26.3″ N, longitude 070°06′22.6″ W; thence to latitude 43°44′15.2″ N, longitude 070°06′12.9″ W; thence to latitude 43°44′54.2″ N, longitude 070°05′45.5″ W; thence to latitude 43°45′18.0″ N, longitude 070°05′39.2″ W; thence to latitude 43°45′31.4″ N, longitude 070°05′42.5″ W; thence to the point of beginning. This area is approximately 13,500 sq. yards, encompassing the eastern coast of Great Chebeague Island.

(g) *Regulations:* This area is principally for use by recreational craft. Temporary floats or buoys for marking anchors or moorings in place are allowed in this area. Fixed mooring piles or stakes are not allowed. All moorings or anchors shall be placed well within the anchorage areas so that no portion of the hull or rigging will at any time extend outside of the anchorage.

Note: All anchoring in the areas is under the supervision of the Town of Chebeague Island Harbor Master or other such authority as may be designated by the authorities of the Town of Chebeague Island, Maine. All coordinates referenced use datum: NAD 83.

Dated: July 24, 2012.

James B. McPherson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2012–18825 Filed 8–1–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 161 and 165

[USCG–2012–0632 (previously published as CGD01–04–133)]

RIN 1625–AA11

Regulated Navigation Area; Buzzard's Bay, MA; Navigable Waterways Within the First Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for comments.

SUMMARY: The Coast Guard announces the availability of a draft Environmental Assessment (EA) considering the reasonably foreseeable environmental impacts and socioeconomic effects of implementing a Regulated Navigation Area in Buzzard's Bay, MA. We request your comments on the draft EA.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before September 4, 2012 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0632 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: Mr. John Mauro, Coast Guard First District Waterways Management Branch, telephone 617–223–8355, email *John.J.Mauro@uscg.mil* or Mr. Luke Dlhopolsky, Civil Engineering Unit, Environmental Protection Specialist, telephone 401–736–1743, email *Lucas.A.Dlhopolsky@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Authority: This Draft Environmental Assessment has been prepared in accordance with the National Environmental Policy Act (NEPA) (42 United States Code (U.S.C.) 4321 *et. seq.*); Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 Code of Federal Regulations (CFR) parts 1500–1508) and associated CEQ guidelines; Department of Homeland Security Management Directive 5100.1, Environmental Planning Program; and United States Coast Guard (USCG) Commandant Instruction (COMDTINST) M16475.1D, National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts.

Public Participation and Request for Comments

We encourage you to submit comments and related material on the draft EA. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments: If you submit a comment, please include the docket number for this notice (USCG–2012–0632) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Notices'' and insert ''USCG–2012–0632'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the Comments and Draft EA: To view the comments and draft EA, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0632'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Additionally, the EA can be found online at: *http://www.uscg.mil/d1/prevention/EnvironmentalAssessment.asp.*

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

Background and Purpose

On August 30, 2007 the USCG published a Final Rule to implement amendments to the existing Regulated

Navigation Area (RNA) (2007 Final Rule) applicable to First Coast Guard District waters. (72 FR 50052; corrected by 72 FR 70780). The purpose of these amendments was to further reduce the probability of an incident that could result in the discharge or release of oil or hazardous material, or cause serious harm, to navigable waters of the United States. As part of the process to implement the 2007 Final Rule, the USCG prepared a Categorical Exclusion Determination as defined in its Agency Procedures for Implementing the National Environmental Policy Act. In a ruling on May 17, 2011, the 1st U.S. Circuit Court of Appeals determined that the USCG ''failed to comply with its obligations under the National Environmental Policy Act'' when it failed to prepare an Environmental Impact Statement (EIS) or an Environmental Assessment (EA).

The Coast Guard has completed a draft EA in order to cure the procedural deficiency. This analysis indicates that an Environmental Impact Statement (EIS) will not be necessary for implementation of any of the action alternatives. The Coast Guard anticipates that a Finding of No Significant Impact (FONSI) will be appropriate for implementation of the 2007 Final Rule preferred alternative.

We are seeking public input on the draft EA, including comments on the completeness and adequacy of the document, and on the measures and operating conditions described in the EA as alternatives designed to reduce or eliminate potential environmental impacts. The Coast Guard will consider public comments on the EA in determining the preferred alternative and whether to issue a Finding of No Significant Impact (FONSI), or to conduct additional NEPA analysis.

Dated: July 18, 2012.

D.B. Abel,

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

[FR Doc. 2012–18832 Filed 8–1–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0805; EPA–R05–OAR–2012–0567; FRL–9708–9]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Indiana; Michigan; Minnesota; Ohio; Wisconsin; Infrastructure SIP Requirements for the 2006 $PM_{2.5}$ National Ambient Air Quality Standards; Indiana NSR/PSD

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve some elements, and disapprove other elements, of State Implementation Plan (SIP) submissions by Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin regarding the infrastructure requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2006 24-hour fine particle national ambient air quality standards (2006 $PM_{2.5}$ NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. EPA is also proposing to approve portions of a submittal from Indiana addressing EPA's requirements for its new source review (NSR) and prevention of significant deterioration (PSD) program.

DATES: Comments must be received on or before September 4, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0805 (infrastructure SIP elements for all Region 5 States) or EPA–R05–OAR–2012–0567 (Indiana NSR/PSD elements), by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. 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 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID. EPA–R05–OAR–2009–0805 (infrastructure SIP elements for all Region 5 States) or EPA–R05–OAR–2012–0567 (Indiana NSR/PSD elements). EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang,

Environmental Engineer, at (312) 886–0258 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andy Chang, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0258, *chang.andy@epa.gov.*

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

I. What should I consider as I prepare my comments for EPA?
II. What is the background of these SIP submissions?
A. What State SIP submissions does this rulemaking address?
B. Why did the States make these SIP submissions?
C. What is the scope of this rulemaking?
III. What guidance is EPA using to evaluate these SIP submissions?
IV. What is the result of EPA's review of these SIP submissions?
A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures
B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System
C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures; PSD
D. Section 110(a)(2)(D)—Interstate Transport
E. Section 110(a)(2)(E)—Adequate Resources
F. Section 110(a)(2)(F)—Stationary Source Monitoring System
G. Section 110(a)(2)(G)—Emergency Powers
H. Section 110(a)(2)(H)—Future SIP Revisions
I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D
J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; PSD; Visibility Protection
K. Section 110(a)(2)(K)—Air Quality Modeling/Data
L. Section 110(a)(2)(L)—Permitting Fees
M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities
V. What action is EPA taking?
VI. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background of these SIP submissions?

A. What State SIP submissions does this rulemaking address?

This rulemaking addresses submittals from each State (and appropriate State agency) in EPA Region 5: Illinois Environmental Protection Agency (Illinois EPA); Indiana Department of Environmental Management (IDEM); Michigan Department of Environmental Quality (MDEQ); Minnesota Pollution Control Agency (MPCA); Ohio Environmental Protection Agency (Ohio EPA); and Wisconsin Department of Natural Resources Bureau of Air Management (WDNR). Each State made SIP submissions on the following dates: Illinois—August 9, 2011, and supplemented on August 25, 2011 and June 27, 2012; Indiana—October 20, 2009, and supplemented on June 25, 2012 and July 12, 2012; Michigan—August 15, 2011, and supplemented on July 9, 2012; Minnesota—May 23, 2011, and supplemented on June 27, 2012; Ohio—September 4, 2009, and supplemented on June 3, 2011 and July 5, 2012; and, Wisconsin—January 24, 2011, and supplemented on June 29, 2012.

The States of Indiana and Wisconsin have also made SIP submissions intended to address various EPA requirements for their respective NSR and PSD programs. IDEM submitted revisions on July 12, 2012, for incorporation into its NSR and PSD program, and also requested that EPA approve these revisions as satisfying any applicable infrastructure SIP requirements for the 2006 $PM_{2.5}$ NAAQS. WDNR submitted revisions to its NSR and PSD programs on May 12, 2011, and while the SIP submission was not explicitly made to satisfy the infrastructure SIP requirements for the 2006 $PM_{2.5}$ NAAQS, a discussion of the relevant infrastructure SIP requirements and the State's satisfaction of these requirements is contained in the paragraphs addressing section 110(a)(2)(C).

B. Why did the States make these SIP submissions?

Under sections 110(a)(1) and (2) of the CAA, and implementing EPA policy, the States are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2006 $PM_{2.5}$ NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for particulate matter already met those requirements. EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 Memo). States were required to make SIP submissions meeting the requirements to EPA within three years after promulgation of the revised standards. The three-year submittal window was reiterated in a September 25, 2009, EPA-issued guidance document pertaining to the 2006 $PM_{2.5}$ NAAQS 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)'' (2009 Memo). Because the finalized 2006 $PM_{2.5}$ NAAQS was signed and widely disseminated on September 21, 2006, the due date for infrastructure SIP submissions to EPA was September 21, 2009. The certifications referenced in this rulemaking pertain to the applicable requirements of sections 110(a)(1) and (2) of the CAA. The SIP submissions from the six Region 5 States being evaluated here address only the 2006 $PM_{2.5}$ NAAQS, and the proposed rulemaking addresses only this pollutant as well.[1]

C. What is the scope of this rulemaking?

This rulemaking will not cover four substantive issues that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related

[1] On June 14, 2012, the Administrator of EPA signed a proposed rule that would strengthen various aspects of the existing $PM_{2.5}$ NAAQS (*see* 77 FR 38890). The State submittals and EPA's rulemaking do not extend to these proposed NAAQS.

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''); (iii) existing provisions for minor source NSR programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and, (iv) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Instead, EPA has committed to address each of these four issues in separate rulemakings. A detailed rationale for why these four substantive issues are not part of the scope of infrastructure SIP rulemakings can be found in EPA's July 13, 2011, final rule entitled, ''Infrastructure SIP Requirements for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' in the section entitled, ''What is the scope of this final rulemaking?'' (*see* 76 FR 41075 at 41076–41079).

In addition to the four substantive issues above, EPA is not acting on portions of section 110(a)(2)(D)(i)(II)—Interstate transport; section 110(a)(2)(E)(ii)—Adequate resources; and section 110(a)(2)(J)—Consultation with government officials, public notifications, PSD, and visibility protection. EPA is also not acting on section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D, in its entirety. The rationale for not acting on elements of these requirements is discussed below.

III. What guidance is EPA using to evaluate these SIP Submissions?

EPA's guidance for these infrastructure SIP submissions is embodied in the 2007 Memo. Specifically, Attachment A of this memorandum (Required Section 110 SIP Elements) identified the statutory elements that states need to meet in order to satisfy the requirements for an infrastructure SIP submission. The 2009 Memo was issued to provide additional guidance for certain elements to meet the requirements of section 110(a)(1) and (2) of the CAA for 2006 $PM_{2.5}$ NAAQS. Where appropriate, EPA will reference the guidance contained in both the 2007 Memo and the 2009 Memo as they pertain to the Region 5 States' submissions.

IV. What is the result of EPA's review of these SIP submissions?

The six States in Region 5 have certified that they meet the applicable requirements of sections 110(a)(1) and 110(a)(2) without further revisions to their respective SIPs for the 2006 $PM_{2.5}$ NAAQS. Therefore, consistent with the 2009 Memo, EPA believes that no public hearing or comment process was necessary at the State level for this NAAQS.[2] Nevertheless, the public will now have the opportunity to comment on EPA's evaluation of each certification through our notice-and-comment rulemaking process. Illinois EPA, IDEM, MDEQ, MPCA, Ohio EPA, and WDNR provided detailed synopses of how various components of their respective SIPs meet each of the requirements in section 110(a)(2), as applicable. The following review evaluates the six States' submissions.

A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. The specific nonattainment area plan requirements of section 110(a)(2)(I), however, are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 2006 $PM_{2.5}$ NAAQS. Those SIP provisions are due as part of each state's attainment plan, and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

The Illinois Environmental Protection Act is contained in chapter 415, section 5, of the Illinois Compiled Statutes (415 ILCS 5). 415 ILCS 5/4 provides the Director of Illinois EPA with the authority to develop rules and regulations necessary to meet ambient air quality standards. Additionally, the Illinois Pollution Control Board (IPCB) was created under 415 ILCS 5, providing the IPCB with the authority to develop rules and regulations necessary to promote the purposes of the Illinois Environmental Protection Act. Furthermore, the IPCB ensures compliance with required laws and other elements of the State's attainment plan that are necessary to attain the NAAQS, and to comply with the requirements of the CAA. (415 ILCS 5/10) EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2006 $PM_{2.5}$ NAAQS.

IDEM's authority to adopt emissions standards and compliance schedules is found at Indiana Code (IC) 13–14–8, IC 13–17–3–4, IC 13–17–3–11, and IC 13–17–3–14. EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2006 $PM_{2.5}$ NAAQS.

The Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451), sections 324.5503 and 324.5512, provide the Director of MDEQ with the authority to regulate the discharge of air pollutants, and to promulgate rules to establish standards for emissions for ambient air quality and for emissions. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2006 $PM_{2.5}$ NAAQS.

Minnesota Statute chapter 116.07 gives MPCA the authority to ''[a]dopt, amend, and rescind rules and standards having the force of law relating to any purpose * * * for the prevention, abatement, or control of air pollution.'' EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2006 $PM_{2.5}$ NAAQS.

Ohio Revised Code (ORC) 3704.03 provides the Director of Ohio EPA with the authority to develop rules and regulations necessary to meet State and Federal ambient air quality standards. EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2006 $PM_{2.5}$ NAAQS.

Wisconsin Statutes (WS) chapter 285.11 through WS chapter 285.19 establish general authority for monitoring, updating, and implementing necessary revisions to the Wisconsin SIP. Additional authorities related to specific pollutants are contained in WS chapter 285.21 through WS chapter 285.29. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2006 $PM_{2.5}$ NAAQS.

As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

[2] Although the public hearing process was not necessary at the State level, Ohio EPA held a public hearing on August 13, 2009, and provided an opportunity for written comments as well. No comments were received in person, or in writing.

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. EPA is evaluating compliance with section 110(a)(2)(B) in infrastructure SIP submissions by verifying that the state has submitted an annual monitoring plan for the relevant NAAQS, and that EPA has approved the most recent plan. This review of the annual monitoring plan includes EPA's determination that the state: (i) Monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and, (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

Illinois EPA continues to operate an extensive monitoring network incorporating more than 200 monitors throughout the State. Illinois EPA also publishes an annual report that summarizes air quality trends. Furthermore, Illinois EPA submits yearly monitoring network plans to EPA, and EPA approved the 2012 Annual Air Monitoring Network Plan for $PM_{2.5}$ on December 19, 2011. Monitoring data from Illinois EPA are entered into AQS in a timely manner, and the State provides EPA with prior notification when changes to its monitoring network or plan are being considered. EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2006 $PM_{2.5}$ NAAQS.

IDEM continues to operate an air monitoring network; EPA approved the State's 2012 Annual Air Monitoring Network Plan for $PM_{2.5}$ on January 3, 2012, including the plan for $PM_{2.5}$. EPA noted, however, that IDEM should continue to search for a suitable replacement location for one monitoring site. IDEM enters air monitoring data into AQS, and the State provides EPA with prior notification when changes to its monitoring network or plan are being considered. EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2006 $PM_{2.5}$ NAAQS.

MDEQ maintains a comprehensive network of air quality monitors throughout Michigan. EPA approved MDEQ's 2012 Annual Air Monitoring Network Plan on December 19, 2011. MDEQ enters air monitoring data into AQS, and the State provides EPA with prior notification when changes to its monitoring network or plan are being considered. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2006 $PM_{2.5}$ NAAQS.

MPCA continues to operate an ambient pollutant monitoring network, and compiles and reports air quality data to EPA. EPA approved MPCA's 2012 Annual Air Monitoring Network Plan for $PM_{2.5}$ on December 19, 2011. MPCA also provides prior notification to EPA when changes to its monitoring network or plan are being considered. EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2006 $PM_{2.5}$ NAAQS.

Ohio EPA continues to operate a monitoring network; EPA approved the State's 2012 Annual Air Monitoring Network Plan for $PM_{2.5}$ on January 11, 2012. Furthermore, Ohio EPA populates AQS with air quality monitoring data in a timely manner, and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2006 $PM_{2.5}$ NAAQS.

WDNR continues to operate an extensive monitoring network; EPA approved the State's 2012 Annual Air Monitoring Network Plan for $PM_{2.5}$ on January 3, 2012. WDNR enters air quality data into AQS in a timely manner, and gives EPA prior notification when considering a change to its monitoring network or plan. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2006 $PM_{2.5}$ NAAQS.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures; PSD

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under the PSD and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of the Region 5 States' certifications addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers: (i) Enforcement of SIP measures; (ii) identification of precursors to $PM_{2.5}$ in the PSD program; (iii) identification of $PM_{2.5}$ condensables in the PSD program; (iv) oxides of nitrogen (NOx) as a precursor to ozone in the PSD program; and, (v) greenhouse gas (GHG) permitting and the ''Tailoring Rule.''

Sub-Element 1: Enforcement of SIP Measures

Illinois continues to staff and implement an enforcement program comprised, and operated by, the Compliance Section and Division of Legal Counsel. 415 ILCS 5/4 provides the Director of Illinois EPA with the authority to implement and administer this enforcement program. Furthermore, Illinois EPA has confirmed that all enforcement actions are brought by the Office of the Illinois Attorney General or local State's Attorney offices, with whom Illinois EPA consults. EPA proposes that Illinois has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2006 $PM_{2.5}$ NAAQS.

IDEM maintains an enforcement program to ensure compliance with SIP requirements. IC 13–14–1–12 provides the Commissioner with the authority to enforce rules ''consistent with the purpose of the air pollution control laws.'' Additionally, IC 13–14–2–7 and IC 13–17–3–3 provide the Commissioner with the authority to assess civil penalties and obtain compliance with any applicable rule a board has adopted in order to enforce air pollution control laws. Lastly, IC 13–14–10–2 allows for an emergency restraining order that prevents any person from causing, or introducing contaminants, that cause or contribute to air pollution. EPA proposes that Indiana has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2006 $PM_{2.5}$ NAAQS.

MDEQ continues to staff and implement an enforcement program to assure compliance with all requirements under State law, consistent with the provisions of Act 451. Additionally, this Air Quality Enforcement Unit provides support and technical assistance to Michigan's Attorney General on all air pollution enforcement issues referred by MDEQ's Air Quality Division for escalated enforcement action. Lastly, the air quality enforcement unit at MDEQ coordinates formal administrative actions such as contested case hearings, administrative complaints, and revocation of permits to install. Therefore, EPA proposes that Michigan has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2006 $PM_{2.5}$ NAAQS.

Minnesota Statute chapter 116.07 gives the MPCA the authority to enforce

any provisions of the chapter relating to air contamination. These provisions include: entering into orders; schedules of compliance; stipulation agreements; requiring owners or operators of emissions facilities to install and operate monitoring equipment; and conducting investigations. Minnesota Statute chapter 116.072 authorizes MPCA to issue orders and assess administrative penalties to correct violations of the agency's rules, statutes, and permits. Lastly, Minnesota Statute Chapter 115.071 outlines the remedies that are available to address such violations. EPA proposes that Minnesota has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2006 $PM_{2.5}$ NAAQS.

Ohio EPA staffs and implements an enforcement program. ORC 3704.03 provides the Director of Ohio EPA with the authority to implement the enforcement program as well as the updated NSR provisions within Ohio Administrative Code (OAC) 3745–31. Ohio EPA compiles all air pollution control enforcement settlements in the State, and makes them available for public review on its Web site. EPA proposes that Ohio has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2006 $PM_{2.5}$ NAAQS.

WDNR maintains an enforcement program to ensure compliance with SIP requirements. The Bureau of Air Management houses an active Statewide Compliance and Enforcement Team that works in all geographic regions of the State. WDNR refers most actions to the Wisconsin Department of Justice with the involvement of WDNR. Under WS chapter 285.13, the agency has the authority to impose fees and penalties to ensure that required measures are ultimately implemented. WS chapter 285.83 and WS chapter 285.87 provide the authority to enforce violations and assess penalties. EPA proposes that Wisconsin has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2006 $PM_{2.5}$ NAAQS.

Sub-Element 2: Identification of Precursors to $PM_{2.5}$ in the PSD Program

On May 16, 2008 (*see* 73 FR 28321), EPA issued the Final Rule on the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPS to address sources that emit direct $PM_{2.5}$ and other pollutants that contribute to secondary $PM_{2.5}$ formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of $PM_{2.5}$, otherwise known as precursors. In the 2008 rule, the EPA identified precursors to $PM_{2.5}$ for the PSD program to be sulfur dioxide (SO_2) and NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The 2008 NSR Rule also specifies that volatile organic compounds (VOCs) are not considered to be precursors to $PM_{2.5}$ in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient $PM_{2.5}$ concentrations. The explicit references to SO_2, NO_X, and VOCs as they pertain to secondary $PM_{2.5}$ formation are codified at 40 CFR 51.166(b)(49)(i) and 40 CFR 52.21(b)(50)(i). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011 (*see* 73 FR 28321 at 28341).

As part of identifying pollutants that are precursors to $PM_{2.5}$, the 2008 NSR Rule also required states to revise the definition of ''significant'' as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define ''significant'' for $PM_{2.5}$ to mean the following emissions rates: 10 Tons per year (tpy) of direct $PM_{2.5}$; 40 tpy of SO_2; and 40 tpy of NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations).

Illinois and Minnesota have not adopted or submitted regulations for PSD, although Federally promulgated rules for this purpose are in effect in these two States, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules include provisions establishing precursors to $PM_{2.5}$ both in the definition of ''regulated NSR pollutant'' and ''significant.'' EPA acknowledges that the States have not satisfied the requirement for a SIP submission, which results in a proposed disapproval with respect to this set of infrastructure SIP requirements of section 110(a)(2)(C). However, Illinois and Minnesota have no further obligations to EPA because both States administer the Federally promulgated PSD regulations.

Indiana submitted revisions to its PSD program incorporating the necessary changes regarding $PM_{2.5}$ precursors on July 12, 2012. In this rulemaking, we are proposing to approve portions of these revisions for incorporation into Indiana's SIP, and we are also proposing to find that Indiana has met this set of requirements of section 110(a)(2)(C) for the 2006 $PM_{2.5}$ NAAQS. Specifically, changes to 326 Indiana Administrative Code (IAC) 2–2–1(ss), ''Regulated NSR pollutant,'' have been made to explicitly identify SO_2 and NO_X as precursors to $PM_{2.5}$ that will be evaluated in NSR permit contexts. Additionally, IDEM has also specified that VOCs are not presumed to be precursors to $PM_{2.5}$.[3] The definition of ''Significant'' has been revised at 326 IAC 2–2–1(ww)(1)(F) to identify the significant emissions rates for direct $PM_{2.5}$, and SO_2 and NO_X as its precursors, consistent with the 2008 NSR Rule. EPA is proposing to approve these revisions into the SIP, and also proposes that Indiana has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2006 $PM_{2.5}$ NAAQS.

Michigan is in the process of adopting revisions to its PSD program that incorporate the necessary changes regarding $PM_{2.5}$ precursors. Specifically, changes to the Part 18 Rules (R 336.2801–R 336.2823) have been filed at the State level, and MDEQ has committed to submitting the revisions for incorporation into the SIP when the rules are adopted at the State level. Although the State has made a specific commitment to EPA to make the submission required by the 2008 NSR Rule, the deadline for when states must submit those SIP revisions has since passed. Therefore, EPA is proposing to disapprove this narrow portion of Michigan's infrastructure SIP submission for the 2006 $PM_{2.5}$ NAAQS with respect to the requirements of section 110(a)(2)(C) regarding the identification of $PM_{2.5}$ precursors for NSR permitting.

Ohio is in the process of adopting revisions to its PSD program that incorporate the necessary changes regarding $PM_{2.5}$ precursors. Specifically, draft changes are being made to OAC 3745–31–01, and Ohio has committed to submitting the revisions for incorporation into the SIP when final rules are adopted at the State level. For the same reasons discussed above for

[3] Indiana has also specified that ammonia is not a presumed precursor to $PM_{2.5}$. Ammonia is relevant only in the context of NNSR; for the purposes of this rulemaking related to structural PSD elements, EPA observes that Indiana has properly identified VOCs as not being a presumed $PM_{2.5}$ precursor.

Michigan, EPA is proposing to disapprove this narrow portion of Ohio's infrastructure SIP submission for the 2006 $PM_{2.5}$ NAAQS with respect to the requirements of section 110(a)(2)(C) regarding the identification of $PM_{2.5}$ precursors for NSR permitting.

Wisconsin submitted revisions to its PSD program on May 12, 2011, intended to meet the requirements of the 2008 NSR Rule. Specifically, WDNR's revisions to NR 405.02(27)(a)(5) include the significant emissions rates for direct $PM_{2.5}$, and SO_2 and NO_X as $PM_{2.5}$ precursors, consistent with the 2008 NSR Rule. However, Wisconsin's PSD regulations include only generic language to define what constitutes a regulated NSR pollutant that does not directly account for $PM_{2.5}$ and its precursors in NSR permitting. NR 405(02)(25i) defines ''Regulated NSR air contaminant'' as ''[a]ny air contaminant for which a national ambient air quality standard has been promulgated and any constituents or precursors for the air contaminants identified by the administrator * * *.'' The 2008 NSR Rule obligates the State to explicitly identify the precursors to $PM_{2.5}$ to be addressed in NSR permitting as part of the definition for ''Regulated NSR air contaminant.'' EPA notes that although Wisconsin has incorporated the significant emissions rates in accordance with the 2008 NSR Rule, WDNR has not explicitly identified SO_2 and NO_X as precursors to $PM_{2.5}$ in defining pollutants regulated by the PSD program. Therefore, we are proposing to disapprove this narrow portion of Wisconsin's infrastructure SIP submission for the 2006 $PM_{2.5}$ NAAQS with respect to the requirements of section 110(a)(2)(C) regarding the identification of $PM_{2.5}$ precursors.

Sub-Element 3: Identification of Condensables in the PSD Program

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in $PM_{2.5}$ and PM_{10}[4] emission limits in NSR permits. Instead, EPA determined that states had to account for $PM_{2.5}$ and PM_{10} condensables beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(vi) and 40 CFR 52.21(b)(50)(vi). Revisions to states' PSD programs incorporating the inclusion of condensables were required be submitted to EPA by May 16, 2011 (*see* 73 FR 28321 at 28341).

Illinois and Minnesota have not adopted or submitted regulations for PSD, although Federal rules for this purpose, promulgated at 40 CFR 52.21, are in effect in these two States. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules include provisions defining ''regulated NSR pollutant'' to include condensables for $PM_{2.5}$ and PM_{10}. EPA acknowledges that the States have not satisfied the requirement for a SIP submission, which results in a proposed disapproval with respect to this set of infrastructure SIP requirements of section 110(a)(2)(C). However, Illinois and Minnesota have no further obligations to EPA because both States administer the Federally promulgated PSD regulations.

Indiana submitted revisions to its PSD program incorporating the necessary changes regarding $PM_{2.5}$ and PM_{10} condensables on July 12, 2012. Specifically, 326 IAC 2–1.1–1(2) has been revised to account for condensables in the definition of ''Direct $PM_{2.5}$,'' and analogous changes were made at 326 IAC 2–1.1–1(10) for ''Direct PM_{10}.'' EPA is proposing to approve these revisions into the SIP, and also proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(C) to account for $PM_{2.5}$ and PM_{10} condensables with respect to the 2006 $PM_{2.5}$ NAAQS.

Michigan is in the process of adopting revisions to its regulations that incorporate the necessary changes regarding $PM_{2.5}$ and PM_{10} condensables. Changes to Part 1 Rules (R 336.1101–R 336.1128) have been filed at the State level, and MDEQ has committed to submitting the revisions for incorporation into the SIP when the rules are adopted at the State level. However, for the same reasons discussed above regarding the identification of $PM_{2.5}$ precursors, EPA is proposing to disapprove this narrow portion of Michigan's infrastructure SIP submission for the 2006 $PM_{2.5}$ NAAQS with respect to the requirements of section 110(a)(2)(C) regarding the regulation of $PM_{2.5}$ and PM_{10} condensables in the PSD program.

Ohio is in the process of adopting revisions to its regulations that incorporate the necessary changes regarding $PM_{2.5}$ and PM_{10} condensables. Specifically, draft changes are being made to OAC 3745–31–01, and Ohio has committed to submitting the revisions for incorporation into the SIP when final rules are adopted at the State level. However, for the same reasons described above, EPA is proposing to disapprove this narrow portion of Ohio's infrastructure SIP submission for the 2006 $PM_{2.5}$ NAAQS with respect to the requirements of section 110(a)(2)(C) regarding the regulation of $PM_{2.5}$ and PM_{10} condensables in the PSD program.

Wisconsin submitted revisions to its PSD program on May 12, 2011. However, these revisions do not incorporate the necessary changes regarding the regulation of condensables for $PM_{2.5}$ and PM_{10}, nor does Wisconsin's existing SIP account for $PM_{2.5}$ and PM_{10} condensables. Therefore, EPA is proposing to disapprove this narrow portion of Wisconsin's infrastructure SIP submission for the 2006 $PM_{2.5}$ NAAQS with respect to the requirements of section 110(a)(2)(C) regarding the regulation of $PM_{2.5}$ and PM_{10} condensables in the PSD program.

Sub-Element 4: NO_X as a Precursor to Ozone in the PSD Program

EPA's ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (Phase 2 Rule) was published on November 8, 2005 (*see* 70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_X as a precursor to ozone (70 FR 71612 at 71679, 71699–71700). This requirement was codified in 40 CFR 51.166, and consisted of the following[5]:

40 CFR 51.166(b)(1)(ii): A major source that is major for volatile organic compounds or NO_X shall be considered major for ozone;

40 CFR 51.166(b)(2)(ii): Any significant emissions increase (as defined at paragraph (b)(39) of this section) from any emissions units or net emissions increase (as defined in paragraph (b)(3) of this section) at a major stationary source that is significant for volatile organic compounds or NO_X shall be considered significant for ozone;

40 CFR 51.166(b)(23)(i): Ozone: 40 Tons per year of volatile organic compounds or nitrogen oxides;

40 CFR 51.166(b)(49)(i): Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (*e.g.,* volatile organic compounds and NO_X) are precursors for ozone; and

40 CFR 51.166(i)(5)(i)(e) footnote 1: No *de minimis* air quality level is provided for ozone. However, any net emissions increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides

[4] PM_{10} refers to particles with diameters between 2.5 and 10 microns, oftentimes referred to as ''coarse'' particles.

[5] Similar changes were codified in 40 CFR 52.21.

subject to PSD would be required to perform an ambient impact analysis, including the gathering of air quality data.

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including these specific NO_X as a precursor to ozone provisions, by June 15, 2007 (*see* 70 FR 71612 at 71683).

In EPA's April 28, 2011, proposed rulemaking for infrastructure SIPS for the 1997 ozone and $PM_{2.5}$ NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of pollutants in PSD permits. In other words, if a state lacks provisions needed to address NO_X as a precursor to ozone, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the pollutant being addressed (*see* 76 FR 23757 at 23760). In the same April 28, 2011, notice, we proposed to approve all six Region 5 States' infrastructure SIPs with respect to the NO_X as a precursor to ozone provisions in the PSD program requirements of section 110(a)(2)(C).

In our July 13, 2011, final rulemaking for the 1997 ozone and $PM_{2.5}$ NAAQS infrastructure SIPs, EPA finalized approval of the portions of the infrastructure SIPs from Indiana, Michigan, and Ohio with respect to the NO_X as a precursor to ozone provisions requirement of section 110(a)(2)(C). However, EPA subsequently realized that these three States also lacked sufficient provisions to identify NO_X as a precursor to ozone in their respective PSD programs, as required by the Phase 2 Rule.

In lieu of an error correction pursuant to section 110(k)(6) of the CAA, EPA informed Indiana, Michigan, and Ohio of the factual matter that portions of their infrastructure SIPs intended to address NO_X as a precursor to ozone provisions were approved as an oversight. We committed to work with these States to address the NO_X as a precursor to ozone provisions, consistent with the requirements of the Phase 2 Rule, in the next infrastructure SIP rulemaking, *i.e.,* today's rulemaking.

Illinois and Minnesota have not adopted or submitted regulations for PSD, although Federally promulgated rules for this purpose are in effect in these two States, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules include provisions that explicitly identify NO_X as a precursor to ozone. EPA acknowledges that the States have not satisfied the requirement for a SIP submission, which results in a proposed disapproval with respect to this set of infrastructure SIP requirements of section 110(a)(2)(C). However, Illinois and Minnesota have no further obligations to EPA because both States administer the Federally promulgated PSD regulations.

On July 12, 2012, Indiana submitted revisions to its PSD program incorporating the necessary changes regarding NO_X as a precursor to ozone, consistent with the requirements of the Phase 2 Rule. In this rulemaking, we are proposing to approve these revisions to Indiana's SIP, and we are also proposing to find that Indiana has met this set of requirements of section 110(a)(2)(C) for the 2006 $PM_{2.5}$ NAAQS. Specifically, Indiana has revised the following sections to align with EPA's own regulations contained in 40 CFR 51.166: 326 IAC 2–2–1(dd)(1): 40 CFR 51.166(b)(2)(ii); 326 IAC 2–2–1(ff)(7): 40 CFR 51.166(b)(1)(ii); 326 IAC 2–2–1(ss)(1): 40 CFR 51.166(b)(49)(i); 326 IAC 2–2–1(ww)(1)(G): 40 CFR 51.166(b)(23)(i); and, 326 IAC 2–2–4(b)(2)(vi): footnote to 40 CFR 51.166 (i)(5)(i)(e). EPA is proposing to approve these revisions into the SIP, and also proposes that Indiana has met the requirements of section 110(a)(2)(C) with respect to the 2006 $PM_{2.5}$ NAAQS regarding the explicit identification of NO_X as a precursor to ozone, consistent with the Phase 2 Rule.

Michigan is in the process of adopting revisions to its PSD program that incorporate the necessary changes regarding the explicit identification of NO_X as a precursor to ozone, consistent with the requirements of the Phase 2 Rule. Specifically, changes to the Part 18 Rules (R 336.2801—R 336.2823) have been filed at the State level, and MDEQ has committed to submitting the revisions for incorporation into the SIP when the rules are adopted at the State level. However, consistent with actions in Region 5 and other regions germane to the explicit identification of NO_X as a precursor to ozone in PSD programs, EPA is proposing to disapprove this narrow portion of Michigan's infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS with respect to the requirements of section 110(a)(2)(C) regarding the explicit identification of NO_X as a precursor to ozone in the PSD program.

Ohio is in the process of adopting revisions to its PSD program that incorporate the necessary changes regarding the explicit identification of NO_X as a precursor to ozone, consistent with the Phase 2 Rule. Specifically, draft changes are being made to OAC 3745–31–01, and Ohio has committed to submitting the revisions for incorporation into the SIP when final rules are adopted at the State level. For the same reasons discussed above, EPA is proposing to disapprove this narrow portion of Ohio's infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS with respect to the requirements of section 110(a)(2)(C) regarding the explicit identification of NO_X as a precursor to ozone in the PSD program.

During the comment period following the April 28, 2011, notice, two commenters observed that although we proposed to approve Wisconsin's infrastructure SIP as meeting the correct requirements for NO_X as a precursor to ozone in the State's PSD program, Wisconsin's PSD SIP does not contain the most recent PSD program revisions required by EPA for this purpose. A subsequent review of Wisconsin's PSD SIP indicated that the commenters were correct in their assertion. Specifically, Wisconsin had not made necessary revisions to its PSD program with respect to the identification of NO_X as a precursor to ozone, consistent with the explicit requirements of the Phase 2 Rule. As a result, EPA could not finalize this portion of Wisconsin's infrastructure SIP for the 1997 ozone and $PM_{2.5}$ NAAQS in our July 13, 2011, final rulemaking. Instead, a subsequent set of actions led EPA to disapprove Wisconsin's infrastructure SIP for this narrow portion of section 110(a)(2)(C) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS on June 15, 2012 (*see* 77 FR 35870). A detailed rationale for our disapproval can be found in the associated April 20, 2012, proposed rulemaking (*see* 77 FR 23647).

This final disapproval triggered the requirement under section 110(c) that EPA promulgate a Federal Implementation Plan (FIP) no later than two years from the date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. Wisconsin has not made a subsequent submittal to address the NO_X as a precursor to ozone provisions per the Phase 2 Rule. To clarify, EPA is not proposing to approve or disapprove any portion of Wisconsin's infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS as it relates to NO_X as a precursor to ozone provisions, specifically because we have already finalized disapproval of these provisions for the 1997 ozone and $PM_{2.5}$ NAAQS infrastructure SIPs. However, as discussed above, we are proposing to disapprove portions of Wisconsin's infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS with respect to certain requirements obligated by the 2008 NSR

Rule, including the explicit identification of NO_X as a precursor to $PM_{2.5}$.

Sub-Element 5: GHG Permitting and the ''Tailoring Rule''

On June 3, 2010, EPA issued a final rule establishing a ''common sense'' approach to addressing GHG emissions from stationary sources under the CAA permitting programs. The ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule,'' or ''Tailoring Rule,'' set thresholds for GHG emissions that define when permits under the NSR PSD and title V operating permit programs are required for new and existing industrial facilities (75 FR 31514). The Tailoring Rule set the GHG PSD applicability threshold at 75,000 tpy as expressed in carbon dioxide equivalent; if states have not adopted this threshold, sources with GHG emissions above 100 tpy or 250 tpy (depending on source category) would be subject to PSD, effective January 2, 2011. The lower thresholds could potentially result in apartment complexes, strip malls, small farms, restaurants, etc. triggering GHG PSD requirements.

On December 23, 2010, EPA issued a subsequent series of rules that put the necessary framework in place to ensure that industrial facilities can get CAA permits covering their GHG emissions when needed, and that facilities emitting GHGs at levels below those established in the Tailoring Rule do not need to obtain CAA permits.[6] Included in this series of rules was EPA's issuance of the ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans,'' referred to as the PSD SIP ''Narrowing Rule'' on December 30, 2010 (75 FR 82536). The Narrowing Rule limits, or ''narrows,'' EPA's approval of PSD programs that were previously approved into SIPs; the programs in question are those that apply PSD to sources that emit GHG. Specifically, the effect of the Narrowing Rule is that provisions that are no longer approved—*e.g.,* portions of already approved SIPs that apply PSD to GHG emissions increases from sources emitting GHG below the Tailoring Rule thresholds—now have the status of having been submitted by the state but not yet acted upon by EPA. In other words, the Narrowing Rule focuses on eliminating the PSD obligations under Federal law for sources below the Tailoring Rule thresholds. Each Region 5 State's status with respect to its GHG PSD program, as well as EPA's proposed actions, is discussed below.

Illinois and Minnesota have not adopted or submitted regulations for PSD, although Federally promulgated rules for this purpose are in effect in these two States, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules contain the GHG thresholds as outlined in the Tailoring Rule. EPA acknowledges that the States have not satisfied the requirement for a SIP submission, which results in a proposed disapproval with respect to this set of infrastructure SIP requirements of section 110(a)(2)(C). However, Illinois and Minnesota have no further obligations to EPA because both States administer the Federally promulgated PSD regulations. Note, however, that EPA does propose that Illinois and Minnesota have met the requirement contained in section 110(a)(2)(E) regarding resources specific to permitting GHG.[7]

EPA finalized approval of revisions to Indiana's PSD SIP on September 28, 2011 (*see* 76 FR 59899). These revisions included the adoption of the Federal thresholds for PSD permitting of GHG-emitting sources. On June 25, 2012, Indiana clarified that they intended for our September 28, 2011 approval to satisfy applicable GHG requirements related to their 2006 $PM_{2.5}$ NAAQS infrastructure SIP. Therefore, EPA proposes that Indiana's GHG permitting program has met this set of requirements related to section 110(a)(2)(C) and (E) for the 2006 $PM_{2.5}$ NAAQS.

On July 27, 2010, Michigan informed EPA that the State has both the legal and regulatory authority, as well as the resources, to permit GHG under its SIP-approved PSD permitting program, consistent with the thresholds laid out in the Tailoring Rule.[8] Therefore, EPA proposes that Michigan's GHG PSD permitting program has met this set of requirements of sections 110(a)(2)(C) and (E) for the 2006 $PM_{2.5}$ NAAQS.

The States of Ohio and Wisconsin have the legal authority under their approved PSD SIPs to regulate GHGs as part of their PSD permitting programs. In the PSD SIP Narrowing Rule, EPA narrowed its previous approval of these States' PSD programs to ensure that the Federally approved PSD programs in these two States only require PSD permitting of sources emitting GHG at or above the thresholds established in the Tailoring Rule.

On June 3, 2011, Ohio EPA transmitted a letter confirming that its 2006 $PM_{2.5}$ infrastructure SIP submittal before our review includes only those parts of their PSD SIP that remain approved after the PSD SIP Narrowing Rule. On March 28, 2011, Wisconsin transmitted a similar letter for the purposes of satisfying the same requirements for the 1997 ozone and $PM_{2.5}$ NAAQS infrastructure SIPs. Wisconsin also submitted revisions to its PSD program on May 4, 2011, adopting the Federal thresholds for GHG emitting sources. EPA is taking separate action on Wisconsin's May 4, 2011, submission, but for the purposes of evaluating WDNR's infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS, EPA notes that the portions of Wisconsin's submittal before our review include only those parts of the PSD SIP that remain approved after the PSD SIP Narrowing Rule. Thus, the GHG PSD permitting requirements included in the 2006 $PM_{2.5}$ NAAQS infrastructure SIP submittals from Ohio and Wisconsin consist of only those portions of their PSD SIP programs that apply PSD permitting requirements to GHG emissions at or above Tailoring Rule thresholds. Therefore, EPA proposes that the GHG PSD permitting program in Ohio and Wisconsin have met this set of requirements of sections 110(a)(2)(C) and (E) for the 2006 $PM_{2.5}$ NAAQS.

EPA reiterates that minor NSR regulations and NSR reform regulations are not in the scope of infrastructure SIP actions. Therefore, we are not proposing to approve or disapprove existing minor NSR regulations or NSR reform regulations for each of the Region 5 States' 2006 $PM_{2.5}$ NAAQS infrastructure SIP. Furthermore, various sub-elements in this section overlap with elements of section 110(a)(2)(E) and section 110(a)(2)(J). These links will be discussed in the appropriate areas below.

D. Section 110(a)(2)(D)—Interstate Transport

Section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state. Furthermore, section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any

[6] *http://www.epa.gov/NSR/actions.html#2010.*

[7] Section 110(a)(2)(E) requires that States have the resources to administer an air quality management program. Some States that are not covered by the Narrowing Rule may not be able to adequately demonstrate that they have adequate personnel to issue GHG permits to all sources that emit GHG under the Tailoring Rule thresholds.

[8] Letter from the Director of MDEQ to EPA Region 5 Regional Administrator dated July 27, 2010.

source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality or to protect visibility.

In this notice, we are not proposing to act on the portions of any state submittal intended to address the interstate transport requirements of section 110(a)(2)(D)(i)(I). We previously disapproved those portions of the SIP submittals from Indiana and Ohio (*see* 76 FR 43175), and today's action neither proposes to approve nor proposes to disapprove those portions of the SIP submittals from Illinois, Michigan, Minnesota, and Wisconsin. EPA intends to take separate action on the section 110(a)(2)(D)(i)(I) portion of the SIP submittals from Illinois, Michigan, Minnesota, and Wisconsin. Neither Indiana nor Ohio has a 110(a)(2)(D)(i)(I) SIP submittal pending before the Agency at this time.

With respect to the PSD requirements of section 110(a)(2)(D)(i)(II), EPA notes that each Region 5 State's satisfaction of the applicable infrastructure SIP PSD requirements for the 2006 $PM_{2.5}$ NAAQS has been detailed in the section addressing section 110(a)(2)(C). EPA notes that the proposed actions in that section related to PSD are consistent with the proposed actions related to PSD for section 110(a)(2)(D)(i)(II), and they are reiterated below.

Although Illinois and Minnesota have not adopted or submitted regulations for PSD, Federally promulgated rules for this purpose are in effect in each of the States, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. The PSD regulations in question include: (i) The explicit identification of SO_2 and NO_X as $PM_{2.5}$ precursors (and the significant emissions rates for direct $PM_{2.5}$, and SO_2 and NO_X as its precursors), consistent with the requirements of the 2008 NSR Rule; (ii) the regulation of $PM_{2.5}$ and PM_{10} condensables consistent with the requirements of the 2008 NSR Rule; (iii) the explicit identification of NO_X as a precursor to ozone consistent with the Phase 2 Rule; and, (iv) permitting of GHG emitting sources at the Federal Tailoring Rule thresholds. EPA acknowledges that the States have not satisfied the requirement for a SIP submission, which results in a proposed disapproval with respect to this set of infrastructure SIP requirements of section 110(a)(2)(D)(i)(II). However, Illinois and Minnesota have no further obligations to EPA because both States administer the Federally promulgated PSD regulations.

EPA is proposing to approve revisions to Indiana's PSD SIP that identify SO_2 and NO_X as $PM_{2.5}$ precursors, along with the significant emissions rates for direct $PM_{2.5}$ and SO_2 and NO_X as its precursors, consistent with the requirements of the 2008 NSR Rule. We are also proposing to approve revisions to Indiana's SIP that regulate $PM_{2.5}$ and PM_{10} condensables, consistent with the requirements of the 2008 NSR Rule. Lastly, EPA is proposing to approve revisions to Indiana's SIP that explicitly identify NO_X as a precursor to ozone, consistent with the requirements of the Phase 2 Rule. EPA approved revisions to Indiana's SIP on September 28, 2011, that incorporate the Federal thresholds for GHG emitting sources for PSD permitting. Therefore, EPA proposes that Indiana has met all of the infrastructure SIP requirements for PSD associated with section 110(a)(2)(D)(i)(II) for the 2006 $PM_{2.5}$ NAAQS.

EPA is proposing to disapprove the portions of infrastructure SIP submissions from Michigan, Ohio, and Wisconsin regarding $PM_{2.5}$ precursors, and $PM_{2.5}$ and PM_{10} condensables, in each of these States' PSD programs. These States have not made revisions to their PSD programs consistent with the requirements of the 2008 NSR Rule, and therefore EPA proposes that they have not met the infrastructure SIP requirements to identify $PM_{2.5}$ precursors, or regulate $PM_{2.5}$ and PM_{10} condensables, with respect to the PSD requirements of section 110(a)(2)(D)(i)(II).

EPA is proposing to disapprove the portions of infrastructure SIP submissions from Michigan and Ohio regarding the explicit identification of NO_X as a precursor to ozone in each of these States' PSD programs. These States have not made revisions to their PSD programs consistent with the requirements of the Phase 2 Rule, and therefore EPA proposes that they have not met the infrastructure SIP requirements to identify NO_X as a precursor to ozone with respect to the PSD requirements of section 110(a)(2)(D)(i)(II). As previously noted, EPA has already finalized disapproval of portions of Wisconsin's infrastructure SIP with respect to this requirement.

As stated above, EPA approved revisions to Indiana's SIP on September 28, 2011, that incorporate the Federal Tailoring Rule thresholds for GHG emitting sources. Michigan retains the necessary authority, resources, and personnel to permit GHG emitting sources at the Federal Tailoring Rule thresholds. Ohio and Wisconsin have the necessary authority to permit GHG emitting sources at the Federal Tailoring Rule, and both States have transmitted letters to EPA stating that their infrastructure SIPs before our review includes only those parts of their PSD SIP that remain approved after the PSD SIP Narrowing Rule. Thus, the GHG PSD permitting requirements included in the 2006 $PM_{2.5}$ NAAQS infrastructure SIP submittals from Ohio and Wisconsin consist of only those portions of their PSD SIP programs that apply PSD permitting requirements to GHG emissions at or above Tailoring Rule thresholds. EPA proposes that the States of Indiana, Michigan, Minnesota, and Ohio have met the infrastructure SIP requirements for permitting GHG emitting sources at the Federal Tailoring Rule thresholds with respect to the PSD requirements of section 110(a)(2)(D)(i)(II).

EPA reiterates once again that minor NSR regulations and NSR reform regulations are not in the scope of infrastructure SIP actions. Therefore, we are not proposing to approve or disapprove existing minor NSR regulations or NSR reform regulations for each of the Region 5 States' 2006 $PM_{2.5}$ NAAQS infrastructure SIP.

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2009 Memo states that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, and an approved SIP addressing regional haze.

EPA's final approval of Illinois' regional haze plan was published on July 6, 2012 (*see* 76 FR 39943). EPA's final approval of Indiana's regional haze plan was published on June 11, 2012 (*see* 77 FR 34218). EPA's final approval of Ohio's regional haze plan was published on July 2, 2012 (*see* 77 FR 39177). EPA's final approval of Minnesota's regional haze plan was published on June 12, 2012 (*see* 77 FR 34801). EPA's final approval of Wisconsin's regional haze plan was signed by the Regional Administrator on June 15, 2012, and is awaiting publication in the **Federal Register**. Therefore, EPA proposes that the States of Illinois, Indiana, Ohio, Minnesota, and Wisconsin have met this set of infrastructure SIP requirements of section 110(a)(2)(D)(i)(II) for the 2006 $PM_{2.5}$ NAAQS. EPA is taking separate action on Michigan's regional haze plan, which was submitted on November 5, 2010, and is not proposing to approve or disapprove the visibility protection

and regional haze plan requirements of section 110(a)(2)(D)(i)(II) for Michigan in today's action. We will address Michigan's satisfaction of the infrastructure SIP requirements related to visibility protection and regional haze of section 110(a)(2)(D)(i)(II) after EPA finalizes action on the regional haze submission.

Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 and section 115 (relating to interstate and international pollution abatement, respectively).

Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element.

While Illinois and Minnesota have not adopted or submitted regulations for PSD, Federally promulgated rules for this purpose are in effect in each of the States, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules contain provisions requiring new or modified sources to notify neighboring states of potential negative air quality impacts. EPA acknowledges that the States have not satisfied the requirement for a SIP submission, which results in a proposed disapproval with respect to this set of infrastructure SIP requirements of section 110(a)(2)(D)(ii). However, Illinois and Minnesota have no further obligations to EPA because both States administer the Federally promulgated PSD regulations.

Indiana, Michigan, Ohio, and Wisconsin have provisions in their respective EPA-approved PSD programs requiring new or modified sources to notify neighboring states of potential negative air quality impacts. The original submissions from Indiana, Michigan, and Wisconsin reference each State's PSD program as having adequate provisions to meet the requirements of section 126(a). Ohio EPA's June 3, 2011, supplemental submission clarifies that provisions in their PSD program satisfy the requirements of section 126(a). EPA is proposing that Indiana, Michigan, Ohio, and Wisconsin have met the infrastructure SIP requirements of section 126(a) with respect to the 2006 $PM_{2.5}$ NAAQS. None of the Region 5 States have obligations under any other section of section 126.

The original submissions from Indiana, Michigan, Minnesota, and Wisconsin affirm that none of these States have pending obligations under section 115, while Illinois EPA's August 25, 2011, and Ohio EPA's June 3, 2011, supplemental submissions confirmed the same satisfaction of section 115. EPA therefore is proposing that all Region 5 States have met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA (international pollution abatement).

E. Section 110(a)(2)(E)—Adequate Resources

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues. Section 110(a)(2)(E)(ii) also requires each state to comply with the requirements respecting state boards under section 128.

Sub-Element 1: Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

At the time of their submittal, Illinois EPA cited the most recent House Bill and Public Act in the State that provides appropriations for the Illinois Bureau of Air Programs and associated personnel. In addition to the environmental performance partnership agreement (EnPPA) with EPA, Illinois has confirmed that it retains all necessary resources to carry out required air programs. As discussed in previous sections, Illinois EPA has affirmed that 415 ILCS 5/4 and 415 ILCS 5/10 provide the Director, in conjunction with IPCB, with the authority to develop rules and regulations necessary to meet ambient air quality standards and respond to any EPA findings of inadequacy with the Illinois SIP program. Lastly, IPCB ensures compliance with required laws or elements of the State's attainment plan that are necessary to attain the NAAQS, or that are necessary to comply with the requirements of the CAA. EPA proposes that Illinois has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2006 $PM_{2.5}$ NAAQS.

Indiana's biennial budget and their EnPPA with EPA document funding and personnel levels for IDEM every two years. As discussed in earlier sections, IC 13–14–1–12 provides the Commissioner of IDEM with the authority to enforce air pollution control laws. Furthermore, IC 13–14–8, IC 13–17–3–11, and IC 13–17–3–14 contain the authority for IDEM to adopt air emissions standards and compliance schedules. EPA proposes that Indiana has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2006 $PM_{2.5}$ NAAQS.

Michigan's budget ensures that EPA grant funds as well as State funding appropriations are sufficient to administer its air quality management program, and MDEQ has routinely demonstrated that it retains adequate personnel to carry out the duties of this program. Michigan's EnPPA with EPA documents certain funding and personnel levels for MDEQ. Furthermore, Act 451 provides the legal authority under State law to carry out the Michigan SIP. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(E) with respect to the 2006 $PM_{2.5}$ NAAQS.

Minnesota provided information on the State's authorized spending by program, program priorities, and the State budget. MPCA's EnPPA with EPA provides the MPCA's assurances of resources to carry out certain air programs. EPA also notes that Minnesota Statute chapter 116.07 provides the legal authority under State law to carry out the SIP. EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(E) with respect to the 2006 $PM_{2.5}$ NAAQS.

Ohio EPA has included its most recent biennial budget with its submittal, which details the funding sources and program priorities addressing the required SIP programs. Ohio EPA has routinely demonstrated that it retains adequate personnel to administer its air quality management program. Ohio's EnPPA with EPA documents certain funding and personnel levels at Ohio EPA. As discussed in previous sections, ORC 3704.03 provides the legal authority under State law to carry out the SIP. EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(E) with respect to the 2006 $PM_{2.5}$ NAAQS.

Wisconsin's biennial budget ensures that EPA grant funds as well as State funding appropriations are sufficient to administer its air quality management program, and WDNR has routinely demonstrated that it retains adequate personnel to administer its air quality management program. Wisconsin's EnPPA with EPA documents certain funding and personnel levels at WDNR. As discussed in previous sections, basic duties and authorities in the State are outlined in WS chapter 285.11. EPA proposes that Wisconsin has met the

infrastructure SIP requirements of section 110(a)(2)(E) with respect to the 2006 $PM_{2.5}$ NAAQS.

As noted above in the discussion addressing section 110(a)(2)(C), the resources needed to permit all sources emitting more than 100 tpy or 250 tpy (as applicable) of GHG would require more resources than any Region 5 State appears to have. This is not a concern in Illinois and Minnesota, because PSD permitting for GHGs is based on Federally promulgated PSD rules that ''tailor'' the applicability to 75,000 tons per year (expressed as carbon dioxide equivalent).

Given the effect of EPA's Narrowing Rule to provide that approved SIPs for Ohio and Wisconsin do not involve permitting GHG sources smaller than the Tailoring Rule thresholds, EPA proposes that these States also have the resources necessary to implement the requirements of their respective SIPs.

As previously discussed, EPA approved revisions to Indiana's PSD program adopting the Federal Tailoring Rule thresholds for GHG on September 28, 2011. Therefore, Indiana's SIP as it relates to GHG-emitting sources for PSD does not involve permitting sources smaller than the Tailoring Rule thresholds, and EPA proposes that Indiana retains the resources necessary to implement the requirements of its SIP.

EPA confirms that Michigan's PSD regulations provide the State with adequate resources to permit GHG consistent with the Tailoring Rule thresholds; therefore, EPA proposes that Michigan retains all the resources necessary to implement the requirements of its SIP.

Sub-Element 2: State Board Requirements Under Section 128 of the CAA

Section 110(a)(2)(E) also requires each SIP to contain provisions that respect the state board requirements of section 128, which has two explicit requirements: (i) that 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 and enforcement orders under this chapter, and (ii) that 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.

In today's action, EPA is neither proposing to approve or disapprove each Region 5 State's satisfaction of the state board requirements of section 110(a)(2)(E)(ii). Instead, EPA will take separate action on compliance with section 110(a)(2)(E)(ii) for the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin at a later time. EPA is working with each of the Region 5 States to address these requirements in the most appropriate way.

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

Illinois EPA requires regulated sources to submit various reports, dependent on applicable requirements and the type of permit issued to the source. These reports are submitted to the Bureau of Air's Compliance Unit for review, and all reasonable efforts are made by Illinois EPA to maximize the effectiveness of available resources to review the required reports. EPA proposes that Illinois has satisfied the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2006 $PM_{2.5}$ NAAQS.

The Indiana State rules for monitoring requirements are contained in 326 IAC 3. Additional emissions reporting requirements are found in 326 IAC 2–6. Emission reports are available upon request by EPA or other interested parties. EPA proposes that Indiana has satisfied the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2006 $PM_{2.5}$ NAAQS.

Michigan Administrative Code (MAC) R336.2001 to R336.2004 provide requirements for performance testing and sampling. MAC R336.2101 to R336.2199 provide requirements for continuous emission monitoring, and MAC R336.201 and R336.202 require annual reporting of emissions. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2006 $PM_{2.5}$ NAAQS.

Under Minnesota State air quality rules, any NAAQS is an applicable requirement for stationary sources. Minnesota's monitoring rules have been previously approved by EPA and are contained in Chapter 7011 of Minnesota's SIP. Minnesota Statute chapter 116.07 gives MPCA the authority to require owners or operators of emission facilities to install and operate monitoring equipment, while Chapter 7007.0800 of Minnesota's SIP sets forth the minimum monitoring requirements that must be included in stationary source permits. Lastly, Chapter 7017 of Minnesota's SIP contains monitoring and testing requirements, including rules for continuous monitoring. EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2006 $PM_{2.5}$ NAAQS.

Ohio EPA district offices and local air agencies are currently required to witness 50% of all source testing and review 100% of all tests. EPA recognizes that Ohio has routinely submitted quality assured analyses and data for publication. Furthermore, requirements for continuous emissions monitoring under 40 CFR part 51, appendix P are contained in OAC 3745–17–03(c). EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2006 $PM_{2.5}$ NAAQS.

Wisconsin DNR requires regulated sources to submit various reports, dependent on applicable requirements and the type of permit issued, to the Bureau of Air Management Compliance Team. The frequency and requirements for report review are incorporated as part of Wisconsin Administrative Code NR 438 and Wisconsin Administrative Code NR 439. Additionally, WDNR routinely submits quality assured analyses and data obtained from its stationary source monitoring system for review and publication. Basic authority for Wisconsin's Federally mandated Compliance Assurance Monitoring reporting structure is provided in Wisconsin Statute Chapter 285.65. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2006 $PM_{2.5}$ NAAQS.

G. Section 110(a)(2)(G)—Emergency Powers

EPA is currently in the process of promulgating new guidance providing values that we would recommend for defining emergency episodes for $PM_{2.5}$. Subsequent to the December 2007 submittals, EPA has provided guidance regarding $PM_{2.5}$ emergency episode planning. This guidance was provided in Attachment B of a memorandum dated September 25, 2009, from the

Director of the Air Quality Policy Division to the Regional Air Division Directors. In accordance with this guidance, EPA believes that all states must have general emergency authority comparable to section 303 of the CAA. With respect to contingency plans, EPA believes that where a state can demonstrate that $PM_{2.5}$ levels have consistently remained below 140.4 micrograms per cubic meter (μg/m³), the state may satisfy section 110(a)(2)(G) without necessarily providing for specific emergency episode plans or contingency measures for 2006 $PM_{2.5}$ NAAQS.

On June 27, 2012, Illinois EPA confirmed that all monitored values of $PM_{2.5}$ have been well below 140.4 μg/m³ at all monitoring sites in Illinois, and therefore Illinois does not need to submit an emergency episode plan and contingency measures for $PM_{2.5}$ at this time. Illinois also has the necessary general authority to address emergency episodes, and these provisions are contained in 415 ILCS 5/34 and 415 ILCS 5/43(a). EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(G) with respect to the 2006 $PM_{2.5}$ NAAQS.

On June 25, 2012, IDEM confirmed that all monitored values of $PM_{2.5}$ have been well below 140.4 μg/m³ at all monitoring sites in Indiana since 1999, and therefore Indiana does not need to submit an emergency episode plan and contingency measures for $PM_{2.5}$ at this time. Several statutory provisions in the Indiana Code and the IAC provide the proper mechanisms to address air pollution emergency episodes. EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(G) with respect to the 2006 $PM_{2.5}$ NAAQS.

On July 9, 2012, MDEQ confirmed that all monitored $PM_{2.5}$ values in Michigan have been well below 140.4 μg/m³, therefore, MDEQ does not need to submit an emergency episode plan and contingency measures for $PM_{2.5}$ at this time. Michigan R 324.5518 of Act 451 provides MDEQ with the authority to require the immediate discontinuation of air contaminant discharges that constitute an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment. Furthermore, R 324.5530 of Act 451 provides for civil action by the Michigan Attorney General for violations described in R 324.5518. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(G) with respect to the 2006 $PM_{2.5}$ NAAQS.

On June 27, 2012, MPCA observed that all monitored values of $PM_{2.5}$ have been well below 140.4 μg/m³ at all monitoring sites in Minnesota since 2006. Therefore, Minnesota does not need to submit an emergency episode plan and contingency measures for $PM_{2.5}$ at this time. Chapter 7000.5000 and 7009.1050 of the Minnesota SIP contain the emergency powers set forth in the State. Chapter 7009.1000–7009.1110 of Minnesota SIP contain the provisions necessary for determining air quality emergency episodes. EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(G) with respect to the 2006 $PM_{2.5}$ NAAQS.

On July 5, 2012, Ohio EPA confirmed that all monitored values of $PM_{2.5}$ have been well below 140.4 μg/m³ at all monitoring sites in Ohio, and therefore Ohio does not need to submit an emergency episode plan and contingency measures for $PM_{2.5}$ at this time. OAC 3745–25 provides the requirement to implement emergency action plans in the event of an Air Quality Alert or higher. EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(G) with respect to the 2006 $PM_{2.5}$ NAAQS.

On July 2, 2012, WDNR confirmed that that all monitored values of $PM_{2.5}$ have been well below 140.4 μg/m³ at all monitoring sites in Wisconsin, and therefore Wisconsin does not need to submit an emergency episode plan and contingency measures for $PM_{2.5}$ at this time. WS chapter 285.85 provides the requirement for WDNR to act upon a finding that episode or emergency conditions exist. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(G) with respect to the 2006 $PM_{2.5}$ NAAQS.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or to an EPA finding that the SIP is substantially inadequate.

As previously mentioned, 415 ILCS 5/4 and 415 ILCS 5/10 provide the Director of Illinois EPA, in conjunction with IPCB, with the authority to develop rules and regulations necessary to meet ambient air quality standards. Furthermore, they have the authority to respond to any EPA findings of inadequacy with the Illinois SIP program. EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2006 $p.m._{2.5}$ NAAQS.

IDEM continues to update and implement needed revisions to Indiana's SIP as necessary to meet ambient air quality standards. As discussed in previous sections, authority to adopt emissions standards and compliance schedules is found at IC 13–4–8, IC 13–17–3–4, IC 13–17–3–11, and IC 13–17–3–14. EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2006 $p.m._{2.5}$ NAAQS.

Michigan Act 451 324.5503 and 324.5512 provides the authority to: promulgate rules to establish standards for ambient air quality and emissions; issue, deny, revoke, or reissue permits; make findings of fact and determinations; make, modify, or cancel orders that require the control of air pollution and/or permits rules and regulations necessary to meet NAAQS; and prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for control or prevention of any new air pollution. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to 2006 $p.m._{2.5}$ NAAQS.

Minnesota Statute chapter 116.07 grants the agency the authority to ''[a]dopt, amend, and rescind rules and standards having the force of law relating to any purpose * * * for the prevention, abatement, or control of air pollution.'' EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2006 $p.m._{2.5}$ NAAQS.

ORC 3704.03 provides the Director of Ohio EPA with the authority to develop rules and regulations necessary to meet ambient air quality standards. EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2006 $p.m._{2.5}$ NAAQS.

WS chapter 285.11(6) provides WDNR with the authority to develop all rules, limits, and regulations necessary to meet the NAAQS as they evolve, and to respond to any EPA findings of inadequacy with the overall Wisconsin SIP and air management programs. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2006 $p.m._{2.5}$ NAAQS.

I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas.

EPA has determined that section 110(a)(2)(I) is not applicable to the

infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; PSD; Visibility Protection

The evaluation of the Region 5 States' certifications addressing the requirements of section 110(a)(2)(J) are described below.

Sub-Element 1: Consultation With Government Officials

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements. All EPA Region 5 States consult with appropriate governments, stakeholders, and FLM in their planning efforts.

Illinois EPA is required to give notice to the Office of the Attorney General and the Illinois Department of Natural Resources during the rulemaking process. Furthermore, Illinois provides notice to reasonably anticipated stakeholders and interested parties, as well as to any FLM if the rulemaking applies to Federal land which the FLM has authority over. Additionally, Illinois EPA participates in the Lake Michigan Air Director's Consortium (LADCO), which consists of collaboration with the States of Indiana, Wisconsin, Michigan, and Ohio. Lastly, Illinois EPA participates in the Regional Haze Planning Process through its membership in the Midwest Regional Planning Organization. EPA proposes that Illinois has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2006 $p.m._{2.5}$ NAAQS.

IDEM actively participates in the regional planning efforts that include State rule developers, representatives from the FLMs, and other affected stakeholders. Additionally, Indiana is an active member of LADCO. EPA proposes that Indiana has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2006 $p.m._{2.5}$ NAAQS.

MDEQ actively participates in planning efforts that include stakeholders from local governments, the business community, and community activist groups. MDEQ also routinely involves FLMs and Tribal groups in Michigan SIP development. Michigan is also an active member of LADCO. Therefore, EPA proposes that Michigan has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2006 $p.m._{2.5}$ NAAQS.

MPCA actively participates in the Central Regional Air Planning Association as well as the Central States Air Resource Agencies. MPCA has historically participated in LADCO, and is in the process of becoming a full-time member of the organization. MPCA has also demonstrated that it frequently consults and discusses issues with pertinent Tribes. Therefore, EPA proposes that Minnesota has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2006 $p.m._{2.5}$ NAAQS.

Ohio EPA actively participates in the regional planning efforts that include both the State rule developers as well as representatives from the FLMs and other affected stakeholders. The FLMs are also included in Ohio EPA's interested party lists which provide announcements of draft and proposed rule packages. Additionally, Ohio is an active member of LADCO. Therefore, EPA proposes that Ohio has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2006 $p.m._{2.5}$ NAAQS.

WS chapter 285.13(5) contains the provisions for WDNR to advise, consult, contract, and cooperate with other agencies of the State and local governments, industries, other states, interstate or inter-local agencies, the Federal government, and interested persons or groups during the entire process of SIP revision development and implementation and for other elements regarding air management for which the agency is the officially charged agency. WDNR's Bureau of Air Management has effectively used formal stakeholder structures in the development and refinement of all SIP revisions. Additionally, Wisconsin is an active member of LADCO. EPA proposes that Wisconsin has satisfied the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2006 $p.m._{2.5}$ NAAQS.

Sub-Element 2: Public Notification

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and must enhance public awareness of measures that can be taken to prevent exceedances.

Illinois EPA continues to collaborate with the Cook County Department of Environmental Control. This consists of: continued and routine monitoring of air quality throughout the State, and notifying the public when unhealthy air quality is measured or forecasted. Illinois EPA provides air quality data to EPA's AIRNOW program, and also provides the daily air quality index (AQI) to the media. Additionally, Illinois EPA provides the AQI to local stakeholder groups including Partners for Clean Air in Chicago and the Clean Air Partnership in St. Louis. Lastly, air quality data, as well as measures that can be taken to prevent exceedances, are available on Illinois EPA's Web site. EPA proposes that Illinois has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2006 $p.m._{2.5}$ NAAQS.

IDEM monitors air quality data daily, and reports the AQI to the interested public and media if necessary. IDEM also participates and submits information to EPA's AIRNOW program, and maintains SmogWatch, which is an informational tool created by IDEM to share air quality forecasts for each day. SmogWatch provides daily information about ground-level ozone, particulate matter concentration levels, health information, and monitoring data for seven regions in Indiana. EPA proposes that Indiana has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2006 $p.m._{2.5}$ NAAQS.

MDEQ actively participates in programs such as Ozone Action, AIRNOW, and EnviroFlash. Additionally, MDEQ posts current air quality concentrations on the its web pages, and prepares an annual air quality report. EPA proposes that Michigan has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2006 $p.m._{2.5}$ NAAQS.

Minnesota consistently notifies the public when exceedances occur, participates in the AIRNOW program, and dedicates portions of the MPCA Web site to enhancing public awareness of measures that can be taken to prevent exceedances. EPA proposes that Minnesota has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2006 $p.m._{2.5}$ NAAQS.

Ohio EPA's district offices and local air agencies monitor air quality daily, and where required, report the daily AQI to the interested media. In addition, Ohio EPA's remote access of data system provides online reports of real time air quality data on the internet and feeds raw information to EPA's AIRNOW program. Furthermore, Ohio EPA actively involves local stakeholder groups in the AIRNOW forecast program. EPA proposes that Ohio has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2006 $p.m._{2.5}$ NAAQS.

In addition to maintaining an active monitoring network for multiple criteria pollutants (with NAAQS), WDNR also routinely forecasts air quality when elevated pollutant concentrations are

noted. Public notice is provided at levels associated with the extent of the monitored problems ranging from a simple advisory to alert levels, consistent with the provisions of WS chapter 285.11. Wisconsin also participates in the AIRNOW program, and dedicates portions of the WDNR Web site to enhancing public awareness of measures that can be taken to prevent exceedances. EPA proposes that Wisconsin has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2006 ozone and $PM_{2.5}$ NAAQS.

Sub-Element 3: PSD

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. All six Region 5 States have stated their commitment to addressing both long-term requirements to meet natural visibility levels by 2064 as well as concurrent review of new major sources and major modifications under each State's approved PSD NSR program. Each Region 5 State's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing section 110(a)(2)(C) and 110(a)(2)(D)(i)(II), and EPA notes that the proposed actions for those sections are consistent with the proposed actions for this portion of section 110(a)(2)(J). Our proposed actions are reiterated below.

Although Illinois and Minnesota have not adopted or submitted regulations for PSD, Federally promulgated rules for this purpose are in effect in each of the States, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. The PSD regulations in question include: (i) The explicit identification of SO_2 and NO_X as $PM_{2.5}$ precursors (and the significant emissions rates for direct $PM_{2.5}$, and SO_2 and NO_X as its precursors) consistent with the requirements of the 2008 NSR Rule; (ii) the regulation of $PM_{2.5}$ and PM_{10} condensables consistent with the requirements of the 2008 NSR Rule; (iii) the explicit identification of NO_X as a precursor to ozone consistent with the Phase 2 Rule; and, (iv) permitting of GHG emitting sources at the Federal Tailoring Rule thresholds. EPA acknowledges that the States have not satisfied the requirement for a SIP submission, which results in a proposed disapproval with respect to this set of infrastructure SIP requirements of section 110(a)(2)(D)(J). However, Illinois and Minnesota have no further obligations to EPA because both States administer the Federally promulgated PSD regulations.

EPA is proposing to approve revisions to Indiana's PSD SIP that identify SO_2 and NO_X as $PM_{2.5}$ precursors, along with the significant emissions rates for direct $PM_{2.5}$, and SO_2 and NO_X as its precursors, consistent with the requirements of the 2008 NSR Rule. We are also proposing to approve revisions to Indiana's SIP that regulate $PM_{2.5}$ and PM_{10} condensables, consistent with the requirements of the 2008 NSR Rule. Lastly, EPA is proposing to approve revisions to Indiana's SIP that explicitly identify NO_X as a precursor to ozone, consistent with the requirements of the Phase 2 Rule. EPA approved revisions to Indiana's SIP on September 28, 2011, that incorporate the Federal thresholds for GHG emitting sources for PSD permitting. Therefore, EPA proposes that Indiana has met all of the infrastructure SIP requirements for PSD associated with section 110(a)(2)(D)(J) for the 2006 p.m.$_{2.5}$ NAAQS.

EPA is proposing to disapprove the portions of infrastructure SIP submissions from Michigan, Ohio, and Wisconsin regarding $PM_{2.5}$ precursors, and $PM_{2.5}$ and PM_{10} condensables, in each of these States' PSD programs. These States have not made revisions to their PSD programs consistent with the requirements of the 2008 NSR Rule, and therefore EPA proposes that they have not met the infrastructure SIP requirements to identify $PM_{2.5}$ precursors, or regulate $PM_{2.5}$ and PM_{10} condensables, with respect to the PSD requirements of section 110(a)(2)(J).

EPA is proposing to disapprove the portions of infrastructure SIP submissions from Michigan and Ohio regarding the explicit identification of NO_X as a precursor to ozone in each of these States' PSD programs. These States have not made revisions to their PSD programs consistent with the requirements of the Phase 2 Rule, and therefore EPA proposes that they have not met the infrastructure SIP requirements to identify NO_X as a precursor to ozone with respect to the PSD requirements of section 110(a)(2)(J). As previously noted, EPA has already finalized disapproval of portions of Wisconsin's infrastructure SIP with respect to this requirement.

As stated above, EPA approved revisions to Indiana's SIP on September 28, 2011, that incorporate the Federal Tailoring Rule thresholds for GHG emitting sources. Michigan retains the necessary authority, resources, and personnel to permit GHG emitting sources at the Federal Tailoring Rule thresholds. Ohio and Wisconsin have the necessary authority to permit GHG emitting sources at the Federal Tailoring Rule, and both States have transmitted letters to EPA stating that their infrastructure SIPs before our review includes only those parts of their PSD SIP that remain approved after the PSD SIP Narrowing Rule. Thus, the GHG PSD permitting requirements included in the 2006 $PM_{2.5}$ NAAQS infrastructure SIP submittals from Ohio and Wisconsin consist of only those portions of their PSD SIP programs that apply PSD permitting requirements to GHG emissions at or above Tailoring Rule thresholds. EPA proposes that the States of Indiana, Michigan, Minnesota, and Ohio have met the infrastructure SIP requirements for permitting GHG emitting sources at the Federal Tailoring Rule thresholds with respect to the PSD requirements of section 110(a)(2)(D)(J).

EPA reiterates once again that minor NSR regulations and NSR reform regulations are not in the scope of infrastructure SIP actions. Therefore, we are not proposing to approve or disapprove existing minor NSR regulations or NSR reform regulations for each of the Region 5 States' 2006 $PM_{2.5}$ NAAQS infrastructure SIP.

Sub-Element 4: Visibility Protection

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (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, we find 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.

EPA's final approval of Illinois' regional haze plan was published on July 6, 2012 (*see* 76 FR 39943). EPA's final approval of Indiana's regional haze plan was published on June 11, 2012 (*see* 77 FR 34218). EPA's final approval of Ohio's regional haze plan was published on July 2, 2012 (*see* 77 FR 39177). EPA's final approval of Minnesota's regional haze plan was published on June 12, 2012 (*see* 77 FR 34801). EPA's final approval of Wisconsin's regional haze plan was signed by the Regional Administrator on June 15, 2012, and is awaiting publication in the **Federal Register.** Therefore, EPA proposes that the States of Illinois, Indiana, Ohio, Minnesota, and Wisconsin have met this set of requirements of section 110(a)(2)(J). EPA is taking separate action on Michigan's

regional haze plan, which was submitted on November 5, 2010, and is not proposing to approve or disapprove the visibility protection and regional haze plan requirements of section 110(a)(2)(J) for Michigan in today's action. We will address Michigan's satisfaction of the infrastructure SIP requirements related to visibility protection and regional haze of section 110(a)(2)(J) after EPA finalizes action on the regional haze submission.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

SIPs must provide for performing air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and submission of such data to EPA upon request.

Illinois EPA maintains the capability to perform modeling of the air quality impacts of emissions of all criteria pollutants, including the capability to use complex photochemical grid models. This modeling is used in support of the SIP for all nonattainment areas in the State. Illinois EPA also requires air quality modeling in support of permitting the construction of major and some minor new sources under the PSD program. These modeling data are available to EPA as well as the public upon request. Lastly, Illinois EPA participates in LADCO, which conducts regional modeling that is used for statewide planning purposes. EPA proposes that Illinois EPA has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2006 $PM_{2.5}$ NAAQS.

IDEM continues to review the potential impact of major and some minor new sources using computer models. Indiana's rules regarding air quality modeling are contained in 326 IAC 2–2–4, 326 IAC 2–2–5, 326 IAC 2–2–6, and 326 IAC 2–2–7. These modeling data are available to EPA or other interested parties upon request. EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2006 $PM_{2.5}$ NAAQS.

MDEQ reviews the potential impact of major and some minor new sources, consistent with 40 CFR part 51, appendix W, ''Guidelines on Air Quality Models.'' These modeling data are available to EPA upon request. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2006 $PM_{2.5}$ NAAQS.

MPCA reviews the potential impact of major and some minor new sources. Applicable major sources in Minnesota are required to perform modeling to show that emissions do not cause or contribute to a violation of any NAAQS. Furthermore, MPCA maintains the capability to perform its own modeling. Because Minnesota administers the Federally promulgated PSD regulations, pre-construction permitting modeling is conducted in compliance with EPA's regulations. EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2006 $PM_{2.5}$ NAAQS.

Ohio EPA reviews the potential impact of major and some minor new sources, consistent with 40 CFR part 51, appendix W, ''Guidelines on Air Quality Models,'' as well as Ohio EPA Engineering Guide 69. These modeling data are available to EPA upon request. EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2006 $PM_{2.5}$ NAAQS.

WDNR maintains the capability to perform computer modeling of the air quality impacts of emissions of all criteria pollutants, including both source-oriented and more regionally directed complex photochemical grid models. WDNR collaborates with LADCO, EPA, and other Lake Michigan States in order to perform modeling. The authorities to perform modeling in Wisconsin reside in WS chapter 285.11, WS chapter 285.13, and WS chapter 285.60—285.69. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2006 $PM_{2.5}$ NAAQS.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

Illinois EPA implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62946); therefore, EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(L).

IDEM implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62969); revisions to program were approved on August 13, 2002 (67 FR 52615). EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(L).

MDEQ implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62949); revisions to the program were approved on November 10, 2003 (68 FR 63735). EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(L).

MPCA implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62967); therefore, EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(L).

Ohio EPA implements and operates the title V permit program, which EPA approved on August 15, 1995 (60 FR 42045); revisions to the program were approved on November 20, 2003 (68 FR 65401). EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(L).

WDNR implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62951); revisions to the program were approved on February 28, 2006 (71 FR 9934). EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(L).

EPA proposes that all Region 5 States have met the infrastructure SIP requirements of section 110(a)(2)(L) with respect to 2006 $PM_{2.5}$ NAAQS.

M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities

States must consult with and allow participation from local political subdivisions affected by the SIP.

All public participation procedures pertaining to Illinois EPA are consistent with 35 Illinois Administrative Code Part 164 and Part 252. Part 252 is an approved portion of Illinois' SIP. EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2006 $PM_{2.5}$ NAAQS.

Any IDEM rulemaking procedure contained in IC 13–14–9 requires public participation in the SIP development process. In addition, IDEM ensures that the requirements of 40 CFR 51.102 are satisfied during the SIP development process. EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2006 $PM_{2.5}$ NAAQS.

In Michigan, memoranda of understanding regarding consultation or participation in the SIP development process have been entered between MDEQ and local political subdivisions. MDEQ also provides opportunity for stakeholder workgroup participation in rule development processes. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2006 $PM_{2.5}$ NAAQS.

Minnesota regularly consults with local political subdivisions affected by the SIP, where applicable. EPA observes that Minnesota Statute chapter 116.05 authorizes cooperation and agreement between MPCA and other State and local governments. Additionally, the Minnesota Administrative Procedures

Act (Minnesota Statute chapter 14) provides general notice and comment procedures that are followed during SIP development. Lastly, MPCA regularly issues public notices on proposed actions. EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2006 $PM_{2.5}$ NAAQS.

Ohio EPA follows approved procedures for allowing public participation, consistent with OAC 3745–47, which is part of the approved SIP. EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2006 $PM_{2.5}$ NAAQS.

In addition to the measures outlined in the paragraph addressing WDNR's submittal regarding consultation requirements of section 110(a)(2)(J), as contained in WS chapter 285.13(5), the State follows a formal public hearing process in the development and adoption of all SIP revisions that entail new or revised control programs or strategies and targets. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2006 $PM_{2.5}$ NAAQS.

V. What action is EPA taking?

EPA is proposing to approve some elements and disapprove remaining elements of submissions from the EPA Region 5 States certifying that the current SIPs are sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2006 $PM_{2.5}$ NAAQS. EPA is also proposing to approve portions of a submittal from Indiana intended to meet EPA's requirements for the NSR and PSD program in that State. Specifically, they include: (i) 326 IAC 2–1.1–1(2); (ii) 326 IAC 2–1.1–1(10); (iii) 326 IAC 2–2–1(dd)(1); (iv) 326 IAC 2–2–1(ff)(7); (v) 326 IAC 2–2–1(ss)(1); (vi) 326 IAC 2–2–1(ww)(1)(F); (vii) 326 IAC 2–2–1(ww)(1)(G); and, (viii) 326 IAC 2–2–4(b)(2)(vi).

EPA's proposed actions for each Region 5 State's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) are contained in the table below.

Element	IL	IN	OH	MI	MN	WI
A: Emission limits and other control measures	A	A	A	A	A	A
B: Ambient air quality monitoring and data system	A	A	A	A	A	A
C1: Enforcement of SIP measures	A	A	A	A	A	A
C2: $PM_{2.5}$ precursors for PSD	D,*	A	D	D	D,*	D
C3: $PM_{2.5}$ and PM_{10} condensables for PSD	D,*	A	D	D	D,*	D
C4: NOx as a precursor to ozone for PSD	D,*	A	D	D	D,*	NA
C5: GHG permitting thresholds in PSD regulations	D,*	A	A	A	D,*	A
D1: Contribute to nonattainment/interfere with maintenance of NAAQS	NA	NA	NA	NA	NA	NA
D2: PSD	**	**	**	**	**	**
D3: Visibility Protection	A	A	A	NA	A	A
D4: Interstate Pollution Abatement	D,*	A	A	A	D,*	A
D5: International Pollution Abatement	A	A	A	A	A	A
E: Adequate resources	A	A	A	A	A	A
E: State boards	NA	NA	NA	NA	NA	NA
F: Stationary source monitoring system	A	A	A	A	A	A
G: Emergency power	A	A	A	A	A	A
H: Future SIP revisions	A	A	A	A	A	A
I: Nonattainment area plan or plan revisions under part D	NA	NA	NA	NA	NA	NA
J1: Consultation with government officials	A	A	A	A	A	A
J2: Public notification	A	A	A	A	A	A
J3: PSD	**	**	**	**	**	**
J4: Visibility protection (Regional Haze)	A	A	A	NA	A	A
K: Air quality modeling and data	A	A	A	A	A	A
L: Permitting fees	A	A	A	A	A	A
M: Consultation and participation by affected local entities	A	A	A	A	A	A

In the above table, the key is as follows:
A Approve.
NA No Action/Separate Rulemaking.
D Disapprove.
* Federally promulgated rules in place.
** Previously discussed in element (C).

To clarify, EPA is proposing to disapprove the infrastructure SIP submissions from Illinois and Minnesota with respect to certain PSD requirements including: (i) The explicit identification of SO_2 and NO_X as $PM_{2.5}$ precursors (and the significant emissions rates for direct $PM_{2.5}$, and SO_2 and NO_X as its precursors) consistent with the requirements of the 2008 NSR Rule; (ii) the regulation of $PM_{2.5}$ and PM_{10} condensables consistent with the requirements of the 2008 NSR Rule; (iii) the explicit identification of NO_X as a precursor to ozone consistent with the Phase 2 Rule; and, (iv) permitting of GHG emitting sources at the Federal Tailoring Rule thresholds.

EPA is also proposing to disapprove the infrastructure SIP submissions from Illinois and Minnesota with respect to the requirements of section 110(a)(2)(D)(ii) related to interstate pollution abatement. Specifically, this section requires states with PSD programs have provisions requiring a new or modified source to notify neighboring states of the potential impacts from the source, consistent with the requirements of section 126(a).

However, Illinois and Minnesota have no further obligations to EPA because Federally promulgated rules, promulgated at 40 CFR 52.21 are in effect in each of these States. EPA has delegated the authority to Illinois and Minnesota to administer these rules, which include provisions related to PSD and interstate pollution abatement. A final disapproval for Illinois or Minnesota for these infrastructure SIP requirements will not result in sanctions under section 179(a), nor will it obligate EPA to promulgate a FIP within two years of final action if the States do not submit revisions to their PSD SIPs addressing these deficiencies. Instead, Illinois and Minnesota are already administering the Federally promulgated PSD regulations.

The grounds for EPA's proposed disapproval of portions of the infrastructure SIP submittals from Ohio, Michigan, and Wisconsin are very narrow, and pertain only to these specific deficiencies in the States' SIPs described in the relevant sections of this proposed action.

As previously discussed, Michigan and Ohio have been working on revisions to their PSD programs, consistent with the requirements of the Phase 2 Rule and the 2008 NSR Rule. We will work with the States to rectify these issues promptly. In addition, EPA will work with WDNR to account for the explicit identification of precursors to $PM_{2.5}$, as well as $PM_{2.5}$ and PM_{10} condensables, in its PSD program.[9]

Under section 179(a) of the CAA, final disapproval of a submission that addresses a requirement of a Part D Plan (section 171—section 193 of the CAA), or is required in response to a finding of substantial inadequacy as described in section 110(k)(5) starts a sanction clock. The provisions in the submissions we are disapproving were not submitted by Michigan, Ohio, or Wisconsin to meet either of those requirements. Therefore, if EPA takes final action to disapprove these submissions, no sanctions under section 179 will be triggered.

The full or partial disapproval of a SIP revision triggers the requirement under section 110(c) that EPA promulgate a FIP no later than two years from the date of the disapproval unless the state corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. As previously mentioned, EPA anticipates that MDEQ and Ohio EPA will make submissions rectifying each of these deficiencies. Further, EPA anticipates acting on the submissions within the two year time frame prior to our FIP obligation on these very narrow issues. In the interim, EPA expects Michigan and Ohio to treat and explicitly identify NO_X as a precursor to ozone for PSD permitting consistent with the requirements of the Phase 2 Rule. EPA also expects these States to adhere to the requirements of the 2008 NSR Rule with respect to the treatment and identification of $PM_{2.5}$ precursors and the accounting for $PM_{2.5}$ and PM_{10} condensables in permitting emissions limits in their respective PSD programs.

[9] Although not specific to this action, EPA will also continue to work with WDNR to ensure that revisions to the State's PSD program contain provisions that explicitly identify NO_X as a precursor to ozone, consistent with the Phase 2 Rule.

EPA will actively work with Wisconsin to incorporate changes to its PSD program that explicitly identify $PM_{2.5}$ precursors and account for $PM_{2.5}$ and PM_{10} condensables in permitting emissions limits, consistent with the 2008 NSR Rule. In the interim, EPA expects WDNR to adhere to the associated requirements of the 2008 NSR Rule in its PSD program, specifically with respect to the explicit identification of $PM_{2.5}$ precursors, and the accounting for $PM_{2.5}$ and PM_{10} condensables in permitting emissions limits.

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 20, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–18880 Filed 8–1–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2011–0194; FRL–9709–4]

Approval and Promulgation of State Implementation Plans: Idaho; Boise-Northern Ada County Air Quality Maintenance Area; Second 10-Year Carbon Monoxide Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Idaho (the State). The Idaho State Department of Environmental Quality (IDEQ) submitted the Northern Ada County Air Quality Maintenance Area Second 10-year Carbon Monoxide Maintenance Plan on February 10, 2011. In accordance with the requirements of the Federal Clean Air Act (the Act), EPA is proposing to approve the revision because the State adequately demonstrates that the Boise-Northern Ada County Air Quality Maintenance Area will maintain air quality standards for carbon monoxide (CO) through the year 2022.

DATES: Comments must be received on or before September 4, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–

OAR–2011–0194, by any of the following methods:

• *www.regulations.gov:* Follow the on-line instructions for submitting comments.

• *Email: chi.john@epa.gov*

• *Mail:* John Chi, U.S. EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle WA, 98101.

• *Hand Delivery/Courier:* U.S. EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: John Chi, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: John Chi at telephone number: (206) 553–1230, email address: *chi.john@epa.gov,* fax number: (206) 553–0110, or Claudia Vergnani Vaupel at telephone number: (206) 553–6121, email address: *vaupel.claudia@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: For further information, please see the direct final action, of the same title, which is located in the Rules section of this **Federal Register**. EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule.

If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: July 23, 2012.

Dennis J. McLerran,

Regional Adminstrator, EPA Region 10.

[FR Doc. 2012–18786 Filed 8–1–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1999–0010–; FRL–9704–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Eastland Woolen Mill Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 1 is issuing a Notice of Intent to Delete the following properties at the Eastland Woolen Mill Superfund Site (Site) located in Corinna, Maine, from the National Priorities List (NPL) and requests public comments on this proposed action.

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Maine, through the Maine Department of Environmental Protection, have determined that all appropriate response actions at these identified parcels under CERCLA, other than and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

This partial deletion pertains to all Site media (including soil and groundwater).

DATES: Comments must be received by September 4, 2012.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1999–0010, by one of the following methods:

• *http://www.regulations.gov:* Follow on-line instructions for submitting comments.

• *Email: hathaway.ed@epa.gov.*

• *Fax:* 1–617–918–0372.

• *Mail:* Edward Hathaway, U.S. EPA Remedial Project Manager, 5 Post Office Square (OSRR07–1), Boston, MA 02109–3912.

• *Hand Delivery:* Edward Hathaway, U.S. EPA Remedial Project Manager, 5 Post Office Square (OSRR07–1), Boston, MA 02109–3912. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1999–0010. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *http://www.regulations.gov* or email. The *http://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 *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or on disk or physical copy at:

EPA Region 1 Record Center, 5 Post Office Square, Boston, MA 02109. Phone: 1–617–918–1440. Hours: Mon–Fri 8 a.m. to 5 p.m.

Stewart Free Library, 8 Levi Stewart Drive, Corinna, ME 04928. Phone: 1–207–278–2454. Hours: Tuesday: 9

a.m.–2 p.m.; Wednesday: 1 p.m.–7 p.m.; Thursday: 1 p.m.–7 p.m.; Friday: 9 a.m.–2 p.m.

FOR FURTHER INFORMATION CONTACT: Edward Hathaway, Remedial Project Manager, U.S. Environmental Protection Agency, Region 1, OSRR07–1, 5 Post Office Square, Boston, MA 02109–3912 (617) 918–1372 email: *hathaway.ed@epa.gov*.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Partial Deletion for the following properties at the Eastland Woolen Mill Superfund Site without prior Notice of Intent for Partial Deletion because EPA views this as a noncontroversial revision and anticipates no adverse comment.

Properties owned by the Town of Corinna that include properties described in Quitclaim Deed dated August 18, 1997 and recorded in Book C6471, Page 278, also identified as Lot 118 in Tax Map 18 dated 2004 and several additional properties that were part of the former Eastland Woolen Mill complex that were acquired due to a tax foreclosure. The tax foreclosure properties are described in the Penobscot County Registry of Deeds in Condemnation Order dated December 8, 1999 and recorded in Book 7251, Page 47, a portion of the property has been subdivided in accordance with a plan dated October 19, 2004 entitled, ''Subdivision Plan for the Town of Corinna of Main Street Subdivision on Main Street, Hill Street & St. Albans Road in Corinna, County of Penobscot, Maine,'' recorded in said Registry in Plan File 2004, No. 167 (the ''Subdivision Plan''). Specifically subdivision Lots 2, 3, 4, 5, 6, 8, 9, 10, the portion of Subdivision Lot 1 north of the Central Maine Power property and a portion of Lot 54 on Tax Map 18, along with Lot 53 on Tax Map 18 are proposed for deletion. The portions of Main Street and Hill Street within the subdivision are also proposed for deletion. Lot 53 on Tax Map 18 is also recorded in Book 853, Page 391, as a warranty deed dated September 26, 1913 and is known as ''Winchester Park''.

Property owned by the State of Maine Department of Conservation identified in Release Deed dated December 5, 2003 Book 9114, Page 194, also identified in Tax Map 18 as Map 15 Lot 10 (which a portion of the State of Maine Department of Conservation recreational trail that runs through the Town of Corinna).

Property owned by the State of Maine Department of Transportation described in a Notice of Layout and Taking dated May 3, 2000 and recorded in the Penobscot County Registry of Deeds in Book 7357, Page 29, and being generally depicted on the Survey Plan Showing Property Subject to Proposed Environmental Covenants for Maine Department of Environmental Protection, Corinna, Penobscot County, Maine which is recorded in the Penobscot County Registry of Deeds as Plan File 2012 No. 20, dated March 29, 2012, but excluding the portion of the Maine Department of Transportation property bounded by Town of Corinna Subdivision Lot 1; the East Branch of the Sebasticook River, Route 7, and Nokomis Road.

Property owned by Central Maine Power identified in indenture dated May 2, 1956 and recorded in the Penobscot County Registry of Deeds in Book 1532, Page 228, and generally depicted as Central Maine Power Company land in the Town of Corinna tax records as Lot 4 on Tax Map 20.

The properties proposed for deletion are shown in Figure 11 of Partial Deletion Technical Memorandum dated June 2012 and will be referred to hereafter as ''the properties proposed for deletion''. All Tax Map references are based on the Town of Corinna 2004 Tax Maps and the ''Survey Plan Showing Property Subject to Proposed Environmental Covenants for Maine Department of Environmental Protection, Corinna, Penobscot County, Maine'' which is recorded in the Penobscot County Registry of Deeds as Plan File 2012 No. 20, dated March 29, 2012.

We have explained our reasons for this partial deletion in the preamble to the direct final Notice of Partial Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this partial deletion action, we will not take further action on this Notice of Intent for Partial Deletion. If we receive adverse comment(s), we will withdraw the direct final Notice of Partial Deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Partial Deletion based on this Notice of Intent for Partial Deletion. We will not institute a second comment period on this Notice of Intent for Partial Deletion. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Partial Deletion which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: July 16, 2012.

Ira W. Leighton,

Acting Regional Administrator, Region 1.

[FR Doc. 2012–18659 Filed 8–1–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383

[Docket No. FMCSA–2012–0172]

RIN 2126–AB43

Self Reporting of Out-of-State Convictions

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

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: Current regulations require both commercial driver's license (CDL) holders and States with certified CDL programs to report a CDL holder's out-of-State traffic conviction to the driver's State of licensure. FMCSA proposes to reduce the impact of this reporting redundancy by providing that if a State in which the conviction occurs has a certified CDL program in substantial compliance with FMCSA's regulations, then an individual CDL holder convicted in that State is considered to be in compliance with his/her out-of-State traffic conviction reporting obligations because the State where the conviction occurred will report the violation to the CDL holder's State of licensure. This proposed change would reduce a regulatory burden on both individuals and States.

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

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2012–0172 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online 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 or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

• *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Robert Redmond, Office of Enforcement and Program Delivery, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at (202) 366–5014 or via email at *robert.redmond@dot.gov.* Office hours are from 9 a.m. to 5 p.m. ET, Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, contact Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments
A. Submitting Comments
B. Viewing Comments and Documents
C. Privacy Act
II. Legal Basis for the Rulemaking
III. Background
IV. Discussion of Proposed Rule
V. Regulatory Analyses

I. Public Participation and Request for Comments

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

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2012–0172), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comment and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and click on the ''Submit a Comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop-down menu, select ''Proposed Rules,'' insert ''FMCSA–2012–0172'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Submit a Comment'' in the ''Actions'' column. If you submit your comment by mail or hand delivery, submit it in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit your comment by mail and would like to know that it reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change the proposed rule based on your comment.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble, available in the docket, go to *http://www.regulations.gov* and click on the ''Read Comments'' box in the upper right-hand side of the screen. Then in the ''Keyword'' box, insert ''FMCSA–2012–0172'' and click ''Search.'' Next, click the ''Open Docket Folder'' in the ''Actions'' column. Finally, in the ''Title'' column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's (DOT) Privacy Act Statement for the Federal Docket Management System 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.*

II. Legal Basis for the Rulemaking

Congress enacted the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) [Pub. L. 99–570, Title XII, 100 Stat. 3207–170, 49 U.S.C. chapter 313] to improve highway safety by ensuring that drivers of large trucks and buses are qualified to operate those vehicles and to remove unsafe and unqualified drivers from the highways. To achieve these goals, the CMVSA established the Commercial Driver's License (CDL) Program and required States to ensure that drivers convicted of certain serious traffic violations are prohibited from operating commercial motor vehicles (CMVs). Although State participation in the CDL program is voluntary, the CMVSA created incentives by conditioning certain Federal highway and grant funding on States maintaining a certified CDL program (CMVSA §§ 12010, 12011, codified at 49 U.S.C. 31313, 31314). One of the CMVSA's CDL program requirements was that States report CDL holders' out-of-State traffic convictions to their licensing States within 10 days of the conviction (CMVSA § 12009(a)(9)). The CMVSA also established a requirement for CDL holders to report these same out-of-State traffic convictions to their licensing States within 30 days of the conviction (CMVSA § 12003(a)(1), codified at 49 U.S.C. 31303(a)). Congress authorized the Secretary to issue regulations to implement these provisions (CMVSA § 12018(a), codified at 49 U.S.C. 31317). The Federal Highway Administration (FHWA), FMCSA's predecessor, subsequently issued regulations, including 49 CFR 383.31(a), which implemented the requirement that CDL holders report out-of-State traffic convictions to their licensing States (52 FR 20574, June 1, 1987). FHWA did not issue regulations implementing the States' reporting requirement at that time.

On July 5, 1994, Congress recodified title 49 of the United States Code (U.S.C.) [Pub. L. 103–272, 108 Stat. 475 (the 1994 Recodification Act)]. Among other things, the 1994 Recodification Act corrected an ambiguity in CMVSA § 12009(a)(9). The wording of the statute did not make clear who had the obligation to report the CDL holders' out-of-State violations: The State or the driver. The 1994 Recodification Act added language making it explicit that *States* must report an out-of-State CDL holder's traffic conviction to the licensing State within 10 days of the

conviction (108 Stat. 1024, 49 U.S.C. 31311(a)(9)). However, Congress did not repeal the requirement that individual CDL holders report the same information within 30 days of conviction.

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) [Pub. L. 106–159, 113 Stat. 1748] amended numerous provisions of title 49 of the U.S.C., related to the licensing and sanctioning of CMV drivers required to hold a CDL and directed the Secretary to amend regulations to correct specific weaknesses in the CDL program. One such provision directed the Secretary to develop a uniform system for the State-to-State electronic transmission of the out-of-State CDL holders' traffic conviction information. FMCSA subsequently issued regulations implementing MCSIA and other statutory requirements, including CMVSA § 12009(a)(9). Those regulations included 49 CFR 384.209, which requires States to report out-of-State CDL holders' traffic convictions to their licensing States as a minimum requirement of maintaining a certified CDL program (67 FR 49742, July 31, 2002).

The FMCSA Administrator has been delegated authority under 49 CFR 1.73(e)(1) to carry out the CMVSA functions vested in the Secretary.

III. Background

Presidential Executive Order (E.O.) 13563, issued January 18, 2011, ''Improving Regulation and Regulatory Review'' (76 FR 3821, January 21, 2011), prompted DOT to publish a notice in the **Federal Register** (76 FR 8940, February 16, 2011). This notice requested comments on a plan for reviewing existing rules, as well as identification of existing rules that DOT should review because they may be outmoded, ineffective, insufficient, or excessively burdensome. DOT placed all retrospective regulatory review comments, including a transcript of a March 14, 2011, public meeting, in docket DOT–OST–2011–0025. DOT received comments from 102 members of the public, with many providing multiple suggestions.

In connection with this initiative, a commenter identified as appropriate for review the requirements of 49 CFR 383.31(a) and 384.209, which provide for both individual CDL holders and States with certified CDL programs to report the same information about CDL holders' out-of-State convictions. FMCSA agreed with this suggestion. Although States are not required to participate in FMCSA's CDL certification program, all 50 States and the District of Columbia currently maintain certified programs, due in part to the financial incentives described above. In practice, this means that compliance with both §§ 383.31(a) and 384.209 has resulted in a reporting redundancy.

Both individual CDL holders and States have previously informed FMCSA that they believe this redundancy creates an unnecessary burden. Many States have reported to FMCSA that they do not have systems in place to process the information that comes from individuals and that they prefer to receive the information through official State-to-State communications, which are more efficient and secure. Currently, all States but one use the telecommunications network associated with the Commercial Driver's License Information System (CDLIS), a clearinghouse and repository administered by the American Association of Motor Vehicle Administrators (AAMVA), to transmit this information electronically. The remaining State transmits the information via mail. Therefore individual communications from CDL holders are redundant and inefficient.

IV. Discussion of Proposed Rule

This rule proposes to reduce the burden on individuals and States by harmonizing the requirements of §§ 383.31 and 384.209. FMCSA reads the statutory provisions authorizing these regulations, 49 U.S.C. 31303(a) and 31311(a)(9), as two elements of the CDL program Congress originally established in CMVSA, as opposed to separate or independent requirements. Reading the statutory provisions together as a part of an integrated regulatory scheme, the Agency believes that Congress intended for States to obtain accurate and timely information about their CDL holders' out-of-State traffic convictions so States are able to impose the appropriate sanctions for disqualifying offenses. The Agency does not believe that redundant reporting adds any special value to the CDL regulatory scheme. Rather, FMCSA believes that Congress created the statutory redundancy because State participation in the CDL program is voluntary, and as a result, it saw the need to create a method of reporting in the event that a State does not maintain a certified CDL program. That said, there currently exists a reporting redundancy because all 51 eligible jurisdictions have certified CDL programs and therefore must report a CDL holder's out-of-State traffic convictions (49 CFR 384.209).

To reduce this redundancy, FMCSA proposes to amend § 383.31 to provide that if the State in which a CDL holder is convicted for a traffic control violation has an FMCSA-certified CDL program, the Agency will consider the CDL holder to be in compliance with § 383.31(a) because the State where the conviction occurred will report the violation to the CDL holder's State of licensure. FMCSA believes that this change would effectuate Congress's intent that States have the requisite information to remove unsafe and unqualified drivers from the highways, while minimizing inefficiencies and reducing an unnecessary administrative burden on both individual CDL holders and States.

V. Regulatory Analyses

E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

FMCSA has determined that this proposed rule is a not significant regulatory action within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), or within the meaning of DOT regulatory policies and procedures because the proposed rule is not expected to generate substantial congressional or public interest. The estimated cost of the proposed rule is not expected to exceed the $143.1 million [1] annual threshold for economic significance; therefore, any costs associated with the rule are expected to be minimal. The proposed rule would reduce a regulatory burden on current reporting requirements affecting individuals and States and thus should result in decreased economic burden. This rule would not require a change in the business practice of already compliant states currently using CDLIS, the clearinghouse and repository system. The Agency expects this rule to generate cost savings in the form of reduced paperwork burdens.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small

[1] This is the value equivalent of $100 million in CT 1995, adjusted for inflation to CY 2010 levels by the Consumer Price Index for All Urban consumers (CPI–U) as published by the Bureau of Labor Statistics. Office of the Secretary of Transportation Memo: Threshold of Significant Regulatory Actions Under the Unfunded Mandates Reform Act of 1995. July 5, 2011.

businesses and 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 [2].

Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), the proposed rule is not expected to have a significant economic impact on a substantial number of small entities. Consequently, I certify the proposed action would not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Robert Redmond, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's 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 to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

Unfunded Mandates Reform Act

This rulemaking would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $143.1 million [3] or more in any one year. Any agency circulating a rule likely to result in a Federal mandate requiring expenditures by a State, local, or Tribal government or by the private sector of $143.1 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act.

E.O. 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of Executive Order 13132 if it has ''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.'' FMCSA has determined that this proposal would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation.

E.O. 13175 (Indian Tribal Governments)

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

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FMCSA has determined that there is no new information collection requirement associated with this proposed rule. FMCSA expects that this rule would result in a paperwork burden reduction that cannot be quantified because States do not have mechanisms for tracking or processing driver-reported out-of-State traffic convictions. States rely on State-to-State reporting to gather this information, which is more accurate and secure than driver self-reporting.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this notice of proposed rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1(69 FR 9680, March 1, 2004), Appendix 2, paragraph (s)(2). The Categorical Exclusion (CE) in paragraph (s)(2) covers requirements for drivers to notify their States of licensure of certain convictions. The proposal in this rule is covered by this CE and does not have any effect on the quality of the environment. The Categorical Exclusion determination is available for inspection or copying in the *Regulations.gov* Web site listed under **ADDRESSES.**

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under E.O. 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 E.O. 13211.

E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. As discussed previously, this proposed rule is not economically

[2] Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) see National Archives at *http://www.archives.gov/federal-register/laws/regulaotry-flexibility/601.html.*

[3] *Ibid.,* V Regulatory Analyses—Executive Order (E.O.) 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563.

significant. Therefore, no analysis of the impacts on children is required. In any event, FMCSA does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

E.O. 12988 (Civil Justice Reform)

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

E.O. 12630 (Taking of Private Property)

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

National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt Government technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. This rule does not propose to adopt any technical standards.

Privacy Impact Assessment

FMCSA conducted a privacy impact assessment of this rule as required by section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment considers any impacts of the rule on the privacy of information in an identifiable form and related matters. FMCSA has determined this rule would have no privacy impacts.

List of Subjects in 49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Incorporation by reference, Motor carriers.

In consideration of the foregoing, FMCSA proposes to amend 49 CFR part 383 as follows:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

1. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1766, 1767; sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1726; and 49 CFR 1.73.

2. Amend § 383.31(a) by revising paragraph (a) and adding new paragraph (d), to read as follows:

§ 383.31 Notification of convictions for driver violations.

(a) Except as provided in paragraph (d) of this section, each person who operates a commercial motor vehicle, who has a commercial driver's license issued by a State or jurisdiction, and who is convicted of violating, in any type of motor vehicle, a State or local law relating to motor vehicle traffic control (other than a parking violation) in a State or jurisdiction other than the one which issued his/her license, shall notify an official designated by the State or jurisdiction which issued such license, of such conviction. The notification must be made within 30 days after the date that the person has been convicted.

* * * * *

(d) A person is considered to be in compliance with the requirements of paragraph (a) of this section if the State or jurisdiction that issued the citation resulting in a conviction is in substantial compliance with 49 CFR part 384, subpart B, and has not been de-certified in accordance with 49 CFR 384.405.

Issued on: July 27, 2012.

William Bronrott,

Deputy Administrator.

[FR Doc. 2012–18902 Filed 8–1–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 120628195–2276–01]

RIN 0648–XC089

Main Hawaiian Islands Deep 7 Bottomfish Annual Catch Limits and Accountability Measures for 2012–13

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

ACTION: Proposed specification; request for comments.

SUMMARY: NMFS proposes to specify a quota (annual catch target) of 325,000 lb of Deep 7 bottomfish in the main Hawaiian Islands for the 2012–13 fishing year, based on a proposed annual catch limit of 346,000 lb. When the quota is projected to be reached, NMFS would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish for the remainder of the fishing year. The proposed specifications and fishery closure support the long-term sustainability of Hawaii bottomfish.

DATES: Comments must be received by August 17, 2012.

ADDRESSES: Comments on this proposed specification, identified by NOAA–NMFS–2012–0130, may be sent to either of the following addresses:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov;* or
- *Mail:* Mail written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments must be submitted to one of the two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries, 808–944–2108.

SUPPLEMENTARY INFORMATION: The bottomfish fishery in Federal waters around Hawaii is managed under the Fishery Ecosystem Plan for the Hawaiian Archipelago (Hawaii FEP), developed by the Western Pacific Fishery Management Council (Council) and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The regulations at Title 50 Code of Federal Regulations Part 665.4 require NMFS to specify an annual catch limit for MHI Deep 7 bottomfish each fishing year,

based on a recommendation from the Council. The Deep 7 bottomfish are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapuupuu (*Epinephelus quernus*).

The Council's recommendation of an annual catch limit of 346,000 lb considers the most recent bottomfish stock assessment, risk of overfishing, past fishery performance, recommendations from its Scientific and Statistical Committee (SSC), and input from the public. The proposed annual catch limit is based on a 2010 stock assessment that indicated that the MHI Deep 7 bottomfish were not overfished and not subject to overfishing. The proposed annual catch limit is associated with less than a 41 percent probability of overfishing the Deep 7 bottomfish in the MHI.

Management uncertainty, influenced by unreported recreational landings, accuracy of commercial catch reporting, weather influences on the fishing activity and productivity, monitoring and forecasting capabilities, and mortality of recreational catch discards associated with high-grading, could cause the fishery to exceed the annual catch limit. Accordingly, the Council recommended a quota (annual catch target) of 325,000 lb, which is about six percent (21,000 lb) lower than the annual catch limit, to provide a sufficient buffer to ensure that the fishery does not exceed the limit.

If the quota is projected to be reached before the end of the fishing year (August 31), NMFS will close the non-commercial and commercial fisheries for Deep 7 bottomfish in Federal waters through the end of the fishing year. When NMFS closes Federal waters to fishing for Deep 7 bottomfish, State of Hawaii law allows the State to adopt a complementary closure of the Deep 7 fishery in State waters. During a closure for Deep 7 bottomfish, no person may fish for, possess, or sell any of these fish in the MHI, except as otherwise authorized by law. Specifically, fishing for, and the resultant possession or sale of, Deep 7 bottomfish by vessels legally registered to Pacific Remote Island Area bottomfish fishing permits, and conducted in compliance with all other laws and regulations, are not affected by the closure. There is no prohibition on fishing for or selling other non-Deep 7 bottomfish species throughout the year.

NMFS will consider public comments on the proposed annual catch limit and quota, and will announce the final specifications prior to the scheduled reopening of the fishery on September 1, 2012. The fishery will continue until August 31, 2013, unless the fishery is closed earlier because the quota is reached. Regardless of the final annual catch limit and quota, all other management measures will continue to apply in the MHI bottomfish fishery.

To be considered, comments on these proposed specifications must be received by August 17, 2012, not postmarked or otherwise transmitted by that date.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed specification is consistent with the Hawaii FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed specifications, if adopted, would not have a significant economic impact on a substantial number of small entities.

A description of the action, why it is being considered, and the legal basis for it are contained in the preamble to this proposed specification.

NMFS proposes to specify a quota (annual catch target) of 325,000 lb of Deep 7 bottomfish in the main Hawaiian Islands for the 2012–13 fishing year, based on a proposed annual catch limit of 346,000 lb. When the fishery is projected to reach the quota, NMFS would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish for the remainder of the fishing year. The proposed specifications and fishery closure support the long-term sustainability of Hawaii bottomfish.

The 2011–12 fishing year started on September 1, 2011, with a quota of 325,000 lb and an annual catch limit of 346,000 lb. From September 1, 2011, through June 28, 2012, some 456 commercial vessels reported landing 215,135 lb of Deep 7 bottomfish, at an average landed price of $7.46/lb. Based on this, the estimated average gross revenue for that period was $3,520 per vessel. The fishery is not likely to reach the quota before the current fishing year ends on August 31, 2012. NMFS proposes to specify the same quota for 2012–13 as in 2011–12. Assuming an average price of $7.46/lb and 456 participating vessels, NMFS expects the proposed 2012–13 quota of 325,000 lb to yield up to $2,424,500 in total revenue, or an average of $5,317 per vessel.

In general, the relative importance of MHI bottomfish to commercial participants as a percentage of overall fishing or household income is unknown, as the total suite of fishing and other income-generating activities by individual operations across the year has not been examined. Based on available information, NMFS has determined that all vessels in the current fishery are small entities under the Small Business Administration definition of a small entity, i.e., they are engaged in the business of fish harvesting, are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of $4 million. Therefore, there would be no disproportionate economic impacts between large and small entities. Furthermore, there are would be no disproportionate economic impacts among the universe of vessels based on gear, home port, or vessel length.

Even though this proposed specification would affect a substantial number of vessels, i.e., 100 percent of the bottomfish fleet, there would be no significantly adverse economic impact to individual vessels resulting from the implementation of this specification. Landings information from the 2010–11 fishing year (completed) and the 2011–12 fishing year (ongoing) indicate that Deep 7 bottomfish landings will likely not exceed the quota proposed for 2012–13. Therefore, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), NMFS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This action is exempt from review under the procedures of E.O. 12866.

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

Dated: July 27, 2012.

Alan D. Risenhoover,

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

[FR Doc. 2012–18920 Filed 8–1–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 77, No. 149

Thursday, August 2, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0077]

Notice of Determination of the Foot-and-Mouth Disease Status of Japan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination regarding the foot-and-mouth disease status of Japan. Based on an evaluation that we made available to the public for review and comment through a previous notice, the Administrator has determined that Japan is free of foot-and-mouth disease. As a result, the importation of whole cuts of boneless beef from Japan may resume. Other ruminant meat and meat byproducts, as well as fresh pork, live ruminants, and live swine, remain prohibited due to Japan's status for bovine spongiform encephalopathy, classical swine fever, and swine vesicular disease.

DATES: *Effective Date:* This determination is effective August 17, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Kelly Rhodes, Senior Staff Veterinarian, Regionalization Evaluation Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 851–3300.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States to prevent the introduction of various animal diseases, including rinderpest and foot-and-mouth disease (FMD). The regulations prohibit or restrict the importation of live ruminants and swine, and products from these animals, from regions where FMD is considered to exist. The regulations also restrict the importation of meat and other products of ruminants and swine from regions that are considered free of FMD but that supplement their national meat supply by importing fresh (chilled or frozen) meat of ruminants or swine from regions that are considered to be affected with FMD, or have a common land border with such regions, or import ruminants or swine from such regions under conditions less restrictive than would be acceptable for importation into the United States.

On April 20, 2010, the Ministry of Agriculture, Forestry, and Fisheries (MAFF) of Japan reported an outbreak of FMD in that country to the World Organization for Animal Health (OIE). In response, the Animal and Plant Health Inspection Service (APHIS) administratively issued temporary restrictions on commodities from Japan that could harbor FMD virus. Subsequently, in an interim rule [1] effective and published in the **Federal Register** on October 25, 2010 (75 FR 65431–65432, Docket No. APHIS–2010–0077), we amended the regulations in part 94 to remove Japan from the list of regions considered free of FMD, and from the list of regions considered free of FMD and rinderpest but from which the importation of meat and other products of ruminants and swine into the United States is restricted because of shared land borders or trading practices with regions that have one or both of these diseases. The interim rule also clarified that, as a result of the change in Japan's FMD status, the importation of whole cuts of boneless beef from Japan, formerly allowed under § 94.27 of the regulations, was prohibited due to FMD. These actions were necessary to protect against the introduction of FMD into the United States. We solicited comments on the interim rule for 60 days ending December 27, 2010. We received one comment by that date, from the Government of Japan. The comment acknowledged the interim rule and encouraged APHIS to begin its reevaluation of Japan's FMD status as soon as was appropriate.

By July 4, 2010, when the last case was detected, Japan had reported FMD on a total of 292 premises in Miyazaki Prefecture of that country to the OIE. Although the source of the virus that caused the outbreak has not been definitively identified, MAFF suspects that it was introduced by people or personal goods entering Japan from a nearby country affected with FMD. Japan's official veterinary services addressed the FMD outbreak through a stamping-out policy that involved movement restrictions, culling, active surveillance, and ultimately vaccination. All vaccinated animals were subsequently culled. Intensive surveillance demonstrated that the virus did not spread outside Miyazaki Prefecture. On February 4, 2011, the OIE reinstated Japan to its list of countries that are free of FMD without vaccination.

We stated in our interim rule that, based on Japan's response to the detection of the disease, we intended to reassess the situation at a future date in accordance with OIE standards to determine whether we can restore Japan to the list of regions APHIS considers free of FMD.

On July 26, 2011 (76 FR 44503–44504, Docket No. APHIS–2010–0077), we published in the **Federal Register** a notice [2] announcing the availability for review and comment of a document titled ''APHIS Evaluation of the Foot and Mouth Disease Status of Japan.'' This evaluation examined the events that occurred during and after the outbreak and assessed the risk of live animals and animal products from Japan harboring the FMD virus. We stated that the evaluation would provide a basis for determining whether to reinstate Japan to the list of regions free of FMD and to the list of regions considered free of FMD and rinderpest but from which the importation of meat and other animal products of ruminants and swine into the United States is subject to additional restrictions.

We made the evaluation available for public comment for 60 days ending September 26, 2011. We received two comments by that date. They were from a State animal health board and an organization that represents cattle

[1] To view the interim rule, the follow-up notice and evaluation, and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0077*.

[2] See footnote 1.

farmers and ranchers. The issues they raised are discussed below.

Comment: One commenter stated that APHIS' evaluation of the FMD status of Japan is incomplete and inadequate for determining the risk of introduction and spread of FMD into the United States from Japan because it is qualitative, rather than quantitative, and because it does not include either an exposure assessment or a consequence assessment. The commenter said that APHIS' 2004 Process for Foreign Animal Disease Status Evaluations, Regionalization, Risk Analysis, and Rulemaking (Evaluation Process) [3] explains that quantitative risk modeling is typically used when a foreign country requests to export a specific product to the United States, which the commenter said is the case here where the only product subject to a resumption of exports is whole muscle cuts of boneless beef from Japan. The commenter said that APHIS' Evaluation Process also states, ''The risk assessment may conclude if the release assessment demonstrates no significant risk. However, some form of exposure and consequence assessment is typically included for completeness.''

Response: The 2004 document referenced by the commenter was intended as a description of general practices rather than as a statement of future policy. A decision on whether to prepare a qualitative or quantitative risk assessment for any action must be made on a case-by-case basis after considering all of the circumstances involved.

The OIE has established international standards for import risk analysis.[4] Article 2.1.1 of the OIE guidelines on import risk analysis states, ''No single method of risk assessment has proven appropriate in all situations, and different methods may be appropriate in different circumstances.'' Article 2.1.1 further states that risk assessments may be either qualitative or quantitative and that, particularly for diseases listed in the Terrestrial Animal Health Code, where there are international standards and broad agreement concerning likely risks, a qualitative assessment may be all that is required.

Most risk evaluations prepared by APHIS are qualitative. In particular, APHIS has historically used qualitative evaluations to assess requests from regions to be considered free of a particular disease, as is the case for Japan. These evaluations are based on science and conducted according to the factors identified in 9 CFR part 92, § 92.2, which include veterinary infrastructure, biosecurity measures, livestock demographics, marketing practices, disease surveillance, and diagnostic laboratory capabilities. Neither these regulations nor APHIS guidance documents require a quantitative risk assessment or indicate that one is needed here. The commenter did not specify how the results of our evaluation would be improved by a quantitative risk assessment.

Additionally, while reinstatement of FMD-free status for Japan would allow a resumption of exports of boneless beef from Japan to the United States, the evaluation prepared for this action was not designed to evaluate specific mitigation measures for boneless beef or any other commodity from Japan. Those mitigation measures were developed based on separate, previous risk assessments and through prior rulemakings.

Regarding the need for exposure and consequence assessments, Article 2.1.4 of the OIE guidelines on import risk analysis states that, if the release assessment demonstrates no significant risk, the risk assessment does not need to continue, meaning that no exposure assessment or consequence assessment is necessary. While APHIS has sometimes included exposure and consequence assessments when the release assessment has demonstrated no significant risk, they provide no additional value under the circumstances. Therefore, we did not include them in the evaluation for Japan's FMD status, and, as a general rule, will not include them in future evaluations when the release assessment demonstrates no significant risk.

Comment: One commenter said that APHIS does not provide a scientific basis for recommending the resumption of exports from Japan within only months following Japan's latest FMD outbreak. The commenter recommended that APHIS wait at least 3 years following the last case of FMD that occurs in a foreign country before considering the resumption of trade in FMD-susceptible products from that country. The commenter said that Japan's 3-year waiting period before its FMD burial sites can be disturbed supports this recommendation. He said that APHIS should explain the security measures in place to prevent wild boars, floods, earthquakes or other natural phenomenon from prematurely disturbing the burial sites within 3 years and what risks can be expected if those security measures fail.

Response: OIE guidelines for reinstatement of FMD freedom are set out in Article 8.5.9 of the Terrestrial Animal Health Code.[5] When an FMD outbreak or FMD virus infection occurs in an FMD-free country or zone where vaccination is not routinely practiced, such as Japan before and after the 2010 outbreak, the OIE recommended waiting period to regain FMD-free status is 3 months after the slaughter of all vaccinated animals where a stamping-out policy, emergency vaccination, and serological surveillance are applied consistent with articles 8.5.42 to 8.5.47 and article 8.5.49. The last case of FMD in Japan was detected on July 4, 2010, and all affected animals on the farm were destroyed on July 5, 2010. No additional cases were found during extensive surveillance that included testing of wildlife and testing of sentinel cattle that were introduced onto previously affected and depopulated farms. It has now been well over a year since all affected farms were cleaned and disinfected. There is no scientific basis for a 3-year waiting period.

Japan's 3-year prohibition on disturbing FMD burial sites is required by Japan's Animal Infectious Disease Prevention Law (AIDPL) to prevent animals from being exposed to carcasses or materials. Disturbance by wild animals is unlikely, as buried carcasses are covered with thick layers of slaked lime and under at least 3 feet of soil. The sites cannot be used for farming or grazing during the 3-year period, which limits exposure of domestic animals. MAFF told APHIS that the sites were selected taking environmental factors, such as underground water and water sources, into account, and that water quality surveys and regular disinfection are implemented to maintain the sites properly during the 3-year period. MAFF also said that soil on the sites would be supplemented or leveled if disturbed by natural causes during the restricted period. Barriers and standing sign boards have been placed around the disposal sites to restrict the entrance of people.

Comment: One commenter stated that APHIS' evaluation contains overly optimistic and unsupported assumptions regarding Japan's ongoing risk for FMD given that the source of the 2010 outbreak is not definitively known, Japan's import policies related to FMD are less stringent than those of the United States, and wildlife cannot be ruled out as a potential source of

[3] Process for Foreign Animal Disease Status Evaluations, Regionalization, Risk Analysis, and Rulemaking, USDA–APHIS, 2004.

[4] The Terrestrial Animal Health Code, Chapter 2.1, Import risk analysis. *http://www.oie.int/fileadmin/Home/eng/Health_standards/tahc/2010/en_titre_1.2.htm.*

[5] Terrestrial Animal Health Code, Chapter 8.5, Foot and Mouth Disease. *http://www.oie.int/index.php?id=169&L=0&htmfile=chapitre_1.8.5.htm.*

another FMD outbreak in Japan. Another commenter said that it is difficult to judge the risks associated with the introduction of FMD from Japan without knowing how the FMD virus came in contact with the index animal, and, thus, how Japan can prevent it from happening again.

Response: While the source of the 2010 outbreak and mode of introduction have not been definitively identified, the mechanisms and pathways by which FMD can be transmitted to livestock are well known. Japan's MAFF conducted an epidemiological investigation that identified the presumed index herd, the estimated date of introduction, and the most likely route of infection.

As noted in section 5.1.2 of the evaluation, it is likely that the virus was brought into Japan from another Asian country through the movement of people or goods. Japan has implemented additional biosecurity measures at airports for all persons arriving from international destinations, from aggressive public awareness campaigns, including announcements on inbound flights, to floor mats soaked in disinfectant that travelers must cross. MAFF has also increased biosecurity measures at the farm level. Additionally, public awareness of FMD has been heightened by both the outbreak and MAFF's educational outreach.

Regarding Japan's import policies, MAFF prohibits the importation of products derived from animals susceptible to FMD from countries with FMD unless the products are heat treated according to set protocols. Products are subject to inspection upon arrival, as discussed in section 9.2.3 of the evaluation. Live susceptible animals must be accompanied by a health document certified by the veterinary authority of the exporting region. The animals undergo inspection upon arrival, as well as quarantine, during which time the animals undergo clinical inspection and diagnostic testing. Prefectural veterinary officials for the farm of destination are responsible for follow-up inspections. Live animals denied entry may be reshipped or destroyed with pathological examination.

Although Japan allows the importation of live cloven-hoofed animals, genetic materials, and meat under lesser restrictions from several regions that APHIS does not recognize as free of FMD—namely, Bosnia and Herzegovina, Croatia, Northern Mariana Islands, Romania, Singapore, and Vanuatu—Japan has not received such imports from any of these countries for at least the past 5 years. Additionally, the last years that FMD was reported in any of these countries ranges from 1935 to 1978. APHIS evaluates and recognizes foreign regions as free of FMD only when a foreign government asks us to do so. None of these countries has requested that APHIS recognize them as FMD free.

Contaminated straw was implicated in the last previous outbreak of FMD in Japan (2000), and Japan currently allows importation of grain straw and hay for animal feed from regions that APHIS does not consider free of FMD. Most notably, Japan imports substantial amounts of rice straw from China each year because there is not enough arable land to grow sufficient forage for livestock in Japan. However, Japan requires the straw to be produced, processed, and stored in an area that has been free from FMD, rinderpest, and African swine fever for at least 3 years, and strictly enforces requirements that the hay and straw be heat treated to inactivate the FMD virus and stored afterward in a manner that prevents recontamination. Rice straw from China is processed in dedicated plants with a Japanese inspector on site whose sole job is to check the core temperature of each lot. The straw is shipped to Japan in sealed containers and tested upon arrival. The failure rate for compliance in 2010 was 0.15 percent, due to a missing seal on one container, and 0.06 during the first three quarters of 2011, because Japanese officials could not confirm that the rice straw had been properly stored following treatment in order to prevent recontamination.

Regarding the potential for wildlife to be a source of another FMD epidemic, Japan collected and tested 159 samples from susceptible wildlife with negative results. The samples were taken from animals hunted as nuisance species, as well as from the carcasses of dead and injured wildlife. Of the 159 samples, 145 came from hunted nuisance species, including sika deer (46) and wild boar (99). The remaining 14 samples were taken from carcasses of dead and injured wildlife: 5 were from sika deer, 7 from wild boar, and 2 from Japanese serows. Japan estimates that there are about 70,000 deer and 65,000 wild pigs in Miyazaki Prefecture. The wildlife surveillance conducted by Japan during and after the 2010 outbreak was statistically sufficient to detect a 7 percent or higher prevalence level of FMD with 95 percent confidence. We consider Japan's surveillance to be adequate due to the highly contagious nature of FMD, which would normally produce much higher prevalence than 7 percent if it was present. To provide additional assurance of the absence of FMD in wildlife in Miyazaki Prefecture, Japan initiated another round of wildlife sampling and testing during the 2011 hunting season that began in October.

Comment: One commenter, observing that the 2000 FMD outbreak in Japan was linked to contaminated straw/feedstuffs imported into that country, asked whether the recent reported low refusal rate for incoming shipments of straw was the result of good mitigation methods or just luck. He noted the refusal rate of 0.15 percent in 2010, due to rejection of one container because it did not have a seal. Estimating that this meant one container was rejected out of 667, he asked whether 667 was the number of containers imported per year.

Response: The low refusal rate is based on a high level of compliance with import requirements, as determined through inspections conducted prior to shipment and again upon arrival. Japan told APHIS that it does not record the number of containers imported, but said it imported 175,233,764 kilograms of straw in 2010 and 148,226,568 kilograms in the first three quarters of 2011. The rejection rate for January through September of 2011 was 0.06 percent (1 inspection testing case out of 1,550). In that instance, Japanese officials said that the straw had been heat treated as required, but they were unable to confirm that the treated straw had been properly protected after treatment to prevent recontamination.

Comment: One commenter asked, ''Does the new path towards liberalization, in light of an unidentified source, of normalized trade practices allow for adequate opportunity to find disease if it were present in a species that would not normally show outward signs?'' The commenter expressed concern about the rate at which depopulated farms were restocking. He suggested that a low concentration of animals provides fewer opportunities to determine whether the disease is still present and asked how effective the sentinel cow program could be with only a 3-month waiting period. He asked how long it is expected to take to repopulate the farms and how that process might affect, or be affected by, the ''post quarantine timeframe of active and passive surveillance.''

Response: APHIS disagrees with the notion that there is a new path towards liberalization of trade practices. We have not changed any of our criteria for determining whether a region can be reinstated as FMD free following an outbreak. We are satisfied that FMD has been eradicated in Japan. During the 2010 outbreak, veterinary officials in Japan conducted active surveillance for

FMD, both in Miyazaki Prefecture and throughout the country to ensure detection of FMD. Investigators assumed an average incubation period of 10 days for swine and 7 days for cattle, with a maximum of 14 days for both species. However, each epidemiological investigation traced animal movements onto and off of the farm for 21 days prior to detection of infection. The last case of FMD in Japan was detected on July 4, 2010, and all susceptible animals on the farm were destroyed the next day. By August 26, 2010, all affected farms had completed cleaning and disinfection procedures. Japan conducted clinical and serological surveillance around previously affected farms prior to lifting movement restrictions and throughout Miyazaki Prefecture to reestablish freedom from FMD. Japan also introduced sentinel cattle onto 175 previously affected farms beginning on August 31, 2010, to assist in determining whether any FMD virus remained in the environment. Farmers were required to conduct daily clinical observations of the cattle, and local veterinary officers conducted clinical inspections 3 to 4 weeks after the cattle were introduced onto the premises. Serum samples were collected on the day of introduction and 3 to 4 weeks after, in accordance with international recommendations.[6] The samples were subject to liquid-phase blocking enzyme-linked immunosorbent assay testing, with negative results. Finally, Japan collected and tested samples from susceptible wildlife species in Miyazaki Prefecture, also with negative results. Even if the disease were present in animals that did not show outward signs, those animals would have spread the disease long before now to susceptible species that show clinical signs.

Restocking of affected premises has proceeded slowly, in large part due to economic concerns related to the natural disasters Japan experienced in 2011. According to MAFF, 58 percent of depopulated cattle farms and 47 percent of depopulated swine farms—57 percent of the total number of depopulated farms—had restocked or started restocking as of the last day of August 2011. MAFF told APHIS that many farmers have delayed restocking because of a decline in livestock prices following the great earthquake of 2010 in eastern Japan.

The 3-month waiting period mentioned by the commenter appears to refer to MAFF's declaring Japan once again free of FMD on October 6, 2010, 3 months after the animals on the last affected farm were destroyed. A 3-month waiting period is in line with OIE recommendations for reinstatement of FMD-free status in a previously free country where a stamping-out policy is followed and all vaccinated animals are destroyed.

As discussed previously, while the specific source of this outbreak has not been identified, the mechanisms and pathways by which FMD can be transmitted to livestock are well known. Japan has identified the most likely route of infection and has implemented measures to prevent another introduction.

Comment: One commenter said that it would be helpful to get an idea of what biosecurity measures were in place prior to March 19, 2010, what measures are new since the disease was identified, and what measures will continue to be in place after recognition of FMD freedom.

Response: Biosecurity measures prior to the outbreak varied from farm to farm, as is typical in many other countries, including the United States. Neighboring cattle farmers commonly visited each other's premises and shared farm equipment. Swine farms generally had better biosecurity with disinfecting footbaths in place and restricted access to areas where the animals were kept. Since the outbreak, many of the biosecurity measures employed during the emergency are now required by law. Standards of biosecurity for farming include defining areas of increased biosecurity on the farm where persons entering are required to wear particular clothing, requiring people and vehicles entering the biosecurity area to be disinfected, and preventing contact between domestic and wild animals.

Comment: One commenter asked how APHIS can be comfortable with Japan's process for dealing with the outbreak when the prefectural government's Livestock Hygiene Service Center was notified about the first animal on March 31, 2010, notified about a second farm with oral lesions on April 9, 2010, and no samples were submitted for FMD testing until April 16, 2010. The commenter stated that the lack of astuteness to the symptoms of the disease present illustrate that all aspects of disease prevention, detection, and mitigation must be fully understood and employed or response and recovery are all that is left.

Response: There is no question that delayed detection was a major cause of virus spread during the 2010 FMD outbreak in Japan. As discussed in section 7.1 of the evaluation, prior to confirmation of the first FMD case on April 20, 2010, Japan relied on passive surveillance for detection and reporting of suspect FMD cases. Passive surveillance depends on awareness of FMD, however, and local veterinarians who initially saw cattle with clinical signs compatible with the disease apparently did not suspect FMD and, therefore, did not act quickly. As a result of the outbreak, the level of awareness among farmers and veterinarians throughout Japan is now quite high. Additionally, government officials and an independent committee established by the Japanese Government to look into the 2010 outbreak and make recommendations have noted the high cost of delays in detecting FMD, and the committee has made several recommendations for improving passive surveillance and emergency preparedness, as well as other aspects of FMD prevention, detection, and mitigation. APHIS is confident that veterinary officials would react far more promptly today should clinical signs compatible with FMD be observed in a susceptible animal.

Comment: One commenter stated that APHIS' evaluation deceives the public by falsely claiming that all FMD-exposed livestock in Japan have been depopulated. Evidence of this deception is the discussion in the evaluation concerning six bulls that were removed from a farm just 3 days before the farm experienced an outbreak. According to the evaluation, one of the bulls became infected with FMD, and the five other bulls were spared. Since the average incubation period for cattle is assumed to be 7 days, FMD was likely incubating on the farm before the bulls were removed.

Response: APHIS did not claim that all FMD-exposed livestock were depopulated. The evaluation stated that all FMD cases and susceptible animals kept in the same and epidemiologically related farms, as well as all susceptible animals on unaffected, vaccinated farms, were depopulated. Additionally, the evaluation included an extensive discussion of the disposition of the bulls referenced by the commenter. As described in section 5.3.3, six high-value bulls from the Miyazaki Livestock Improvement Association (MLIA), which supplies semen to Miyazaki producers of Wagyu beef, were removed from the MLIA during the outbreak in Miyazaki Prefecture. FMD virus was subsequently detected at the MLIA and all remaining animals were depopulated.

APHIS agrees that FMD was likely incubating on the MLIA premises when

[6] FAO Animal Health Manual No. 16: Preparation of Foot-and-Mouth Disease Contingency Plans. Food and Agriculture Organization of the United Nations, Rome, 2002. *http://www.fao.org/DOCREP/006/Y4382E/y4382e09.htm.*

the six bulls were removed. However, the six bulls tested negative for FMD on May 13, 2010, the day they were removed from the MLIA. As described in the evaluation, once on the new premises, the bulls were kept isolated from each other and underwent daily clinical inspections and repeated testing for FMD. One bull tested positive and was destroyed. For the next 14 days, the remaining bulls were each tested daily using reverse transcription polymerase chain reaction on nasal swabs with negative results, and serum samples taken on June 4, June 10, and August 27, 2010, were also negative. In light of these results, the statistical probability of a bull being infected but not detected approaches zero.

Comment: One commenter stated that section 5.3.2 of the evaluation mentions that six bulls were depopulated and buried on July 17, 2010, yet section 5.3.3 indicates that the bulls were serologically tested on September 4, 2010, with two subsequently moved to another location.

Response: Section 5.3.2 discusses six bulls belonging to a farmer in Takanabe-cho who refused to allow the bulls to be vaccinated and depopulated. All of those bulls were depopulated and buried on July 17, 2010. The six bulls discussed in section 5.3.3 are not the same bulls. These bulls belonged to the MLIA. Only one of those bulls was destroyed. The other five bulls remained isolated and underwent testing for FMD, with negative results.

Comment: One commenter said that many sources report the presence of wild boar in the area, but only seven wild boar were tested. When the average time to depopulate from time of identification of virus on a farm was 9 days (range of 0–30), how does testing of only seven wild boar provide any assurance that no virus was or is circulating within the population?

Response: The commenter refers to section 7.2.4 of the evaluation, which indicates that Japanese officials tested seven samples from the carcasses of dead or injured wild boar for FMD, with negative results. However, that same section states that negative results were obtained on serologic testing of samples from 99 wild boar that were hunted as nuisance species (MAFF has since updated this number to 106). Sampling was sufficient to detect 10 percent prevalence with 95 percent confidence which, along with the fact that no clinical signs of FMD have been reported, provides assurance that the virus is not circulating within the wild boar population of Miyazaki Prefecture.

Comment: One commenter, noting that table 4.1 in the evaluation showed the number of dairy cattle, beef cattle, and swine in Miyazaki Prefecture, asked for the total population of each susceptible species in the prefecture, including ''those species which tend to mask the virus,'' and wildlife. He questioned whether dairy cattle meant Holstein-type cattle or water buffalo-type cattle. The commenter also asked for the population of animals within identified zones.

Response: Sheep and goats are not commercially produced in Miyazaki Prefecture, thus the numbers are quite low. Figures available from February 2010 show only 28 sheep and 74 goats. Water buffalo were not included in the count of cattle. At the time of the outbreak, there were 42 water buffalo in Miyazaki Prefecture. Japan estimates a wildlife population in Miyazaki Prefecture of approximately 70,000 deer and 65,000 wild pigs. Sheep and goats, and possibly deer, are the most likely species that could become infected without showing clinical signs. Clinical signs in water buffalo were apparent but not classic, according to reports from the one affected farm with water buffalo. MAFF noted that there was a high incidence of clinical signs among infected cattle and swine with this particular strain of virus.

Comment: One commenter, noting the discussion of penalties for non-reporting in section 3.2 of the evaluation, asked about the relationship of the penalty to the range of values of animals involved. For example, how many slaughter-weight pigs does a 1 million yen fine buy? The commenter said that a producer making 20 percent profit will have a very different risk tolerance to being fined than will a producer making a 2 percent profit margin. He said the outlook for stability within the marketplace will have a large impact on the risk tolerance a producer is willing to take as well.

Response: The comment refers to penalties for violating Japan's AIDPL. The AIDPL requires animal owners, caretakers, and veterinarians to immediately report a suspect or confirmed case of a foreign animal disease, including FMD, to prefectural authorities, who must then notify MAFF and others. The AIDPL also provides for payment of compensation to owners of animals on affected farms up to 80 percent of market value; in this outbreak, the prefecture provided the remaining 20 percent. We do not have the data to determine whether the penalty is sufficient to induce reporting, or the extent to which economic considerations factor into reporting. Compensation tends to encourage reporting. Evidence suggests that the delay in detecting the first case of FMD in the 2010 outbreak was the result of a failure to suspect FMD rather than a failure to report a suspected case.

Comment: One commenter referred to section 3.3.1 of the evaluation, which contains information about the relative numbers of male and female graduates of veterinary medical schools in Japan who become licensed veterinarians each year. He asked what difference it makes, when responding to FMD and protecting the food supply, whether the veterinarian is a male or female?

Response: None.

Comment: One commenter said that section 3.4 of the evaluation contains statements about confusion concerning the prefecture's roles and responsibilities, with obvious changes made during and after the response. He asked if enough time has passed to know whether the implemented changes are effective.

Response: Section 3.4 states that it appeared that the practical roles and responsibilities of MAFF and the prefectures were not clearly defined prior to the 2010 outbreak, which caused some confusion in the initial stages. Japanese officials say that roles were clarified, rather than changed, following the 2010 outbreak. Local veterinary officers in Japan participate in foreign animal disease simulations and training organized by MAFF and the National Institute of Animal Health, Japan's national reference laboratory. MAFF conducted quality control exercises with all prefectures in late 2010, after the FMD outbreak, and also in February 2011. The purpose was to verify details of the emergency response plans and address any weaknesses detected.

Comment: One commenter asked what the basis is for APHIS' last statement in section 3.4 of the evaluation, which the commenter said appears to be directly related to response, when prevention is more important.

Response: The last statement under section 3.4 of the evaluation is ''APHIS concludes that the authority, organization, and infrastructure of Japan's veterinary services were sufficient to address the 2010 FMD outbreak, although opportunities for improvement exist.''

APHIS evaluates veterinary authority, organization, and infrastructure to determine whether the veterinary services in a region have the capability and resources to effectively investigate, diagnose, and report the disease under evaluation, if detected. The sentence referenced by the commenter is our finding in this area. We also evaluated

other factors pertaining to FMD risk in Japan, including measures to prevent the introduction of the disease. These are described in section 9 of the evaluation.

Comment: One commenter, referring to a discussion of animal identification and traceability in section 4.4 of the evaluation, asked how effective the animal identification system was in Japan in helping to stop/prevent the spread of disease.

Response: We found that animal identification practices in Japan allowed officials to effectively trace animals to investigate the source and potential spread of infection. Once the location of affected and at-risk animals was known, they were targeted for destruction, and officials established movement restriction zones around the involved farms to prevent further spread of the disease. In this way, animal identification practices helped officials contain and eventually stamp out the disease.

Comment: One commenter stated that the word ''sufficient'' is used several times throughout the evaluation and asked: How is sufficient determined, by whom, and by what definition?

Response: APHIS used the term ''sufficient'' seven times in the evaluation. As used, the word has the standard dictionary meaning, i.e., enough to meet the needs of a situation or proposed end. In each case, the word was used in a context that identified the situation or proposed end. For example, ''Active clinical and serological surveillance within the restricted zones proved sufficient for detection of additional case farms within Miyazaki Prefecture'' (section 7.3). The context indicates how ''sufficient'' was determined. In this sentence, for example, the use of the word sufficient suggests that the surveillance found all of the remaining cases in the Miyazaki Prefecture, and, in fact, no additional cases have been detected. The answer to the question ''by whom'' also depends on context. In the sentence just quoted, APHIS has made the determination.

Comment: One commenter asked, when the time to depopulate confirmed herds becomes delayed, what is the appropriate time lag whereby it becomes more beneficial to vaccinate than depopulate? The commenter stated that having knowingly positive animals potentially spreading virus through incubation and amplification while waiting to be depopulated cannot be good, especially with operations being separated by just over a quarter of a mile.

Response: The decision to vaccinate rather than depopulate is a difficult one that may have long-term effects on trade in susceptible animals and products from those animals. The determination of when that is the best course of action must be made on a case-by-case basis. That was not the question in Japan, however. Rather, the question in the 2010 outbreak was whether to vaccinate as part of the stamping-out program, when lack of burial grounds led to delays in depopulation. The government recognized that those delays increased the risk that the disease would spread. The difficulty with the decision to vaccinate or not was that the Japanese government did not have the authority at the time to kill apparently healthy, but vaccinated, animals. Japan would need to destroy the vaccinated animals in order to regain its status as FMD-free without vaccination. Recognizing that vaccination was the only way to keep the disease from spreading while additional burial sites were located, the government passed emergency legislation authorizing the precautionary depopulation of susceptible animals in areas designated by the MAFF Minister.

Comment: One commenter expressed concern that reestablishing trade with Japan would subject U.S. industry to greater risks than it can bear. As evidence, the commenter pointed to a 30 percent restocking rate in Japan 6 months after depopulation. The same commenter asked several questions about the number of veterinarians available to deal with livestock disease in both Japan and the United States: What is the per capita ratio of government (all levels) employed veterinarians to livestock in Japan, and how does that ratio compare to that of the United States? Is Japan's incident command structure too top heavy? Is the declining number of food animal veterinarians in Japan, as in the United States, due to declining economic incentive within the industry to sustain interest in the field? The commenter also said that without having a clear and distinct picture of what the APHIS response would be in the United States to FMD, it is impossible for the industry or the States to calculate the risk APHIS is requesting them to take.

Response: As discussed previously, Japanese producers continue to make progress in restocking of farms, which was slowed largely by a decline in livestock prices following the 2010 earthquake. Fifty-seven percent had restocked by the end of August 2011.

Regarding the decline in the number of food animal veterinarians—and not just in the United States and Japan—a number of factors have contributed, including burdensome student loans, low starting salaries, the decline of family farms, and a preference among many professionals to live in areas with urban lifestyle choices. We do not have data on per capita ratio of government-employed veterinarians to livestock in the form requested by the commenter, but the World Animal Health Information Database (WAHID) on the OIE Web site [7] provides information on the relative numbers of veterinarians and paraveterinarians by country. According to WAHID, Japan had 3,465 public sector veterinary personnel in 2010, an average of 0.0092 per square kilometer or 7.92 per livestock unit, for a country ranking of 6th. The United States is ranked 98th, with 1,874 public sector veterinary personnel in 2010, an average of 0.0002 per square kilometer or 0.01 per livestock unit. Differences among countries in the organization of their veterinary infrastructures, additional resources in the event of an emergency, size and nature of geographical areas, population densities (human and livestock), and other factors would have to be explored to provide context for these numbers.

The commenter's questions about the numbers of livestock veterinarians and what the APHIS response would be to an outbreak of FMD in the United States are based on the commenter's concern that a decision to reinstate Japan's FMD-free status would result in an unacceptable risk of FMD being introduced into the United States. As discussed earlier, APHIS has not changed any of its criteria for determining whether a region can be reinstated as FMD-free following an outbreak. For the reasons given in the evaluation and this document, we are satisfied that FMD has been eradicated in Japan and that products authorized by the regulations may be safely imported.

Therefore, based on the evaluation and the reasons given in this document in response to comments, we are reinstating Japan's status as FMD-free.

A final rule [8] published in the **Federal Register** on January 10, 2012 (77 FR 1388–1396, Docket No. APHIS–2009–0035) and effective on February 9, 2012, removed lists of regions classified with respect to certain animal diseases and pests from our animal and animal product import regulations in 9 CFR parts 92, 93, 94, 96, and 98. The lists are now posted on APHIS' Web site, rather

[7] WAHID Interface, Veterinarians and paraveterinarians. *http://web.oie.int/wahis/public.php?selected_start_year=2010&display_class=ah_gov&page=country_personnel&sort=1.*

[8] See *http://www. regulations.gov/#!docketDetail;D=APHIS-2009-0035.*

than published in the Code of Federal Regulations. Accordingly, we are adding Japan to the list of regions that APHIS has declared free of FMD (formerly in § 94.1) and to the list of FMD-free regions that are subject to additional restrictions because they supplement their national meat supply by the importation of fresh (chilled or frozen) meat of ruminants or swine from regions that APHIS considers to be affected with rinderpest or FMD, or have a common land border with such regions, or import ruminants or swine from such regions under conditions less restrictive than would be acceptable for importation into the United States (formerly in § 94.11). These lists are maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the lists are also available via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 27th day of July, 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–18814 Filed 8–1–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Manti-La Sal National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Manti-La Sal National Forest Resource Advisory Committee will meet in Price, Utah. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub.L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to consider Secure Rural Schools Act Title II project proposals.

DATES: The meeting will be held September 13, 2012, and will begin at 9 a.m.

ADDRESSES: The meeting will be held in the conference room of the Utah Division of Wildlife Resources, 319 North Carbonville Road, Price, Utah. Written comments should be sent to Rosann Fillmore, Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501. Comments may also be sent via email to *rdfillmore@fs.fed.us* or via facsimile to 435–637–4940.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501. Visitors are encouraged to call ahead to 435–636–3525 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Rosann Fillmore, RAC coordinator, USDA, Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501; 435–636–3525; Email *rdfillmore@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Consideration of Project Funding Proposals (2) Plans for Monitoring Projects (3) Other business (4) Public comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by September 12, 2012 will have the opportunity to address the Comittee at those sessions.

Dated: July 27, 2012.

Thomas W. Lloyd,

Acting Forest Supervisor.

[FR Doc. 2012–18849 Filed 8–1–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lincoln County Resource Advisory Committee will meet in Libby, MT. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review status of project implementation and review of status of funds for 2008–2011 Secure Rural Schools and Community Self-Determination Act.

DATES: August 29, 2012 @ 6 p.m.

ADDRESSES: Forest Supervisor's Office, 31374 Hwy. 2, Libby, Montana. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Forest Supervisor's Office. Please call ahead to 406–283–7764 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Janette Turk, Committee Coordinator, Kootenai National Forest at (406) 283–7764, or email *jturk@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed under **FOR FURTHER INFORMATION**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Status of project implementation and review of status of funds for 2008–2011 Secure Rural Schools and Community Self-Determination Act. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake, based in Kalispell, Montana. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 27 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Forest Supervisor's Office, 31374 Hwy. 2, Libby, Montana, or by email to *jturk@fs.fed.us,* or via facsimile to 406–283–7709.

Dated: July 27, 2012.

Paul Bradford,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 2012–18850 Filed 8–1–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the program for the Housing Preservation Grant Program.

DATES: Comments on this notice must be received by October 1, 2012 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Bonnie Edwards-Jackson, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, USDA Rural Development, Stop 0781, 1400 Independence Ave. SW., Washington, DC 20250–0782, telephone (202) 690–0759 (voice) (this is not a toll free number) or (800) 877–8339 (TDD–Federal Information Relay Service) or via email at, *Bonnie.Edwards@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: *Title:* RHS/Housing Preservation Grant Program.

OMB Number: 0575–0115.

Expiration Date of Approval: September 30, 2012.

Type of Request: Extension of a currently approved information collection.

Abstract: The primary purpose of the Housing Preservation Grant Program is to repair or rehabilitate individual housing, rental properties, or co-ops owned or occupied by very low- and low-income rural persons. Grantees will provide eligible homeowners, owners of rental properties and owners of co-ops with financial assistance through loans, grants, interest reduction payments or other comparable financial assistance for necessary repairs and rehabilitation of dwellings to bring them up to code or minimum property standards.

Where repair and rehabilitation assistance is not economically feasible or practical the replacement of existing, individual owner occupied housing is available.

These grants were established by Public Law 98–181, the Housing Urban-Rural Recovery Act of 1983, which amended the Housing Act of 1979 (Pub. L. 93–383) by adding section 533, 42 U.S.C. 2490(m), Housing Preservation Grants (HPG). In addition, the Secretary of Agriculture has authority to prescribe rules and regulations to implement HPG and other programs under 42 U.S.C. 1480(j).

Section 533(d) is prescriptive about the information applicants are to submit to RHS as part of their application and in the assessments and criteria RHS is to use in selecting grantees. An applicant is to submit a ''statement of activity'' describing its proposed program, including the specific activities it will undertake, and its schedule. RHS is required in turn to evaluate proposals on a set of prescribed criteria, for which the applicant will also have to provide information, such as: (1) Very low- and low-income persons proposed to be served by the repair and rehabilitation activities; (2) participation by other public and private organizations to leverage funds and lower the cost to the HPG program; (3) the area to be served in terms of population and need: (4) cost data to assure greatest degree of assistance at lowest cost; (5) administrative capacity of the applicant to carry out the program. The information collected will be the minimum required by law and by necessity for RHS to assure that it funds responsible grantees proposing feasible projects in areas of greatest need. Most data are taken from a localized area, although some are derived from census reports of city, county and Federal governments showing population and housing characteristics.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .88 hours per response.

Respondents: A public body or a public or private nonprofit corporation.

Estimated Number of Respondents: 2,373.

Estimated Number of Responses per Respondent: 5.6.

Estimated Total Annual Burden on Respondents: 13,274 hours.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch at (202 692–0040).

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS'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 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.

Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: July 27, 2012.

Cristina Chiappe,

Acting Administrator, Rural Housing Service.

[FR Doc. 2012–18824 Filed 8–1–12; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–56–2012]

Proposed Foreign-Trade Zone—Chenango County, NY; Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Chenango County, New York to establish a foreign-trade zone (FTZ) at sites in Chenango County, adjacent to the Syracuse CBP port of entry, under the alternative site framework (ASF) adopted by the Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new ''subzones'' or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a zone project. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 30, 2012. The applicant is authorized to make the proposal under Chapter 569, Laws of New York 2011, Section 224–27.

The proposed zone would be the second zone for the Syracuse CBP port of entry. The existing zone is: FTZ 90, Onondaga County (Grantee: County of Onondaga, Board Order 230, 11–4–1983).

The applicant's proposed service area under the ASF would be Chenango County. If approved, the applicant would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Syracuse Customs and Border Protection port of entry.

The proposed zone would include two initial ''usage-driven'' sites: Proposed Site 1 (342.47 acres)—Norwich Pharmaceuticals, Inc., 6826 State Highway 12, Norwich, Chenango County; and, Proposed Site 2 (7 acres)—CWS, Contract Packaging, 17 Midland Drive, 19 Sheldon Street and 97–100 East Main Street, Norwich, Chenango County.

The application indicates a need for zone services in Chenango County, New York. Several firms have indicated an interest in using zone procedures for warehousing/distribution and production activities. Specific production approvals are not being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 1, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 16, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: July 30, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–18914 Filed 8–1–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–55–2012]

Foreign-Trade Zone 8—Toledo, OH; Notification of Proposed Production Activity, Whirlpool Corporation (Washing Machines), Clyde and Green Springs, OH

The Toledo-Lucas County Port Authority, grantee of FTZ 8, submitted a notification of proposed production activity on behalf of Whirlpool Corporation (Whirlpool), located in Clyde and Green Springs, Ohio. The notification conforming to the requirements of the regulations of the Board (15 CFR 400.22) was received on July 20, 2012.

The Whirlpool facility consists of three sites in Clyde and Green Springs, Ohio, and is designated as Subzone 8I. The facility is used for the manufacturing and distribution of washing machines. Production under FTZ procedures could exempt Whirlpool from customs duty payments on the foreign status components used in export production. On its domestic sales, Whirlpool would be able to choose the duty rates during customs entry procedures that apply to finished standard and high capacity washing machines (duty rate 1.0–1.4%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Components and materials sourced from abroad include: reinforced rubber hoses, rubber seals and bellows, rotary displacement pumps, centrifugal pumps, drain pumps, washing machine parts, bearing assemblies, transmission parts, shift actuators, AC motors, power supplies, heater tubs, LED light assemblies, triple level and push button switches, control panels, printed circuit boards, power cords, wire harnesses, EMI filters, pressure sensors, pressure switches, slide assemblies and light assemblies (duty rate ranges from duty-free to 9%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 11, 2012.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: July 26, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–18915 Filed 8–1–12; 8:45 am]

BILLING CODE;P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–811]

Purified Carboxymethylcellulose From the Netherlands: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Intent To Rescind

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

SUMMARY: In response to requests from petitioner Aqualon Company, a unit of Hercules Incorporated and a U.S. manufacturer of purified carboxymethylcellulose, and Akzo Nobel Functional Chemicals B.V. (Akzo Nobel), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on purified carboxymethylcellulose (purified CMC) from the Netherlands. This administrative review covers imports of subject merchandise produced and exported by Akzo Nobel and exported by CP Kelco B.V. (CP Kelco) during the period of review of July 1, 2010, through June 30, 2011.

We preliminarily determine that sales of subject merchandise by Akzo Nobel were not made at less than normal value during the period of review and CP Kelco had no shipments of subject merchandise during the period of review. If these preliminary results are adopted in our final results of administrative review, we will issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP). Interested parties are invited to comment on these preliminary results. Parties who submit argument in this review are requested to submit with the

argument: (1) A statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities.

DATES: *Effective Date:* August 2, 2012.

FOR FURTHER INFORMATION CONTACT: Dena Crossland or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3362 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 2005, the Department published the antidumping duty order on purified CMC from the Netherlands.[1] On July 1, 2011, the Department published its notice of opportunity to request an administrative review of this order for the period July 1, 2010, through June 30, 2011.[2]

Pursuant to 19 CFR 351.213(b)(1), Aqualon Company (Aqualon), a unit of Hercules Incorporated, petitioner in this proceeding, filed a July 29, 2011, request that the Department conduct an administrative review of the sales of subject merchandise from Akzo Nobel and CP Kelco during the period of review. Also, pursuant to 19 CFR 351.213(b)(2), on July 29, 2011, Akzo Nobel requested a review of its sales of subject merchandise made during the period of review.

On August 26, 2011, the Department published a notice of initiation of this administrative review, covering exports, sales, and/or entries of purified CMC from Akzo Nobel and CP Kelco in the **Federal Register**.[3]

The Department issued its antidumping duty questionnaire to Akzo Nobel and CP Kelco on September 19, 2011. On October 11, 2011, CP Kelco timely submitted a letter, in which it certified that it did not have any sales or exports during the period of review. Akzo Nobel responded to the questionnaire on October 21, 2011 (section A questionnaire response (section A response)), on November 9, 2011 (sections B and C questionnaire responses (section B response and section C response)), and on November 16, 2011 (section D questionnaire response (section D response)).[4]

Akzo Nobel responded to a supplemental questionnaire concerning sections A through C of the Department's questionnaire on December 21, 2011. Akzo Nobel responded to supplemental questionnaires concerning section D of the Department's questionnaire on February 24, 2012, May 4, 2012, June 7, 2012, and June 26, 2012.

On March 13, 2012, the Department extended the deadline for the preliminary results of review from April 1, 2012, until July 30, 2012.[5]

On May 25, 2012, the Department received a targeted dumping allegation from petitioner concerning Akzo Nobel. Specifically, petitioner stated that it conducted its own targeted dumping analysis of Akzo Nobel's U.S. sales using the Department's targeted dumping methodology as applied in *Nails* and *Wood Flooring.*[6] Based on their own analysis, petitioner argued that the Department should conduct a targeted dumping analysis and employ monthly average-to-transaction comparisons, in place of monthly average-to-average comparisons, without offsets should the Department find that the record supports its allegation of targeted dumping.[7]

In response to petitioner's targeted dumping allegation, Akzo Nobel argued that the Department does not have the statutory authority to apply a targeted dumping analysis in an administrative review.[8] Akzo Nobel further argued that petitioner's targeted dumping allegation does not provide sufficient grounds for using a comparison methodology different than the Department's average-to-average comparison methodology. Additionally, Akzo Nobel contended that even if the Department decided to conduct a targeted dumping analysis, it may not use one standard deviation to find a pattern of price differences because its use is arbitrary, or in the alternative, statistically inaccurate.

In response to Akzo Nobel's rebuttal comments, petitioner submitted comments on June 28, 2012. Citing 19 CFR 351.414(c)(l), as amended by the *Final Modification for Reviews,*[9] petitioner argued that contrary to Akzo Nobel's claim the Department has the statutory authority to conduct a targeted dumping analysis in this administrative review. Specifically, petitioner argued that in 19 CFR 351.414(c)(l) the Department made clear that ''{i}n an investigation *or review,* the Secretary will use the average-to-average method unless the Secretary determines another method is appropriate in a particular case.'' (emphasis added). According to petitioner, that language was clearly intended to give the Department the discretion to use the same criteria that the Department examines in original investigations pursuant to section 777A(d)(1)(A) and (B) of the Act to determine whether appropriate circumstances exist.

For purposes of these preliminary results the Department did not conduct a targeted dumping analysis. In calculating the preliminary weighted-average dumping margin for the mandatory respondent, the Department applied the calculation methodology adopted in *Final Modification for Reviews.* In particular, the Department compared monthly weighted-average constructed export prices with monthly weighted-average normal values and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margins. 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(c), whether another method is appropriate in this administrative review in light of parties' pre-preliminary comments and any

[1] *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden,* 70 FR 39734 (July 11, 2005) (*CMC Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 38609 (July 1, 2011).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404 (August 26, 2011).

[4] Because we disregarded Akzo Nobel sales in the 2009–2010 administrative review that were made at prices below the cost of production, in accordance with section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Act), we requested on September 19, 2011, that Akzo Nobel respond to section D of the Department's questionnaire.

[5] *See Purified Carboxymethylcellulose From Finland and the Netherlands: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews,* 77 FR 14733 (March 13, 2012).

[6] *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 Less Than Fair Value,* 73 FR 33985 (June 16, 2008) (collectively, ''*Nails*''). Petitioner stated that it used the most recent version of the *Nails* programming language as detailed in *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*), and accompanying Issues and Decision Memorandum at Comment 4.

[7] *See* Petitioner's Allegation of Targeted Dumping, dated May 25, 2012.

[8] *See* Akzo Nobel Functional Chemicals B.V. targeted dumping comments, dated June 15, 2012.

[9] *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*).

comments on the issue that parties may include in their case and rebuttal briefs.

Preliminary Determination of No Shipments

In its response to the Department's antidumping questionnaire, CP Kelco stated that it had no sales of subject merchandise during the period of review. We later confirmed with (CBP) that this company had no entries of purified CMC from the Netherlands during the period of review. *See* Memorandum to the File regarding No Shipments Inquiries for CP Kelco B.V., dated July 24, 2012. Because the evidence on the record indicates that CP Kelco did not have any entries of subject merchandise to the United States during the period of review, we preliminarily determine that it had no reviewable transactions during this period.

Our past practice concerning no-shipment respondents was to rescind the administrative review if the respondent certified that it had no shipments and we confirmed the certified statement through an examination of CBP data.[10] We would then instruct CBP to liquidate any entries of merchandise produced by the respondent at the deposit rate in effect on the date of entry. However, in our May 6, 2003, ''automatic assessment'' clarification, we explained that, where respondents in an administrative review demonstrated that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). Because ''as entered'' liquidation instructions do not alleviate the concerns which the *Assessment Policy Notice* was intended to address, instead of rescinding the review with respect to CP Kelco, we find it appropriate to complete the review and issue liquidation instructions to CBP concerning entries for this company following the final results of the review. If we continue to find that CP Kelco had no reviewable transactions of subject merchandise in the final results, we will instruct CBP to liquidate any existing entries of merchandise produced by CP Kelco but exported by other parties at the all-others rate.[11]

Period of Review

The period of review is July 1, 2010, through June 30, 2011.

Scope of the Order

The merchandise covered by this order is all purified CMC, sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations, which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent. The merchandise subject to this order is currently classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and Customs purposes; however, the written description of the scope of this order is dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all purified CMC that are covered by the description included in the ''Scope of the Order'' section above and that was produced and sold by Akzo Nobel in the Netherlands during the period of review to be foreign like product for the purpose of determining appropriate product comparisons to purified CMC sold by the respondent in the United States. For our discussion of home market viability, *see* the ''Normal Value'' section of this notice below.

In comparing the U.S. sales with the sales of the foreign like product in the comparison market, we used the following methodology. If sales of an identical comparison-market model were reported, we compared the constructed export prices of the U.S. sales to the weighted-average, comparison-market prices of all sales that passed the cost of production test of the identical product during the relevant or contemporary month. *See* sections 771(16) and (35) of the Act; *see also* section 773(b)(1) of the Act. If there were no contemporaneous sales of an identical model, we identified sales of the most similar comparison-market model. *See* section 771(16) of the Act. To determine the most similar model, we matched the physical characteristics of the foreign like product, as reported by Akzo Nobel, to the characteristics of the subject merchandise in the following order of importance: (1) Grade, (2) viscosity, (3) degree of substitution, (4) particle size, and (5) solution characteristics. Where there were no sales of identical or similar foreign like product in the ordinary course of trade with which to compare to a U.S. sale, we made product comparisons using constructed value.

Normal Value Comparisons

To determine whether sales of purified CMC from the Netherlands to the United States were made at less than normal value, we compared constructed export price to the normal value, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice below. In these preliminary results, the Department applied the weighted-average dumping margin calculation methodology adopted in *Final Modification for Reviews.* In particular, we compared monthly weighted-average 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.

Date of Sale

As stated at 19 CFR 351.40l(i), the Department normally will use the respondent's invoice date as the date of sale unless another date better reflects the date upon which the exporter or producer established the material terms of sale. Akzo Nobel reported the invoice date as the date of sale for the home market and one of the U.S. market channels of distribution (*i.e.,* U.S. market Channel 2) because the date of invoice reflects the date on which the material terms of sale were finalized. For Akzo Nobel's other U.S. market channel of distribution (*i.e.,* U.S. market Channel 1), Akzo Nobel reported the date of shipment as the date of sale as this date preceded the invoice date in accordance with the Department's practice.[12] For more information, *see*

[10] *See* 19 CFR 351.213(d)(3); *see also Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 41/2 Inches) From Japan: Final Results of Antidumping Duty Administrative Review,* 77 FR 27428, 27430 (May 10, 2012).

[11] *See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[12] Normally, the Department considers invoice date as the date of sale in accordance with 19 CFR 351.401(i). However, it is the Department's practice to use shipment date as the date of sale when shipment date precedes invoice date. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel*

Memorandum to the File, from Dena Crossland, International Trade Analyst, through Angelica Mendoza, Program Manager, entitled ''Analysis of Data Submitted by Akzo Nobel Functional Chemicals B.V. (Akzo Nobel) in the Preliminary Results of the 2010–2011 Administrative Review of the Antidumping Duty Order on Purified Carboxymethylcellulose (purified CMC) from the Netherlands,'' dated July 30, 2012 (Akzo Nobel Preliminary Analysis Memo). Consistent with 19 CFR 351.401(i) and Akzo Nobel's response, the Department has preliminarily determined to use invoice date as the date of sale except in those circumstances where shipment date preceded invoice date. In such instances and consistent with the Department's practice, the Department preliminarily determines to use shipment date.

Constructed Export Price

In accordance with section 772(b) of the Act, constructed export price is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

For purposes of this review, Akzo Nobel classified all of its export sales of purified CMC to the United States as constructed export price (CEP) sales. During the period of review, Akzo Nobel made sales in the United States through its U.S. affiliate, AN–US, which sold the merchandise to unaffiliated customers in the United States. The Department calculated CEP based on packed prices to the first unaffiliated customer in the United States. We made deductions from the starting price, net of discounts, for movement expenses (domestic foreign inland freight and warehousing expenses, domestic inland insurance, domestic brokerage and handling expenses, international freight, marine insurance, U.S. inland insurance, brokerage and handling expenses incurred in the United States, U.S. warehousing expenses, U.S. inland freight, and U.S. customs duties) in accordance with section 772(c)(2)(A) of the Act and 19 CFR 351.401(e). In addition, because Akzo Nobel reported CEP sales in accordance with section 772(d)(l) of the Act, we deducted from the starting price credit expenses and indirect selling expenses, including inventory carrying costs, incurred in the Netherlands and the United States and associated with economic activities in the United States.

In accordance with section 772(d)(3) of the Act, we deducted an amount for CEP profit.

Normal Value

A. Home Market Viability and Comparison Market Selection

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (*i.e.,* whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Akzo Nobel's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, consistent with section 773(a)(1)(C) of the Act.

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.404(b), because Akzo Nobel'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,[13] we determined that the home market was viable. Thus, we based normal value on Akzo Nobel's home market sales made in the usual commercial quantities and in the ordinary course of trade.

B. Cost of Production Analysis

In the last administrative review of the order, the Department determined that Akzo Nobel sold purified CMC at prices below the cost of producing the merchandise and, as a result, we excluded such sales from the calculation of normal value.[14] Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Akzo Nobel's sales of purified CMC under consideration for the determination of normal value in the instant review may have been made at prices below the cost of production. Pursuant to section 773(b)(l) of the Act, we have conducted a cost of production investigation of Akzo Nobel's sales in the comparison market.

C. Calculation of Cost of Production

We have preliminarily relied upon the cost of production information provided by Akzo Nobel in its May 4, 2012, section D submission. In accordance with section 773(b)(3) of the Act, we calculated the weighted-average cost of production for each foreign like product based on the sum of Akzo Nobel's material and fabrication costs for the product, plus amounts for selling, general, and administrative (SG&A) expenses, as well as packing costs. Based on the review of record evidence, Akzo Nobel did not appear to experience significant changes in its cost of manufacturing during the period of review. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

D. Test of Comparison Market Prices

As required under section 773(b) of the Act, we compared Akzo Nobel's weighted-average cost of production figures to its comparison-market sales prices (net of certain discounts, any applicable movement expenses, direct and indirect selling expenses, and packing) of the foreign like product in order to determine whether sales in the comparison market had been made at prices below cost of production. In determining whether to disregard such sales, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made within an extended period of time in substantial quantities and whether the sales were made at prices which would not permit the recovery of all costs within a reasonable period of time.

E. Results of Cost Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the sales of a given product were at prices less than the cost of production, we did not disregard any of the below-cost sales of that product because they were not made in substantial quantities. However, where 20 percent or more of the respondent's comparison-market sales of a model were made at prices below the cost of production, we disregarded these sales because they were made: (1) In substantial quantities within the period of review (*i.e.,* within an extended period of time), in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. We used the remaining comparison-market sales, if such sales

Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 63 FR 13170, 13172–73 (March 18, 1998); *see also Stainless Steel Sheet and Strip in Coils From the Republic of Korea; Final Results and Rescission of Antidumping Duty Administrative Review in Part,* 72 FR 4486 (January 31, 2007), and accompanying Issues and Decision Memorandum at Comments 4 and 5.

[13] *See* Akzo Nobel's section A response at A–2 and Tab 1.

[14] *See Purified Carboxymethylcellulose from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 36519, 36521–36522 (June 22, 2011) unchanged in *Purified Carboxymethylcellulose From the Netherlands: Final Results of Antidumping Duty Administrative Review,* 76 FR 66687 (October 27, 2011).

existed and were made in the ordinary course of trade, as the basis for determining normal value, in accordance with section 773(b)(1) of the Act.

In the current review, we found sales by Akzo Nobel made below the cost of production for 20 percent or more of certain models and, therefore, we disregarded these below-cost sales from our margin calculations. *See* Akzo Nobel Preliminary Analysis Memo.

F. Price-to-Price Comparisons

We calculated normal value based on prices to unaffiliated customers in the comparison market. We decreased price, as appropriate, for certain discounts. We made deductions, where appropriate, for foreign inland freight and international freight pursuant to section 773(a)(6)(B) of the Act. In addition, when comparing sales of similar merchandise to U.S. sales, we made adjustments to normal value for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances of sale, as appropriate (*i.e.,* credit), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also made an adjustment, where appropriate, for a constructed export price offset, in accordance with section 773(a)(7)(B) of the Act. *See* the ''Level of Trade'' section below. Finally, we deducted comparison-market packing costs and added U.S. packing costs to normal value, in accordance with sections 773(a)(6)(A) and (B) of the Act.

G. Price-to-Constructed-Value Comparisons

Section 773(a)(4) of the Act provides that, if we are unable to find a contemporaneous comparison-market match of identical or similar merchandise for a U.S. sale, then we base normal value on constructed value. Section 773(e) of the Act provides that constructed value shall be based on the sum of the cost of materials and fabrication employed in producing the merchandise, SG&A expenses, profit, and expenses associated with packing the merchandise for shipment to the United States. We calculated the cost of materials and fabrication based on the methodology described above in the ''Calculation of Cost of Production'' section. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses (as adjusted above) and profit on the amounts incurred and realized by Akzo Nobel in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country. *See* 19 CFR 351.405(b)(1).

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the export price or constructed export price transaction. The level of trade in the comparison market is the level of trade of the starting-price sales in the comparison market or, when normal value is based on constructed value, the level of trade of the sales from which we derive SG&A expenses and profit. *See* 19 CFR 351.412(c). For constructed export price transactions, the level of trade is that of the constructed sale from the exporter to the importer. *Id.*

To determine whether comparison market sales are at a different level of trade from U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at different levels of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison market sales at the level of trade of the export transaction, the Department makes a level-of-trade adjustment in accordance with section 773(a)(7)(A) of the Act. For constructed export price sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. We analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in level of trade between the constructed export price and normal value. *See* section 773(a)(7)(A) of the Act.

Under section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to normal value for level of trade if the difference in level of trade involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined. Finally, if the normal-value level of trade is at a more advanced stage of distribution than the level of trade of the constructed export price, but the data available do not provide an appropriate basis to determine a level-of-trade adjustment, we reduce normal value by the amount of indirect selling expenses incurred in the comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for constructed export price sales. *See* section 773(a)(7)(B) of the Act (the CEP-offset provision).

In analyzing differences in selling functions, we determine whether the levels of trade identified by the respondent are meaningful. *See Antidumping Duties: Countervailing Duties,* 62 FR 27296, 27371 (May 19, 1997). If the claimed levels of trade are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar. *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.

In the present review, Akzo Nobel claimed that a constructed export price offset was required because the constructed export price level of trade was less advanced than levels of trade in the comparison market.[15] In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the ''chain of distribution''),[16] including selling functions, class of customer (customer category), and the level of selling functions for each type of sale.

Akzo Nobel reported one level of trade in the home market, the Netherlands, with one channel of distribution to two classes of customers: (1) Direct sales from the warehouse located near the Akzo Nobel manufacturing plant to end users, and (2) direct sales from the warehouse located near the Akzo Nobel manufacturing plant to distributors.[17] Based on our review of evidence on the record, we find that the home market sales to both customer categories

[15] *See* Akzo Nobel's section C response at C–45.

[16] The marketing process in the United States and comparison market begins with the producer and extends to the sale to the final user or customer. The chain of distribution involved in the two markets may have many or few links, and respondent's sales occur somewhere along this chain. In performing this evaluation, we considered respondent's narrative responses to properly determine where in the chain of distribution the sale occurs.

[17] *See* Akzo Nobel's section A response at A–15 and A–16; *see also* Akzo Nobel's section B response at B–9.

through the one channel of distribution were substantially similar with respect to selling functions and stages of marketing. Akzo Nobel performed the same selling functions for sales in a single home market channel of distribution, including sales forecasting, strategic planning, advertising, distributor training, packing, warehousing, inventory management, order processing, market research, providing guarantees, after sales services, freight and delivery, and invoicing.[18] Each of these selling functions was identical in the intensity of their provision or only differed minimally, the exception being that Akzo Nobel provided sales/marketing support and technical assistance to a different degree of involvement to different customer types.[19] Thus, after considering all of the above, we preliminarily find that Akzo Nobel had only one level of trade for its home market sales.

Akzo Nobel reported one constructed export price level of trade, with two separate channels of distribution in the United States. Channel 1 sales were made to order for two classes of customers, *i.e.,* end users and distributors.[20] The U.S. customer orders merchandise from Akzo Nobel's U.S. affiliate, AN–US, and the merchandise is shipped directly to the U.S. customer from Akzo Nobel.[21] Further, the customer is invoiced by AN–US, and the title passed directly from AN–US to the unaffiliated customer in the United States. Channel 2 sales were also made to two classes of customers, *i.e.,* end users and distributors, from inventory.[22] Specifically, the U.S. customer orders merchandise from AN–US, which is shipped out of a stock of materials maintained at AN–US's unaffiliated warehouses.[23] Upon examining Akzo Nobel's questionnaire responses, we preliminarily find that it has two channels of distribution for its constructed export price sales in the United States.[24]

For constructed export price sales, we consider only the selling activities reflected in the price after the deduction of expenses and constructed export price profit under section 772(d) of the Act. *See Micron Tech. Inc.* v. *United States,* 243 F.3d 1301, 1314–15 (Fed. Cir. 2001). We reviewed the selling functions and services performed by Akzo Nobel on constructed export price sales as described in its questionnaire and supplemental questionnaire responses, after these deductions. We found that selling functions performed by Akzo Nobel to its U.S. affiliate in support of the constructed export price sales were almost identical regardless of class of customers or channel of trade. Akzo Nobel reported that it provided services to both Channel 1 and Channel 2, including strategic planning, packing, warehousing, inventory management, order processing, and logistics for freight and delivery, although Akzo Nobel provided a different degree of service to these channels for delivery, warehousing, and inventory management.[25] As a result of our analysis, we found that selling functions performed by Akzo Nobel for both channels are at the same level.

Next, we compared the stages in the marketing process and selling functions along the chain of distribution for home market and constructed export price sales. Akzo Nobel's home market and constructed export price sales were both made to end users and distributors. We found that Akzo Nobel performs an additional layer of selling functions at a greater degree of involvement in the home market than it provided on constructed export price Channel 1 and Channel 2 sales (*e.g.,* sales forecasting, strategic planning, advertising, distributor training, market research, technical assistance, sales and marketing support, after sales service, and invoicing).[26] Because these additional selling functions are significant, we find that Akzo Nobel's constructed export price sales are at a different level of trade than its home market sales.

According to section 773(a)(7)(B) of the Act, a CEP offset is appropriate when the level of trade in the home market is at a more advanced stage than the level of trade of the constructed export price sales and there is no basis for determining whether the difference in levels of trade between normal value and constructed export price affects price comparability. Akzo Nobel reported that it provided minimal selling functions and services for the constructed export price level of trade and that, therefore, the home market level of trade is more advanced than the constructed export price level of trade. Based on our analysis of the channels of distribution and selling functions performed by Akzo Nobel for sales in the home market and constructed export price sales in the U.S. market (*i.e.,* sales support and activities provided by Akzo Nobel for sales to its U.S. affiliate), we preliminarily find that the home market level of trade is at a more advanced stage when compared to constructed export price sales because Akzo Nobel provides many selling functions in the home market at a different level of service (*i.e.,* sales forecasting, advertising, distributor training, market research, sales and marketing support, *etc.*) as compared to selling functions performed for its constructed export price sales (*i.e.,* Akzo Nobel reported that the only services it provided for the constructed export price sales were logistics for freight and delivery, packing, warehousing, inventory management, order processing, providing guarantees, and limited strategic planning and technical assistance).[27] Thus, we find that Akzo Nobel's home market sales are at a more advanced level of trade than its constructed export price sales. As there was only one level of trade in the home market, there were no data available to determine the existence of a pattern of price differences, and we do not have any other information that provides an appropriate basis for determining a level-of-trade adjustment; therefore, we applied a constructed export price offset to normal value for constructed export price comparisons.

To calculate a CEP offset for Akzo Nobel, we deducted the comparison market indirect selling expenses from normal value for sales that were compared to U.S. constructed export price sales. We limited the deduction by the amount of the indirect selling expenses deducted in calculating the constructed export price under section 772(d)(1)(D) of the Act. *See* section 773(a)(7)(B) of the Act.

Currency Conversion

We made foreign-currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415 based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. *See* Import Administration Web site at: *http://ia.ita.doc.gov/exchange/index.html.*

Preliminary Results of Review

We preliminarily determine that, for the period July 1, 2010, through June 30, 2011, the following dumping margin exists:

[18] *See* Akzo Nobel's section A response at A–17 through A–21 and Tab 9.

[19] *See* Akzo Nobel's section A response at Tab 9. *See also* Preliminary Analysis Memo.

[20] *See id.* at A–16.

[21] *See id.* at A–15.

[22] *See id.* at A–16.

[23] *See id.* at A–15.

[24] *See id.* at A–15 through A–16, A–24 through A–27, and Tab 8; and section C response at C–9.

[25] *See* Akzo Nobel's section A response at Tab 9.

[26] *See id.* at A–17 through A–21 and Tab 9.

[27] *See id.* at Tab 9.

Manufacturer/Exporter	Weighted-average margin (percent)
Akzo Nobel Functional Chemicals B.V.	0.00

Disclosure and Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit written comments in response to these preliminary results. Interested parties may submit case briefs to the Department no later than 30 days after the publication of these preliminary results. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1) and (2).

Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 351.309(c)(2). Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Executive summaries should be limited to five pages total, including footnotes.

Within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments raised in the case and rebuttal briefs, pursuant to 19 CFR 351.310(c). Unless the Department specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. *See* 19 CFR 351.310(d)(1). Parties will be notified of the time and location of the hearing. Written argument and hearings requests should be electronically submitted to the Department via IA ACCESS.[28]

The Department will publish the final results of the administrative review, including the results of its analysis of issues addressed in any case or rebuttal brief, no later than 120 days after publication of the preliminary results, unless extended. *See* section 751(a)(3)(A) of the Act; 19 CFR 351.213(h).

[28] *See generally* 19 CFR 351.303.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer (or customer)-specific assessment rate or value for merchandise subject to this review as described below.

For CEP sales, we divide the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's period of review entries. *See* 19 CFR 351.212(b).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the period of review produced by companies in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct U.S. Customs and Border Protection to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Assessment Policy Notice.*

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis.* The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable. *See* section 751(a)(2)(C) of the Act.

Cash Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, 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 in the investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the all-others rate of 14.57 percent, which is the all-others rate established in the investigation. *See CMC Order,* 70 FR at 39735. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 25, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–18904 Filed 8–1–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–864]

Pure Magnesium in Granular Form From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

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

DATES: August 2, 2012.

SUMMARY: The U.S. Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on pure magnesium in granular form (''pure granular magnesium'') from the People's Republic of China (''PRC'') with respect to one producer/exporter for the period of review (''POR'') November 1, 2010, through October 31, 2011.[1] If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the period of review.

We intend to issue the 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''). Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Eve Wang, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6231.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2011, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on pure granular magnesium from the PRC for the period from November 1, 2010, through October 31, 2011.[2] On November 20, 2011, the Department received a timely request from US Magnesium LLC (''Petitioner''), in accordance with 19 CFR 351.213(b), for an administrative review of China Minmetals Non-Ferrous Metals Co., Ltd. (''CMN'') in the aforementioned proceeding. On December 30, 2011, in accordance with section 751(a) of the Act, the Department published in the **Federal Register** the initiation notice of the antidumping duty administrative review with respect to CMN.[3]

In the *Initiation,* the Department stated that if a producer or exporter named in that notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of the *Initiation*.[4] On March 2, 2012, the Department issued a questionnaire to CMN. On March 12, 2012, CMN emailed the Department, stating that it had not exported any pure granular magnesium and thus may not be able to provide the information requested in the Department's questionnaire.[5] The Department replied that the deadline for the submission of notices of no-shipments had passed, and that the Department would address the treatment of CMN in the preliminary results of this review.[6] CMN did not submit a response to the Department's questionnaire.

Scope of the Order

The scope of this order excludes pure magnesium that is already covered by an existing order[7] on pure magnesium in ingot form, and currently classifiable under item numbers 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

The scope of this order includes imports of pure magnesium products, regardless of chemistry, including, without limitation, raspings, granules, turnings, chips, powder, and briquettes, except as noted above.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as ''ultra-pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as ''pure'' magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy''[8] (generally referred to as ''off-specification pure'' magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight. Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials of which the Department is aware used to make such excluded reagents are: Lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, aluminum, alumina (Al_2O_3), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of antidumping duties.

The merchandise subject to this order is currently classifiable under item 8104.30.00 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Separate Rate

Pursuant to section 771(18)(C) of the Act, a designation of a country as an NME remains in effect until it is revoked by the Department. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.[9] In the *Initiation,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.[10] It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*),

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part,* 76 FR 82268 (December 30, 2011) (''*Initiation*'').

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 67413 (November 1, 2011).

[3] *See Initiation.*

[4] The deadline for a party to submit its notice of no sales was February 28, 2012.

[5] *See* the Department's memo to the file, ''2011–2012 Administrative Review of Pure Magnesium in Granular Form from the People's Republic of China: Email Communication from China Minmetals Non-Ferrous Metals Co., Ltd.'' dated April 20, 2012. We note that the Department does not generally accept email communications from a party as the party's response to the Department's questionnaire, and we limit those communications to only general procedural questions.

[6] *Id.*

[7] *See Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation,* 60 FR 25691 (May 12, 1995).

[8] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.*

[9] *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079, 53082 (September 8, 2006); Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China,* 71 FR 29303, 29307 (May 22, 2006).

[10] *See Initiation.*

with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers,*[11] as amplified by *Silicon Carbide.*[12] However, if the Department determines that a company is wholly foreign-owned or located in a market economy (''ME''), then a separate rate analysis is not necessary to determine whether it is independent from government control.[13]

CMN did not submit a separate rate application or certification to demonstrate its eligibility for separate rate status. As stated in the *Initiation,* ''[a]ll firms listed below that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below.'' [14] CMN also failed to respond to the Department's questionnaire. Based on these facts, we determined that CMN has not demonstrated entitlement to a separate rate and is now part of the PRC-wide entity.

The PRC-Wide Entity and Use of Adverse Facts Available (''AFA'')

Sections 776(a) of the Act provide that the Department shall apply ''facts otherwise available'' 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.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot serve as a reliable basis, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

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 AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Because we have determined that CMN is not entitled to a separate rate and is now part of the PRC-wide entity, the PRC-wide entity is now under review. The PRC-wide entity did not respond to our requests for information and, as such, we find it appropriate under section 776(a)(2) of the Act to use facts available as the basis for these preliminary results. Because the PRC-wide entity provided no information, we determine that sections 782(d) and (e) of the Act are not relevant to our analysis. We further find that because the PRC-wide entity failed to respond to the Department's requests for information, it failed to cooperate by not acting to the best of its ability to comply with the Department's requests. Therefore, because the PRC-wide entity did not cooperate to the best of its ability in the proceeding, the Department finds it appropriate to use an adverse inference in making its determination, pursuant to section 776(b) of the Act.

Selection of the Adverse Facts Available Rate

In deciding what rate to apply as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) The petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any other information placed on the record. Because of the PRC-wide entity's failure to cooperate in this administrative review, we have preliminarily assigned the PRC-wide entity an AFA rate of 305.56 percent, which is the PRC-wide rate determined in the investigation of pure magnesium in granular form from the PRC.[15] This is the highest rate on the record for all segments of this proceeding.[16]

Corroboration of Facts Available

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall to the extent practicable, corroborate that information from independent sources that are reasonably at the Department's disposal. Secondary information is described in the Statement of Administrative Action (''SAA'') as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' [17] The SAA explains that ''corroborate'' means to determine that the information used has probative value. The Department has determined that to have probative value, information must be reliable and relevant.[18] The SAA also explains that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[19]

As stated above, we are applying as AFA the highest and only rate for the

[11] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991).

[12] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994).

[13] *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China,* 72 FR 52355, 52356 (September 13, 2007).

[14] *See Initiation,* 76 FR at 82269.

[15] *See Antidumping Duty Order: Pure Magnesium in Granular Form From the People's Republic of China,* 66 FR 57936 (November 19, 2001).

[16] *See id.*

[17] *See* The Statement of Administrative Action, reprinted in H.R. Doc. No. 103–216, at 870 (1994) (''SAA'') at 870.

[18] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[19] *See* SAA at 870; *see also Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada,* 70 FR 12181, 12183 (March 11, 2005).

PRC-wide entity from any segment of this administrative proceeding. The AFA rate of 305.56 percent selected here is from the investigation.[20] This rate was calculated based on information contained in the petition, which was corroborated for the final determination. No additional information has been presented in the current review which calls into question the reliability or relevance of the information and the Department's corroboration. The Department's corroboration analysis of a PRC-wide rate was affirmed by the Court's recent decision in *The Watanabe Group* v. *United States,* 2010 Lexis 144; Slip Op. 2010–139 (Ct. Int'l Trade Dec. 22, 2010), where the Court held that with no evidence specific to the review and no evidence questioning the prior corroboration of the PRC-wide rate, the Department may rely on the corroborated rate from an earlier segment of the proceeding because doing so is based on a reasonable inference from the current record.

Therefore, the Department finds that the information continues to be reliable and relevant and therefore the rate is corroborated.

Preliminary Results

The Department has determined that the following preliminary dumping margin exists for the period November 1, 2010, through October 31, 2011:

Producer/manufacturer	Weighted-average margin (percent)
PRC-Wide Entity (which includes CMN)	305.56

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. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity (including CMN) at the PRC-wide rate.

Cash Deposit Requirements

If these preliminary results are adopted in the final results, then the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) 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 entity rate of 305.56 percent; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Since no calculations were performed for these partial preliminary results, no disclosure is required under 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing will be held 37 days after the publication of this notice, or the first business day thereafter unless the Department alters the date pursuant to 19 CFR 351.310(d). Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, pursuant to the Department's e-filing regulations.[21] Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing. Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(1)(ii). As part of the case brief, parties are encouraged to provide a summary of the arguments and a table of authorities cited in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed in accordance with 19 CFR 351.309(d). All briefs must be filed in accordance with the Department's e-filing regulations.[22] The Department intends to issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

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

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

Dated: July 27, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–18912 Filed 8–1–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Medical University of South Carolina, 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 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 12–025. *Applicant:* Medical University of South Carolina, Charleston, SC 29403. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 77 FR 39683, July 5, 2012.

Docket Number: 12–027. *Applicant:* University of Wyoming, Laramie, WY 82071. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech

[20] *See Antidumping Duty Order: Pure Magnesium in Granular Form From the People's Republic of China,* 66 FR 57936 (November 19, 2001).

[21] *See https://iaaccess.trade.gov/help/IA%20ACCESS%20User%20Guide.pdf.*

[22] *Id.*

Republic. *Intended Use:* See notice at 77 FR 39683, July 5, 2012.

Docket Number: 12–028. *Applicant:* Air Force Institute of Technology, Wright-Patterson AFB, OH 45433–7765. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 77 FR 39683, July 5, 2012.

Docket Number: 12–031. *Applicant:* Penn State College of Medicine, Hershey, PA 17033. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 77 FR 39683, July 5, 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: July 26, 2012.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2012–18951 Filed 8–1–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–981]

Utility Scale Wind Towers From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

DATES: *Effective Date:* August 2, 2012

SUMMARY: The Department of Commerce (the ''Department'') preliminarily determines that utility scale wind towers (''wind towers'') from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The preliminary dumping margins are shown in the ''Preliminary Determination'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, Shawn Higgins, Thomas Martin, or Trisha Tran, 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) 482–6412, (202) 482–0679, (202) 482–3936, or (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2011, the Department received a petition, filed by the Wind Tower Trade Coalition (''Petitioner'') in proper form, concerning imports of wind towers from the PRC.[1] In January 2012, the Department requested information regarding, and clarification of, certain areas of the petition. Petitioner filed timely responses to these requests. The Department initiated an antidumping duty (''AD'') investigation of wind towers from the PRC on January 24, 2012.[2]

In the petition, Petitioner requested that the Department consider expanding the period of investigation (''POI'') to include more than two fiscal quarters (*i.e.,* the period normally covered in an investigation involving a non-market economy (''NME'') country), because a POI of normal duration may not capture a large number of wind tower sales. Accordingly, in the *Initiation Notice,* the Department stated that it would give further consideration to the duration of the POI.[3]

In the *Initiation Notice,* the Department stated that it intended to issue its quantity and value (''Q&V'') questionnaire to the exporters/producers named in the petition and to select respondents based on data provided in the responses to the Q&V questionnaire.[4] On January 19, 2012, the Department requested Q&V information from 48 companies identified in the petition as potential exporters of wind towers from the PRC.[5] The Department received timely responses to its Q&V questionnaire from seven companies. The Department concluded from its review of these responses that the six-month POI data ensure a sufficient number of sales for its analysis.[6] Accordingly, the Department, pursuant to 19 CFR 351.204(b)(1), determined to follow its normal practice of using the six-month POI.[7] After further examining the responses to the Q&V questionnaire, the Department selected as mandatory respondents the two companies reporting the largest quantity of wind tower sales to the United States during the POI (*i.e.,* Chengxi Shipyard Co., Ltd. (''CXS'') and Titan Wind Energy (Suzhou) Co., Ltd. (''Titan'')).[8]

On March 8, 2012, the Department issued the AD questionnaire to both CXS and Titan. In April and May 2012, CXS and Titan submitted timely responses to the Department's AD questionnaire and Petitioner submitted comments regarding those responses. From April through July 2012, the Department issued supplemental questionnaires to CXS and Titan. From May through July 2012, CXS and Titan submitted timely responses to the Department's supplemental questionnaires and Petitioner submitted comments regarding several of those responses.

In the *Initiation Notice,* the Department notified parties that they had an opportunity to comment on the scope of the investigation as well as the appropriate physical characteristics of wind towers to be reported in response to the Department's AD questionnaire. In February 2012, CS Wind China Co., Ltd. and CS Wind Corporation (collectively, ''CS Wind'') and Petitioner submitted comments to the Department regarding the scope and the physical characteristics of merchandise under consideration to be used for reporting purposes.

On February 13, 2012, CS Wind requested to be treated as a voluntary respondent in this investigation.[9] CS Wind, however, withdrew its request for treatment as a voluntary respondent on April 30, 2012.[10]

[1] *See* Petition for the Imposition of Antidumping and Countervailing Duties: Utility Scale Wind Towers from the People's Republic of China and The Socialist Republic of Vietnam (December 29, 2011) (''petition'').

[2] *See Utility Scale Wind Towers From the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations,* 77 FR 3440 (January 24, 2012) (''*Initiation Notice*'').

[3] *Id.,* 77 FR at 3441.

[4] *Id.,* 77 FR at 3445.

[5] The Department requested this information on the day after the *Initiation Notice* was signed.

[6] *See* Memorandum from Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Respondent Selection in the Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China'' (March 7, 2012) (''Respondent Selection Memorandum'') at 5.

[7] *Id.*

[8] *Id.* at 4–6; section 777A(c)(2) of the Act.

[9] *See* Letter from CS Wind to the Secretary of Commerce, ''Request To Be Voluntary Respondent in the Antidumping Duty Investigation on Utility Scale Wind Towers from the People's Republic of China'' (February 13, 2012).

[10] *See* Letter from CS Wind to the Secretary of Commerce, ''CS Wind China's Withdrawal of Request for Treatment as a Voluntary Respondent in the Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China'' (April 30, 2012).

On February 13, 2012, the U.S. International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of wind towers from the PRC.[11]

In the *Initiation Notice,* the Department notified parties that in order to obtain separate rate status in this investigation, exporters must file timely separate rate applications and timely responses to the Q&V questionnaire.[12] In March 2012, the Department received, and accepted, separate rate applications from four companies. From April 2012 through June 2012, the Department issued supplemental questionnaires to, and received responses from, the companies applying for a separate rate.

On March 16, 2012, the Department identified potential surrogate countries for use in this investigation and invited interested parties to comment on primary surrogate country and surrogate value selection.[13] In April and May 2012, interested parties submitted comments on the appropriate primary surrogate country and surrogate values.

On May 3, 2012, Petitioner made a timely request, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e), for a 50-day postponement of the preliminary determination.[14] On May 17, 2012, the Department fully extended the deadline for issuing the preliminary determination.[15]

In June 2012, Petitioner filed comments for the Department to consider in its preliminary determination.[16] No other party submitted comments regarding the preliminary determination.

[11] *See Utility Scale Wind Towers From China and Vietnam,* 77 FR 9700 (February 17, 2012).

[12] *See Initiation Notice,* 77 FR at 3445.

[13] *See* Letter from Robert Bolling, Program Manager, Office 4, AD/CVD Operations, to All Interested Parties, ''Antidumping Investigation of Utility Scale Wind Towers from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information'' (March 16, 2012).

[14] *See* Letter from Petitioner to the Secretary of Commerce, ''Certain Utility Scale Wind Towers from the People's Republic of China: Request to Fully Extend Preliminary Determination'' (May 3, 2012).

[15] *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).

[16] *See* Letter from Petitioner to the Secretary of Commerce, ''Utility Scale Wind Towers from the People's Republic of China: Petitioner's Pre-Preliminary Comments'' (June 29, 2012).

Period of Investigation

The POI is April 1, 2011 through September 30, 2011. This period corresponds to the two most recent fiscal quarters prior to the month in which the petition was filed (*i.e.,* December 2011).[17]

Scope of the Investigation

The merchandise covered by this investigation is 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 (''kW'') 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 this investigation is currently classified in the Harmonized Tariff System of the United States (''HTSUS'') under subheadings 7308.20.0020[18] or 8502.31.0000.[19] 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.

[17] *See* 19 CFR 351.204(b)(1).

[18] Wind towers are classified under HTSUS 7308.20.0020 when imported as a tower or tower section(s) alone.

[19] 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).

Scope Comments

In accordance with the preamble to the Department's regulations, the Department 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.*[20]

On February 7, 2012, the Department received timely comments on the scope of the investigation from Petitioner.[21] Specifically, Petitioner requested that the scope cover all future generations of utility scale wind towers, regardless of the type of the future tower (*e.g.,* lattice mast, space frame tower, *etc.*), that are designed to support turbine generators with a capacity in excess of 100 kW.[22] Petitioner argued that, in a previous case, the Department included scope language that covered future generations of semiconductors.[23] Petitioner also stated that wind tower generating capacities have been consistently increasing, generator efficiencies have been improving, and turbine heights have been rising to altitudes with much stronger winds.[24] Petitioner contends, in fact, that the next generation of wind towers will be over 100 meters in height and capable of supporting generators with capacities of 7.0 megawatts and larger.[25] Accordingly, Petitioner proposed including language in the scope stating that ''{f}uture utility scale wind tower configurations that meet the minimum height requirement and are designed to support wind turbine electrical generators greater than 100 kW are also included within the scope.''[26]

Section 731 of the Act requires the Department to define the scope of merchandise subject to investigation in

[20] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997); *Initiation Notice,* 77 FR at 3441.

[21] *See* Letter from Petitioner to the Secretary of Commerce, ''Certain Utility Scale Wind Towers from the People's Republic of China and the Socialist Republic of Vietnam: Scope Comments'' (February 7, 2012) (''Scope Comments''). No other parties provided comments.

[22] *Id.* at 2.

[23] *Id.* at 2–3; *Initiation of Antidumping Duty Investigation: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea,* 57 FR 21231 (May 19, 1992) (''*Semiconductors*'').

[24] *See* Scope Comments at 3.

[25] *Id.*

[26] *Id.* at 2.

each AD investigation. If the Department initiates an investigation based upon a petition, it will continue to review the scope of the merchandise described in the petition to determine the scope of the final order.[27]

Generally, the Department prefers to define product coverage by the physical characteristics of the merchandise subject to investigation.[28] In this proceeding, a wind tower section subject to this investigation ''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* * *.'' Consequently, to revise the scope language as proposed by Petitioner would expand product coverage beyond the physical characteristics of merchandise currently subject to this investigation by including all products meeting the minimum height and power generating capacity defined in the scope, regardless of physical characteristics. Moreover, in *Semiconductors,* the Department did not cover future generations of semiconductors as claimed by Petitioner but, rather, covered future packaging and assembling of dynamic random access semiconductors. What distinguishes the instant investigation from *Semiconductors* is that, while the Department never contemplated future generations of semiconductors, Petitioner's admitted intention in the instant investigation is to ''cover all future generations of utility scale wind towers regardless of the type of future tower.'' [29] This would result in an open-ended scope, potentially covering products whose physical characteristics differ significantly from the physical characteristics of the merchandise subject to this investigation. Therefore, for this preliminary determination, the Department has not adopted the revised scope language proposed by Petitioner.

Non-Market Economy Country

The PRC has been treated as an NME in every proceeding conducted by the Department.[30] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority. The Department has not revoked the PRC's status as an NME. Therefore, the Department has treated the PRC as an NME in this preliminary determination and, accordingly, applied the NME methodology.

Surrogate 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 or countries considered appropriate by the Department. The Department will value FOPs, in accordance with section 773(c)(4) of the Act, by using ''to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—(A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise.'' Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOPs in a single surrogate country.

A. Economic Comparability

The Department identified Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine as countries equally comparable to the PRC in terms of economic development.[31] Consistent with its practice, as reflected in the Policy Bulletin 04.1, the Department found that Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine are countries that are at a level of economic development comparable to that of the PRC and, therefore, satisfy the first criterion of section 773(c)(4) of the Act.[32]

B. Significant Producer of Comparable Merchandise

In order to identify which countries export merchandise comparable to the merchandise under consideration, the Department obtained export data for the six-digit tariff sub-headings listed in the description of the scope of this investigation (*i.e.,* 7308.20 and 8502.31) for each of the seven potential surrogate countries.[33] After reviewing this export data, the Department preliminarily determined that (1) Columbia, Indonesia, Peru, South Africa, Thailand and Ukraine are significant producers of merchandise comparable to the merchandise under consideration and (2) the Philippines is not a significant producer of merchandise comparable to the merchandise under consideration.[34]

C. Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, the Department selects the primary surrogate country based on data availability and reliability.[35] When evaluating surrogate value data, the Department considers several factors, including whether the surrogate values are publicly available, contemporaneous with the POI, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.[36] The record of this investigation contains publicly-available South African and Ukrainian surrogate value data for FOPs.[37] Petitioner contends that the Department should select South Africa as the primary surrogate country because South African surrogate values, including financial statements for South African producers of merchandise comparable to wind towers, are available for all FOPs.[38] After reviewing the surrogate value data on the record, the Department has found that Ukraine provides the most specific information to value each respondent's most significant input (*i.e.,* steel plate). Accordingly, the Department can more accurately value each company's steel plate FOP by using the more specific Ukrainian surrogate value information than by using the single basket category

[27] *See Antidumping Duties; Countervailing Duties,* 62 FR at 27323.

[28] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China,* 73 FR 31970 (June 5, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

[29] *See* Scope Comments at 2.

[30] *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, 9593 (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).

[31] *See* Memorandum from Carole Showers, Director, Office of Policy, Import Administration, to Robert Bolling, Program Manager, Office 4, Import Administration, ''Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Utility Scale Wind Towers, from the People's Republic of China'' (January 27, 2012).

[32] *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (''Policy Bulletin 04.1''); Memorandum from Trisha Tran, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, ''Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China: Selection of a Surrogate Country'' (July 26, 2012) (''Surrogate Country Memorandum'') at 5.

[33] *Id.* at 5–7.

[34] *Id.* at 7.

[35] *See* Policy Bulletin 04.1; Surrogate Country Memorandum at 7–8.

[36] *See* Policy Bulletin 04.1; Surrogate Country Memorandum at 7–8.

[37] *See* Surrogate Country Memorandum at 8.

[38] *See* Letter from Petitioner to the Secretary of Commerce, ''CS Wind's Surrogate Country Comments: Antidumping Duty Investigation on Utility Scale Wind Towers from the People's Republic of China'' (April 25, 2012).

available for South Africa.[39] Therefore, the Department has preliminarily determined that Ukraine offers the best available surrogate value data because (1) it is most specific to the respondents' primary input and (2) specificity of the surrogate value for the primary input in this proceeding outweighs the Department's preference to value all inputs in a single country.[40]

For the reasons above, the Department has preliminarily determined, pursuant to section 773(c)(4) of the Act, that it is appropriate to use Ukraine as the primary surrogate country because Ukraine is (1) at a level of economic development comparable to the PRC and (2) a significant producer of merchandise comparable to the merchandise under consideration.[41] Moreover, the Department has reliable, POI-contemporaneous Ukrainian data that are more specific, compared to the data on the record from alternative countries, to the respondents' FOPs.[42] Therefore, the Department has calculated NV using Ukrainian prices when available and appropriate to value the FOPs of CXS and Titan.[43]

For the final determination in this investigation interested parties may submit publicly available information to value the FOPs within 40 days after the publication of this preliminary determination.[44]

Separate Rates

In proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.[45] The Department's policy is to assign all exporters of merchandise under consideration that are 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.[46] The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*[47] and further developed in *Silicon Carbide.*[48] According to this separate rate test, the Department will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, the Department determines that a company is wholly foreign owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

A. Separate Rate Recipients

1. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Two separate rate applicants that are receiving a separate rate (*i.e.,* Sinovel Wind Group Co., Ltd. (''Sinovel'') and Guodian United Power Technology Baoding Co., Ltd. (''Guodian'')) and the mandatory respondents (*i.e.,* CXS and Titan) provided evidence that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies.[49] The Department has analyzed whether Sinovel, Guodian, and the mandatory respondents have demonstrated an absence of *de jure* and *de facto* government control over their respective export activities.[50]

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) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.[51]

The evidence provided by Sinovel, Guodian, and the mandatory respondents supports a preliminary finding of an absence of *de jure* government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.[52]

b. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices (''EP'') are set by, or are subject to the

[39] *See* Surrogate Country Memorandum at 8–9.

[40] *See* Surrogate Country Memorandum at 8–9; *High Pressure Steel Cylinders From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 77 FR 26739 (May 7, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

[41] *See* Surrogate Country Memorandum at 9–10.

[42] *Id.* at 8–10.

[43] *See* Memorandum from Lilit Astvatsatrian and Trisha Tran, International Trade Compliance Analysts, AD/CVD Operations, Office 4, to Robert Bolling, Program Manager, AD/CVD Operations, Office 4, ''Utility Scale Wind Towers from the People's Republic of China: Preliminary Determination Surrogate Value Memorandum'' (July 26, 2012) (''Surrogate Value Memorandum'').

[44] *See* 19 CFR 351.301(c)(3)(i). In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by any other 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 surrogate value information. *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. Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must provide a written explanation of what information that is already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting.

[45] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039, 55040 (September 24, 2008) (''*PET Film*'').

[46] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588, 20589 (May 6, 1991) (''*Sparklers*'').

[47] *Id.*

[48] *See Notice of 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*'').

[49] *See* Letter from Sinovel to the Secretary of Commerce, ''Utility Scale Wind Towers from the People's Republic of China: Submission of Separate-Rate Application and Required Supporting Documents'' (March 21, 2012) (''Sinovel's SRA''); Letter from Guodian to the Secretary of Commerce, ''Separate Rate Application and Required Supporting Documentation'' (March 23, 2012) (''Guodian's SRA''); Letter from CXS to the Department of Commerce, ''Utility Scale Wind Towers from the People's Republic of China: Section A Questionnaire Response of Chengxi Shipyard Co., Ltd.'' (April 5, 2012) (''CXS's Section A'') at 7–17, Exhibits A.4, A.9–A.18; Letter from CXS to the Department of Commerce, ''Utility Scale Wind Towers from the PRC: Supplemental Section A Questionnaire Response of Chengxi Shipyard Co., Ltd.'' (May 17, 2012) (''CXS's Section A Supplemental'') at 1–42, Exhibits A.36–A.61; Letter from CXS to the Department of Commerce, ''Utility Scale Wind Towers from the PRC: Part Two of Supplemental Sections A and C Questionnaire Response of Chengxi Shipyard Co., Ltd.'' (June 25, 2012) (''CXS's Sections A&C Supplemental'') at 1–17, Exhibits A.73–A.76; Letter from Titan to the Secretary of Commerce, ''Utility Scale Wind Towers from the People's Republic of China: Section A Questionnaire Response of Titan Wind Energy (Suzhou) Co., Ltd.'' (April 5, 2012) (''Titan's Section A'') at 10–20, Exhibits A–3–A–11.

[50] *See* ''Companies Not Receiving a Separate Rate'' section below for a discussion of AVIC.

[51] *See Sparklers,* 56 FR at 20589.

[52] *See* Sinovel's SRA; Guodian's SRA; CXS's Section A at 7–10, Exhibits A.9–A.10; CXS's Section A Supplemental at 1–6; CXS's Sections A&C Supplemental at 1–9, Exhibits A.73–A.76; Titan's Section A at 10–14, Exhibits A–3–A–4.

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 the disposition of profits or financing of losses.[53] 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 which would preclude the Department from assigning separate rates.

The Department has received no comments challenging the claims of Sinovel, Guodian, and Titan that they operate free of *de facto* government control. However, Petitioner argues that CXS is controlled by the central government both directly, as a matter of national security, and indirectly, through the State-Owned Assets Supervision and Administration Commission of the State Council (''SASAC'') and CXS's ultimate corporate parent, China State Shipbuilding Corporation (''CSSC'').[54] First, Petitioner contends that the central government directly controls CSSC and its subsidiaries, such as CXS, because CSSC and its subsidiaries are among the largest naval warship builders in the PRC and, therefore, vital to the PRC's national security.[55] Moreover, Petitioner claims that the central government directly controls companies such as CXS in order to further its goal of developing the PRC's green energy sector for national security purposes.[56] Although Petitioner provides no evidence that the central government sets EPs or otherwise controls export activities, Petitioner suggests that CXS's claim that it cannot provide the Department with certain documents related to CSSC's management, board of supervisors, and affiliates because they contain business secrets specific to the defense industry is further evidence of both (1) the degree to which the government is involved in the operations of CSSC and CXS and (2) the fundamental role of these companies in the maintenance of the PRC's national security.[57] Second, with regard to indirect control by the central government, Petitioner asserts that CSSC, which is directly administered by SASAC, is the controlling shareholder of CXS because the record of this investigation demonstrates that CSSC owns over 61 percent of China CSSC Holdings Limited (''CSSC Holdings'') and CSSC Holdings owns 100 percent of CXS.[58] This, in Petitioner's view, is consistent with CXS's responses to the Department's supplemental questionnaires in which CXS admitted that the ''actual controller'' of CXS is CSSC, not CSSC Holdings.[59] For these reasons, Petitioner contends that the Department should find that CXS is part of the PRC-wide entity.

The Department, after considering Petitioner's comments, has preliminarily determined that the record of this investigation does not demonstrate that the government controls, either directly or indirectly, CXS's export functions. The information provided by Petitioner in support of its claim that the government directly controls CXS does not address the separate rate test's primary focus ''on controls over the decision-making process on export-related investment, pricing, and output decisions at the individual firm level''; rather it addresses only CSSC's importance to the PRC's national security and the government's general control over companies, such as CSSC, that are members of defense-related industries.[60] Similarly, the documents containing defense industry secrets that CXS's was unable to provide to the Department are not specific to CXS's day-to-day export activities but, instead, relate specifically to CSSC.[61] Further, the Department has found no evidence on the record that the government's influence extends through SASAC, CSSC, and CSSC Holdings to the day-to-day export activities of CXS. CXS has provided information demonstrating its ability to set its own EPs, to negotiate and sign agreements, to select management, and to decide how to dispose of profits and finance losses.[62] Therefore, the Department has preliminarily determined that the evidence on the record supports a preliminary finding that CXS is not subject to *de facto* government control of its export functions.

The evidence provided by Sinovel, Guodian, and Titan also supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing that the companies: (1) Set their own EPs independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.[63]

Therefore, the evidence placed on the record of this investigation by Sinovel, Guodian, and the mandatory respondents demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide.* Accordingly, the Department has preliminarily granted separate rates to Sinovel, Guodian, and the mandatory respondents.[64]

2. Wholly Foreign-Owned

One separate rate applicant in this investigation (*i.e.,* CS Wind), provided evidence in its separate rate application that it is wholly owned by individuals and companies located in ME countries.[65] Moreover, the Department

[53] *See Silicon Carbide,* 59 FR at 22586–87; *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).

[54] *See* Letter from Petitioner to the Secretary of Commerce, ''Utility Scale Wind Towers from the People's Republic of China: Response to Chengxi Shipyard Co., Ltd. Supplemental Section A Questionnaire Response And Separate Rate Request'' (May 25, 2012) at 1–7.

[55] *Id.* at 4–6.

[56] *Id.* at 6.

[57] *Id.* at 4–6.

[58] *Id.* at 2–4.

[59] *Id.* at 3–4.

[60] *See* Import Administration's Policy Bulletin No. 05.1, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries'' (April 5, 2005) (''Policy Bulletin 05.1''), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05–1.pdf*, at 1; *Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 14514 (March 31, 2009), and accompanying Issues and Decision Memorandum at Comment 11 (finding that ownership and/or theoretical control by the government is not sufficient to deny a separate rate; rather, the evidence on the record must demonstrate that the government controls the individual export decisions of the respondent).

[61] CXS was unable to provide (1) Appointment letters and evaluations of CSSC's management, (2) the identities of the members of CSSC's board of supervisors, and (3) a complete list of all CSSC's affiliates. With regard to the third item, CSSC has provided a signed certification stating that no affiliates of CSSC, except for CXS and one of CXS's subsidiaries, are involved in the export and/or production of the merchandise under consideration. *See* CXS's Section A Supplemental at Exhibit A.51.

[62] *See* CXS's Section A at 11–17, Exhibits A.4, A.10–A.18; CXS's Section A Supplemental at 7–42, Exhibits A.36–A.61; CXS's Sections A&C Supplemental at 9–17.

[63] *See* Sinovel's SRA; Guodian's SRA; Titan's Section A at 14–20, Exhibits A–4–A–11.

[64] *See* ''Preliminary Determination'' section below.

[65] *See* Letter from CS Wind Corporation to the Secretary of Commerce, ''CS Wind Corporation Separate Rate Application in the Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China'' (March 26, 2012); Letter from CS Wind China Co., Ltd. to the

has no evidence indicating that CS Wind is under the control of the PRC government. For these reasons, it is not necessary for the Department to conduct a separate rate analysis to determine whether CS Wind is independent from government control.[66] Therefore, the Department has preliminarily granted a separate rate to CS Wind.

B. Companies Not Receiving a Separate Rate

The Department has not granted a separate rate to AVIC International Renewable Energy Co., Ltd. (''AVIC'') because it failed to submit a timely response to the Department's supplemental separate rate questionnaire[67] and withdrew its participation in this AD investigation.[68]

Margin for the Separate Rate Companies

Normally, the Department's practice is to assign to separate rate entities that were not individually examined a rate equal to the average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis,* or based entirely on adverse facts available (''AFA'').[69] Consistent with this practice, the Department has assigned Sinovel, Guodian, and CS Wind a rate of 26.25 percent, which is equal to an average of the rates calculated for the mandatory respondents.[70]

The PRC-Wide Entity

The record indicates that, in addition to AVIC, there are other PRC exporters and/or producers of the merchandise under consideration during the POI that did not respond to the Department's requests for information. Specifically, the Department did not receive responses to its Q&V questionnaire from over 30 PRC exporters and/or producers of merchandise under consideration that were named in the petition and to whom the Department issued the questionnaire.[71] Because AVIC and these non-responsive PRC companies have not demonstrated that they are eligible for separate rate status, the Department considers them part of the PRC-wide entity.

Application of Facts Available and Adverse Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) Withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

The Department has found that the PRC-wide entity withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. The PRC-wide entity neither filed documents indicating it was having difficulty providing the information nor requested that it be allowed to submit the information in an alternate form. As a result, the Department has preliminarily determined, pursuant to sections 776(a)(2)(A)-(C) of the Act, that it may use facts otherwise available to determine the rate for the PRC-wide entity.[72]

Section 776(b) of the Act provides that the Department, in selecting from among the facts otherwise available, may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The Department has found that the PRC-wide entity's failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.[73] Therefore, the Department has preliminarily found that the PRC-wide entity has failed to cooperate to the best of its ability to comply with requests for information and, consequently, the Department may employ an inference that is adverse to the PRC-wide entity in selecting from among the facts otherwise available.

Section 776(b) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate based on AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. The Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated dumping margin of any respondent in the investigation.[74] In this investigation, the petition dumping margin is 213.54 percent.[75] This rate is higher than any of the weighted-average dumping margins calculated for the companies individually examined.

Corroboration of Information

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as ''information derived from the petition that gave rise to the investigation or review, the final

Secretary of Commerce, ''CS Wind China Separate Rate Application in the Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China'' (March 26, 2012).

[66] *See, e.g., Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 26716, 26720 (May 12, 2010), unchanged in *Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 60725 (October 1, 2010).

[67] *See* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to AVIC, ''Supplemental Separate Rate Questionnaire in the Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China'' (April 5, 2012).

[68] *See* Letter from AVIC to the Secretary of Commerce, ''Utility Scale Wind Towers from the People's Republic of China: Notice of Intent to Not Participate in Antidumping Investigation and Request of Removal from Public Service List and APO Service List'' (April 30, 2012).

[69] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007).

[70] *See* Memorandum from Thomas Martin, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, ''Utility Scale Wind Towers from the People's Republic of China: Calculation of the Preliminary Margin for Separate Rate Recipients'' (July 26, 2012).

[71] *See* Respondent Selection Memorandum at 1–2. The Department also posted a copy of the Q&V questionnaire on its Web site.

[72] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam,* 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003).

[73] *See Nippon Steel Corporation* v. *United States,* 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a ''failure to cooperate to the best of a respondent's ability'' existed (*i.e.,* information was not provided ''under circumstances in which it is reasonable to conclude that less than full cooperation has been shown'')).

[74] *See Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 77 FR 17436, 17438 (March 26, 2012).

[75] *See Initiation Notice,* 77 FR at 3445.

determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.'' [76]

The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value.[77] The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[78] To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.

In order to determine the probative value of the dumping margins in the petition for use as AFA for purposes of this preliminary determination, the Department examined information on the record and found that it was unable to corroborate the margin contained in the petition. Therefore, for the preliminary determination, the Department has assigned to the PRC-wide entity the rate of 72.69 percent, which is the highest transaction-specific dumping margin for a mandatory respondent.[79] It is unnecessary to corroborate this rate because it was obtained in the course of this investigation and, therefore, is not secondary information.[80]

Date of Sale

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), ''use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business.'' The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.[81] Because CXS and Titan demonstrated that the substantive terms of sale were agreed upon on the invoice date, the Department has preliminarily determined to use invoice date as the date of sale.

Fair Value Comparisons

In accordance with section 777A(d)(1) of the Act, the Department compared the weighted-average price of the U.S. sales of the merchandise under consideration to the weighted-average NV to determine whether the mandatory respondents sold merchandise under consideration to the United States at LTFV during the POI.[82]

Export Price

In accordance with section 772(a) of the Act, the Department defined the U.S. price of merchandise under consideration based on the EP of the U.S. sales reported by CXS and Titan. The Department calculated the EP based on the prices at which merchandise under consideration was sold to unaffiliated purchasers in the United States. The Department preliminarily determined that the base rings sold by CXS and Titan during the POI are not covered by the scope of the investigation because they consist of only a single steel plate.[83] Therefore, the Department did not include the base rings sold by CXS and Titan to the United States during the POI in the calculations of the weighted-average dumping margins.

The Department made deductions, as appropriate, from the reported U.S. price for movement expenses (*i.e.,* domestic and foreign inland freight, domestic and foreign brokerage and handling, marine insurance, and international freight).[84] The Department based movement expenses on surrogate values where the service was purchased from a PRC company.[85] The Department also adjusted U.S. price, where applicable, by the value of certain materials provided free-of-charge by U.S. customers.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using the FOP methodology if the merchandise is exported from an NME and 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. The Department bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.[86] Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), the Department calculated NV based on FOPs. 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; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.[87]

Factor Valuation Methodology

In accordance with section 773(c) of the Act, the Department calculated NV based on FOP data reported by the individually examined respondents. To calculate NV, the Department multiplied the reported per-unit factor-consumption rates by publicly available surrogate values. When selecting the surrogate values, the Department considered, among other factors, the quality, specificity, and contemporaneity of the data.[88] As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. Specifically, the Department added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported

[76] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (''SAA''), H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994).

[77] *Id.*

[78] *Id.*

[79] *See, e.g., Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318, 64322 (October 18, 2011) (assigning as an AFA rate the highest calculated transaction-specific rate among mandatory respondents).

[80] *See* section 776(c) of the Act and 19 CFR 351.308(c) and (d); *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China,* 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

[81] *See, e.g., Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review,* 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey,* 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

[82] *See* ''Export Price'' and ''Normal Value'' sections below.

[83] The scope of this investigation states that ''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* * *.'' *See* ''Scope of the Investigation'' section above.

[84] *See* section 772(c)(2)(A) of the Act.

[85] *See* ''Factor Valuation Methodology'' section below.

[86] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China,* 71 FR 19695, 19703 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079 (September 8, 2006).

[87] *See* section 773(c)(3)(A)-(D) of the Act.

[88] *See, e.g., 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 Issues and Decision Memorandum at Comment 9.

distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.[89] A detailed description of all surrogate values used for CXS and Titan can be found in the Surrogate Value Memorandum.

For this preliminary determination, except as noted below, the Department used Ukrainian import data, as reported by the State Customs Committee of Ukraine and published by Global Trade Atlas (''GTA''), and other publicly available sources from Ukraine to calculate surrogate values for CXS's and Titan's FOPs and certain movement expenses. In accordance with section 773(c)(1) of the Act, the Department applied the best available information for valuing FOPs by selecting, to the extent practicable, surrogate values which are (1) Non-export average values, (2) contemporaneous with, or closest in time to, the POI, (3) product-specific, and (4) tax-exclusive.[90] The record shows that Ukrainian import data obtained through GTA, as well as data from other Ukrainian sources, are product-specific, tax-exclusive, and generally contemporaneous with the POI.[91] In those instances where the Department could not obtain information contemporaneous with the POI with which to value FOPs, the Department adjusted the surrogate values using, where appropriate, the Ukrainian producer price index as published in the International Monetary Fund's (''IMF'') International Financial Statistics.

When calculating Ukrainian import-based, per-unit surrogate values, the Department disregarded import prices that it has reason to believe or suspect may be subsidized. It is the Department's practice, guided by the legislative history, not to conduct a formal investigation to ensure that such prices are not subsidized; rather, the Department bases its decision on information that is available to it at the time it makes its determination.[92] In this case, the Department has reason to believe or suspect that prices of exports from India, Indonesia, South Korea, and Thailand may have been subsidized. The Department has found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, consequently, it is reasonable to infer that all exports from these countries to all markets may be subsidized.[93] Therefore, the Department has not used data from these countries in calculating Ukraine's import-based surrogate values.

Additionally, the Department disregarded data from NME countries when calculating Ukraine's import-based per-unit surrogate values. The Department also excluded from the calculation of Ukraine's import-based per-unit surrogate values imports that were labeled as originating from an ''unidentified'' country because the Department could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.[94]

When a respondent sources inputs that were produced in an ME from an ME supplier in meaningful quantities (*i.e.,* not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping in the PRC and/or subsidies.[95] CXS and Titan claimed that certain of their reported inputs were purchased in ME countries and paid for in ME currencies. However, CXS and Titan were unable to demonstrate that these inputs were produced in ME countries. Therefore, the Department did not use CXS's and Titan's reported ME purchase prices to value those inputs; rather, the Department based the value of these inputs on surrogate values.[96]

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings.[97] In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing from the International Labor Organization (''ILO'') Yearbook of Labor Statistics (''Yearbook'').

In this preliminary determination, the Department valued labor using the methodology described in *Labor Methodologies.* Specifically, to value the respondents' labor input, the Department relied on labor cost data reported by Ukraine to the ILO in Chapter 6A of the Yearbook. Although the Department found that the two-digit description under ISIC-Revision 3–D (''28-Manufacture of fabricated metal products, except machinery and equipment'') is the best available information on the record with which to value labor because it is specific to industries that produce merchandise comparable to the merchandise under consideration, Ukraine has never reported Chapter 6A data specific to this two-digit description. Ukraine did, however, report total manufacturing labor cost data in 2006. Accordingly, the Department relied on Chapter 6A of the Yearbook to calculate the labor value using total manufacturing labor cost data reported by Ukraine to the ILO in

[89] *See Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997).

[90] *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).

[91] *See* Surrogate Value Memorandum at 1–8.

[92] *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report, H.R. Rep. 100–576 at 590 (1988); *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, 30763 (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); *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *PET Film,* 73 FR at 55039.

[93] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7; *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 ''II. Programs Determined to Confer Subsidies.''

[94] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China,* 69 FR 75294, 75301 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China,* 70 FR 24502 (May 10, 2005).

[95] *See* 19 CFR 351.408(c)(1); *Antidumping Duties; Countervailing Duties,* 62 FR at 27366; *Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 77 FR 41744 (July 16, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

[96] *See* Surrogate Value Memorandum at 3–4.

[97] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*'').

2006.[98] Because these labor cost data are not contemporaneous with the POI, the Department adjusted the average value for inflation using the Ukrainian consumer price index as published in the IMF's International Financial Statistics.[99]

The ILO data from Chapter 6A of the Yearbook reflects all costs related to labor, including wages, and indirect labor costs such as benefits, housing, and training. The financial statements used to calculate the surrogate financial ratios included itemized details regarding the indirect labor costs incurred. Therefore, the Department has made adjustments to the surrogate financial ratios.[100]

The Department valued electricity using the average of the monthly POI tariff rates from the National Electricity Regulatory Commission of Ukraine.[101] The Department did not adjust the value for inflation because these tariff rates were current during the POI.

The Department valued water using Utilities Ministry of Ukraine data published on the World of Public Services Web site, available at *http://gkh.com.ua/gkh/full-news-gkh/view11692.*[102] The Department did not adjust the value for inflation because these water rates were current during the POI.

The Department valued truck freight using Ukrainian January 2012 data published on the Web site of Della Trucking, a Ukrainian trucking company, available at *www.della-ua.com.*[103] The Department deflated this rate using the Ukrainian producer price index as published in the IMF's International Financial Statistics.[104]

The Department was unable to identify a surrogate value explicitly for inland water freight in Ukraine. Therefore, the Department valued inland water freight using South African data in an article published by the Human Sciences Research Council, a South African research agency.[105] The Department adjusted this rate for inflation using the South African producer price index as published in the IMF's International Financial Statistics.[106]

The Department valued international ocean freight from the PRC to the United States using data obtained from the Descartes Carrier Rate Retrieval Database (''Descartes''), available at *www.descartes.com.*[107]

The Department valued marine insurance using a marine insurance rate offered by RJG Consultants.[108] RJG Consultants is an ME provider of marine insurance. The rate is a percentage of the value of the shipment; therefore, the Department did not inflate or deflate the rate.

The Department valued brokerage and handling using a price list for export procedures necessary to export a standardized cargo of goods from Ukraine in a 20-foot container.[109] The price list was published in the World Bank publication, *Doing Business 2012: Ukraine.* The Department adjusted this rate by the ratio of the capacity of a 40-foot high flat rack relative to the cargo weight of a 20-foot container in order to derive the per-unit brokerage and handling cost for a 40-foot high flat rack.[110] The Department did not inflate this rate since it is contemporaneous with the POI.

The Department was unable to identify surrogate financial statements for a Ukrainian producer of the merchandise under consideration or merchandise comparable to the merchandise under consideration. Therefore, the Department used audited financial statements from Mazor Group Limited, a South African producer of merchandise comparable to the merchandise under consideration, to value factory overhead, selling, general, and administrative expenses, and profit.[111] These financial statements cover the fiscal year ending February 2012 and, therefore, are contemporaneous with the POI.

Currency Conversion

In accordance with section 773A(a) of the Act, the Department made currency conversions into U.S. dollars, where necessary, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, the Department intends to verify the information submitted by CXS and Titan.

Combination Rates

As announced in the *Initiation Notice,*[112] the Department has calculated combination rates for the respondents that are eligible for a separate rate in this investigation. This practice is described in Policy Bulletin 05.1.[113]

Preliminary Determination

The Department has preliminarily determined that the following weighted-average dumping margins exist for the period April 2011 through September 2011:

Exporter	Producer	Weighted-Average Dumping Margin (%)
Chengxi Shipyard Co., Ltd	Chengxi Shipyard Co., Ltd	30.93
Titan Wind Energy (Suzhou) Co., Ltd	Titan (Lianyungang) Metal Product Co., Ltd	20.85
Titan Wind Energy (Suzhou) Co., Ltd	Titan Wind Energy (Suzhou) Co., Ltd	20.85
CS Wind Corporation	CS Wind China Co., Ltd	26.25
Guodian United Power Technology Baoding Co., Ltd	Guodian United Power Technology Baoding Co., Ltd	26.25
Sinovel Wind Group Co., Ltd	Sinovel Wind Group Co., Ltd	26.25
PRC-Wide Entity		72.69

[98] *See, e.g., Galvanized Steel Wire From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 76 FR 68407, 68419 (November 4, 2011), unchanged in *Galvanized Steel Wire From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 77 FR 17430 (March 26, 2012); section 773(c)(4) of the Act; Surrogate Value Memorandum at 5, Attachment 6.

[99] *See* Surrogate Value Memorandum at Attachment 3.

[100] *Id.* at Attachment 7.

[101] *Id.* at 4–5, Attachment 4.

[102] *Id.* at 5, Attachment 5 (last visited on July 20, 2012).

[103] *Id.* at 7, Attachment 10 (last visited on July 20, 2012).

[104] *Id.* at Attachment 3.

[105] *See* Francois J. Botes, ''The Impact of Transport Pricing Practices in South Africa on Freight Transport Costs'' Human Sciences Research Council—Centre for Poverty and Growth (2005); Surrogate Value Memorandum at 8.

[106] *See* Surrogate Value Memorandum at Attachment 12.

[107] *Id.* at 7–8, Attachment 11 (last visited on July 20, 2012).

[108] *Id.* at 8, Attachment 13.

[109] *Id.* at 7, Attachment 8.

[110] *Id.* at 7, Attachments 8–9.

[111] *Id.* at 6, Attachment 7.

[112] *See Initiation Notice,* 77 FR at 3445–46.

[113] *See* Policy Bulletin 05.1.

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose the calculations performed in this investigation to parties within five days of the date of publication of this notice in the **Federal Register**.

Suspension of Liquidation

In accordance with section 733(d) of the Act, the Department will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of wind towers from the PRC, as described in the ''Scope of the Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which NV exceeds U.S. price, adjusted where appropriate for export subsidies, as follows: (1) The separate rate for the exporter/producer combinations listed in the table above will be the rate the Department has determined in this preliminary determination; (2) for all combinations of PRC exporters/producers of merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the rate for the PRC-wide entity; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter.

For exporter/producer combinations receiving a separate rate based on the rates calculated for the mandatory respondents in an AD determination, it is the Department's practice to instruct CBP to require a cash deposit equal to the amount by which the NV exceeds the U.S. price, reduced by the lesser of the export subsidy rate applicable to each exporter or the average of the export subsidy rates applicable to the mandatory respondents on which the separate rate in the AD determination is based.[114] In this case, the average of the export subsidy rates applicable to the mandatory respondents on which the separate rate is based is 0.0075 percent, which is lower than CS Wind's 0.03 percent export subsidy rate and the 0.015 percent export subsidy rate applicable to Sinovel and Guodian,[115] However, because this rate is less than 0.01 percent, the Department will not adjust CS Wind, Sinovel, and Guodian's cash deposit rate for export subsidies.

With regard to CXS, a mandatory respondent in this AD investigation that received the ''All Others Rate'' in the companion CVD case, the Department will instruct CBP to require a cash deposit equal to the amount by which the NV exceeds the U.S. price, reduced by the export subsidy rate applicable to CXS (*i.e.,* 0.015 percent).

These cash deposit instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department has notified the ITC of this preliminary affirmative determination of sales at LTFV. Section 735(b) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of the Department's final determination.

Public Comment

Case briefs or other written comments may be submitted to the Department no later than seven days after the date on which the final verification report is issued in this proceeding. Rebuttal briefs, limited to the issues raised in case briefs, may be submitted no later than five days after the deadline for case briefs.[116] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department. The executive summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. 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.[117] 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, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

In June 2012, Titan and CXS requested, pursuant to section 735(a)(2) of the Act, that the Department postpone its final determination by 60 days.[118] Additionally, Titan and CXS requested, pursuant to 19 CFR 351.210(e)(2), that the Department extend the application of the provisional measures from a four-month period to a six-month period. In accordance with section 735(a) of the Act and 19 CFR 351.210(b), the Department is granting these requests to postpone the final determination until no later than 135 days after the publication of this notice in the **Federal Register** because (1) The preliminary determination is affirmative, (2) the requesting exporters account for a

[114] *See Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances,* 77 FR 17021, 17026 (March 23, 2012); *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).

[115] In the companion countervailing duty (''CVD'') investigation, the Department preliminarily determined that the merchandise under consideration exported by CS Wind, a mandatory respondent in the CVD investigation and separate rate recipient in this preliminary AD determination, benefitted from an export subsidy of 0.03 percent. *See Utility Scale Wind Towers From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 77 FR 33422, 33432 (June 6, 2012). The Department, however, did not find evidence in the preliminary CVD determination that Titan, the other mandatory respondent in the CVD investigation and a mandatory respondent in this AD investigation, benefitted from an export subsidy. To calculate the ''All Others Rate'' in the preliminary CVD determination, the Department used a simple average of the rates of the two mandatory respondents. Therefore, the ''All Others Rate'' included an export subsidy rate equal to the average of the CVD export subsidy rates applicable to the mandatory respondents (*i.e.,* 0.015 percent).

[116] *See* 19 CFR 351.309(c)(1)(i) and (d).

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

[118] *See* Letter from Titan to the Secretary of Commerce, ''Utility Scale Wind Towers from the People's Republic of China; Request to Extend Final Determination'' (June 15, 2012); Letter from CXS to the Secretary of Commerce, ''Utility Scale Wind Towers from the People's Republic of China: Request by Chengxi Shipyard Co., Ltd. For Postponement of the Final Determination'' (June 21, 2012).

significant proportion of exports of the merchandise under consideration, and (3) there are no compelling reasons to deny these requests. Suspension of liquidation will be extended accordingly. The Department is further extending the application of the provisional measures from a four-month period to a six-month period.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: July 26, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–18929 Filed 8–1–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–812]

Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

DATES: *Effective Date:* August 2, 2012.

SUMMARY: We preliminarily determine that steel wire garment hangers from the Socialist Republic of Vietnam (''Vietnam'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Pursuant to a request from an interested party, we are postponing the final determination by 60 days and extending provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik or Bob Palmer, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6905 or 482–9068, respectively.

SUPPLEMENTARY INFORMATION:

Initiation

On December 29, 2011, the Department of Commerce (the ''Department'') received an antidumping duty (''AD'') petition concerning imports of steel wire garment hangers from Vietnam filed in proper form on behalf of M&B Metal Products Company, Inc.; Innovative Fabrication LLC/Indy Hanger; and US Hanger Company, LLC (collectively, ''Petitioners'').[1] On January 18, 2012, the Department initiated an AD investigation of steel wire garment hangers from Vietnam.[2] Additionally, in the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in non-market economy (''NME'') investigations.[3]

On February 13, 2012, the United States International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Vietnam of steel wire garment hangers.[4]

Period of Investigation

The period of investigation (''POI'') is April 1, 2011, through September 30, 2011. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (December 29, 2011).[5]

Scope of the Investigation

The merchandise subject to this investigation is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and whether or not fashioned with paper covers or capes (with or without printing) or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers.

Specifically excluded from the scope of the investigation are (a) Wooden, plastic, and other garment hangers that are not made of steel wire; (b) steel wire garment hangers with swivel hooks; (c) steel wire garment hangers with clips permanently affixed; and (d) chrome plated steel wire garment hangers with a diameter of 3.4 mm or greater.

The products subject to the investigation are currently classified under U.S. Harmonized Tariff Schedule (''HTSUS'') subheadings 7326.20.0020 and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations,[6] in our *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.*[7] The Department did not receive any scope comments from interested parties.

Quantity and Value and Respondent Selection

In the *Initiation Notice,* the Department stated that the quantity and value (''Q&V'') data received from Vietnamese exporters/producers will be used as the basis to select the mandatory respondents.[8] The Department also stated that it requires that the respondents submit a response to both the Q&V questionnaire and the separate rate application by the respective deadlines in order to receive consideration for separate rate status. Of the 44 Q&V questionnaires sent, the Department received seven Q&V responses[9] and two unsolicited Q&V responses.[10] The Department rejected two untimely or improperly filed Q&V responses from Angang Clothes Rack Manufacture Co. (''Angang'') and

[1] *See* ''Petitions for the Imposition of Antidumping Duties on Steel Wire Garment Hangers From Taiwan and Antidumping and Countervailing Duties on Steel Wire Garment Hangers from the Socialist Republic of Vietnam,'' filed on December 29, 2011 (the ''Petition''). A countervailing duty (''CVD'') petition was also filed on steel wire garment hangers from Vietnam.

[2] *See Steel Wire Garment Hangers From the Socialist Republic of Vietnam and Taiwan: Initiation of Antidumping Duty Investigations,* 77 FR 3731 (January 25, 2012) (''*Initiation Notice*'').

[3] *See id.,* 77 FR at 3735–36.

[4] *See* Investigation Nos. 701–TA–487 and 731–TA–1197–1198 (Preliminary), *Steel Wire Garment Hangers From Taiwan And Vietnam,* 77 FR 9701 (February 17, 2012).

[5] *See* 19 CFR 351.204(b)(1).

[6] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[7] *See Initiation Notice,* 77 FR at 3732.

[8] *See id.,* 77 FR at 3735.

[9] We received Q&V responses from the following companies to which we issued a Q&V questionnaire: Triloan Hangers, Inc.; Tan Minh Textile Sewing Trading Co., Ltd.; Nam A. Hamico Export Joint Stock; Minh Quang Steel Joint Stock Company; Ju Fu Co. Ltd.; Linh Sa Hamico Company, Ltd.; CTN Limited Company. Additionally, we note that Petitioners provided several addresses for multiple companies, which resulted in the issuance of more than one Q&V questionnaires to the same companies.

[10] We received an unsolicited Q&V response from South East Asia Hamico Export Joint Stock Company (''Hamico''). Further, while we did not issue a Q&V questionnaire to T.J. Co., Ltd. (''TJ''), it filed a Q&V response on behalf of itself and its two claimed affiliates, Infinite Industrial Hanger Co., Ltd. and Tan Dinh Enterprise, both to which we issued a Q&V questionnaire.

Vietnam Hangers Joint Stock Company.[11] The Department also rejected one other unsolicited Q&V response which was improperly filed.[12] Of the 44 Q&V questionnaires sent, 22 companies were unresponsive and did not provide Q&V responses.[13] Finally, of the 44 Q&V questionnaires sent, 10 were marked as ''undeliverable/delivery exception.'' [14]

After analyzing the Q&V responses, the Department selected two mandatory respondents for individual examination: Hamico and TJ. These companies accounted for the largest volume of exports of steel wire garment hangers, based on the Q&V responses, to the United States that can be reasonably examined.[15]

Questionnaires

On February 17, 2012, the Department issued to Hamico and TJ the NME questionnaire. The Department issued supplemental questionnaires to TJ and Hamico between March 2012 and June 2012.

Surrogate Country Comments

On March 14, 2012, the Department determined that Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines are countries whose per capita gross national income are comparable to Vietnam in terms of economic development.[16] On March 14, 2012, the Department requested comments from the interested parties regarding the selection of a surrogate country. On May 3, 2012, the Department extended the deadline for the submission of surrogate country and factor valuation comments to May 21, 2012, and May 31, 2012, respectively. On May 21, 2012, Petitioners and TJ submitted surrogate country comments. For a detailed discussion of the selection of the surrogate country, *see* ''Surrogate Country'' section below.

Surrogate Value Comments

On May 31, 2012, Petitioners and TJ submitted surrogate factor valuation comments and data. On June 12, 2012, Petitioners and TJ submitted rebuttal surrogate factor valuation comments.

Separate Rate Applications

On March 26, 2012, we received properly filed separate rate applications from three companies.[17] *See* the ''Separate Rates'' section below for the full discussion of the treatment of the separate rate applicants. Additionally, three other companies attempted to file separate rate applications, which were rejected because these companies either had not also filed Q&V responses, which the Department required in the *Initiation Notice,* or had submitted improperly filed/deficient separate rate applications.[18]

Postponement of Preliminary Determination

On April 27, 2012, Petitioners filed a timely request to postpone the issuance of the preliminary determination by 50 days. On May 14, 2012, the Department published in the **Federal Register** a notice postponing the preliminary AD determination.[19]

Further, on June 25, 2012, TJ requested that, in the event of an affirmative preliminary determination in this investigation, the Department: (1) Postpone its final determination by 60 days, in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii); and (2) extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four month period to a six month period. For further discussion, *see* the ''Postponement of Final Determination and Extension of Provisional Measures'' section of this notice, below.

Non-Market-Economy Country

For purposes of initiation, Petitioners submitted LTFV analyses of Vietnam as an NME country.[20] The Department considers Vietnam to be an NME country.[21] 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.[22] Therefore, we continue to treat Vietnam as an NME country for purposes of this preliminary determination. Accordingly, the Department has calculated the normal value (''NV'') in accordance with section

[11] *See* Letter from the Department to Angang, re: Return of Untimely Submission Quantity and Value Questionnaire, dated February 15, 2012. *See also* Letter from the Department to Vietnam Hangers Joint Stock Company, re: Quantity and Value Questionnaire, dated February 8, 2012. While the Department provided Vietnam Hangers Joint Stock Company with an opportunity to refile complete and proper Q&V responses, the Department did not receive one.

[12] *See* Letter from the Department to Cty Tnhh Mtv Xnk My Phuoc and/or Cty Tnhh san xuat My Phuoc Long An Factory, re: Improperly Filed Quantity and Value Questionnaire Response, dated February 8, 2012. While the Department provided Cty Tnhh Mtv Xnk My Phuoc and/or Cty Tnhh san xuat My Phuoc Long An Factory with an opportunity to refile a complete and proper Q&V response, the Department did not receive one.

[13] We did not receive Q&V responses from the following companies to which we issued a Q&V questionnaire: Acton Co., Ltd.; Asmara Home Vietnam; B2B Co., Ltd.; Capco Wai Shing Viet Nam Co., Ltd.; Dai Nam Investment Jsc; Dong Nam A Co., Ltd.; Focus Shipping Corp.; Dong Nam A Trading Co.; HCMC General Import and Export Investment Joint Stock Company; Hongxiang Business and Product Co., Ltd.; N-Tech Vina Co., Ltd.; Ocean Star Transport Co., Ltd.; Quoc Ha Production Trading Service; Quyky (Factory); Quyky Group/Quyky Co., Ltd./Quyky-Yanglei International Co., Ltd.; S.I.I.C.; The Xuong Co., Ltd.; Thien Ngon Printing Co., Ltd.; Trung Viet My Joint Stock Company; Viet Anh Imp-Exp Joint Stock Co.; VNS/VN Sourcing/Vietnam Sourcing; and Yen Trang Co., Ltd.

[14] Several of these ''undeliverable'' Q&V questionnaires were also sent to secondary addresses, which were confirmed delivered, but were ultimately unresponsive to the Department. The Q&V questionnaires were not successfully delivered to: Tan Minh Textile Sewing Trading; NV Hanger Co., Ltd. (both addresses); Thanh Hieu Manufacturing Trading Co.; Est Glory Industrial Ltd.; Top Sharp International Trading; Viet Hanger Investment, LLC; Vietnam Sourcing; Tan Dinh Enterprise; Moc Viet Manufacture Co., Ltd.; Godoxa Viet Nam, Ltd.; Diep Son Hangers One Member Co. *See* ''Memorandum to the File from Robert Palmer, Analyst, re: Quantity & Value Questionnaire Delivery Confirmation,'' dated February 9, 2012.

[15] *See* ''Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director, Office 9; Antidumping Duty Investigation of Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Respondent Selection,'' dated February 16, 2012 (''Respondent Selection Memo'').

[16] *See* ''Memorandum from Carole Showers, Director, Office of Policy, to Catherine Bertrand, Program Manager, China/NME Group, Office 9: Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Steel Wire Garment Hangers (''Hangers'') From the Socialist Republic of Vietnam (''Vietnam''),'' dated March 14, 2012 (''Surrogate Country List'').

[17] The following companies filed separate rate applications: CTN Limited Company; Ju Fu Co., Ltd.; and Triloan Hangers Inc. (collectively, ''separate rate applicants'').

[18] The Department rejected separate rate applications filed by the following companies with no Q&V responses on the record: Angang and N–Tech Vina Co., Ltd. *See* Letter from the Department to Angang, re; Antidumping Duty Investigation of Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Rejection of Separate Rate Application, dated February 22, 2012, and Letter from the Department to N–Tech Vina Co., Ltd. re; Antidumping Duty Investigation of Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Third Rejection of Separate Rate Application, dated April 2, 2012. The Department also rejected a separate rate application repeatedly improperly filed by Tan Minh Textile Sewing Trading Company. *See* Letter from the Department to Tan Minh Textile Sewing Trading Company, re; Final Opportunity to Properly File a Separate Rate Application, dated April 17, 2012.

[19] *See Steel Wire Garment Hangers From the Socialist Republic of Vietnam and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 77 FR 28356 (May 14, 2012).

[20] *See Initiation Notice,* 77 FR at 3733.

[21] *See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review,* 77 FR 15039, 15040 (March 14, 2012).

[22] *See 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).

773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (''FOP''), valued in a surrogate market economy (''ME'') country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[23] As stated above, the Department determined that Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines are countries whose per capita gross national income are comparable to Vietnam in terms of economic development. The sources of the surrogate values (''SVs'') we have used in this investigation are discussed under the ''Normal Value'' section below.

Petitioners submit that for purposes of the Department's selection of an appropriate surrogate, based on the export statistics compiled by the World Trade Atlas for the POI, both Indonesia and India reported substantial exports of steel wire products and, therefore, should be considered significant producers of comparable merchandise.[24] Petitioners propose India and Indonesia as appropriate candidates for the primary surrogate country in this investigation. Petitioners assert that Indonesia has a large number of companies that manufacture various steel wire products and several that produce steel wire garment hangers. TJ proposes that the Department should select India as the surrogate country in this investigation because it satisfies the surrogate selection criteria under section 773(c)(4) of the Act. Further, citing to the second administrative review of steel wire garment hangers from the People's Republic of China, TJ notes that the Department selected India as the primary surrogate country after determining that India is a significant producer of comparable merchandise.[25] TJ suggests that India is an appropriate surrogate country for Vietnam in this investigation as it is an ME country at a comparable level of economic development to that of Vietnam, it is a significant producer of comparable merchandise, and because it provides available and reliable surrogate data.

Economic Comparability

As explained in our Surrogate Country List, the Department considers Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines all comparable to Vietnam in terms of economic development.[26] Therefore, we consider all six countries as having met this prong of the surrogate country selection criteria.

Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that ''the terms 'comparable level of economic development,' 'comparable merchandise,' and 'significant producer' are not defined in the statute.''[27] The *Policy Bulletin* further states that ''in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.''[28] Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[29] Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.[30] ''In cases where the identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced. How the team does this depends on the subject merchandise.''[31]

In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

> In other cases, however, where there are major inputs, *i.e.,* inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.,* processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.[32]

Moreover, while the legislative history provides that the term ''significant producer'' includes any country that is a significant ''net exporter,''[33] it does not preclude reliance on additional or alternative metrics. In this case, because production data of identical or comparable merchandise was not available, we analyzed which of the six countries are exporters of identical or comparable merchandise, as a proxy for production data. We obtained export data using the Global Trade Atlas (''GTA'') for Harmonized Tariff Schedule (''HTS'') 7326.20: ''Other Articles of Iron/Steel Wire,'' which the Department has previously found to be comparable merchandise.[34] The Department found that, of the six countries provided in the Surrogate Country List, only four countries (India, Indonesia, Nicaragua, and the Philippines) were exporters of comparable merchandise. Thus, India, Indonesia, Nicaragua, and the Philippines are considered as having met this prong of the surrogate country selection criteria because each exported comparable merchandise.

Data Availability

When evaluating SV data, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POI, represents a broad-market average, from an approved surrogate country, tax

[23] *See* Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (''*Policy Bulletin*'').

[24] *See* Petitioners' Surrogate Country comments dated May 21, 2012, at 4.

[25] *See* TJ's Surrogate Country comments dated May 21, 2012, at 3.

[26] *See* Surrogate Country List.

[27] *See Policy Bulletin.*

[28] *See id.*

[29] The *Policy Bulletin* also states that ''if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.'' *See id.,* at note 6.

[30] *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 65674 (December 15, 1997) and accompanying Issues and Decision Memorandum at Comment 1 (to impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute).

[31] *See Policy Bulletin,* at 2.

[32] *See id.,* at 3.

[33] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100–576, at 590 (1988).

[34] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value: Steel Wire Garment Hangers from the People's Republic of China,* 73 FR 15726, 15728 (March 25, 2008) (''*PRC Hangers LTFV Prelim''*), unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 47587 (August 14, 2008) (''*PRC Hangers LTFV Final''*).

and duty-exclusive, and specific to the input. There is no hierarchy among these criteria. It is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.[35] In this case, because surrogate financial statements for Nicaragua or the Philippines are unavailable, these countries will not be considered for surrogate country selection purposes at this time. With respect to Indonesia, SVs are available for the FOPs. However, we find that the three financial statements [36] submitted by interested parties are not useable because the companies produce merchandise which is not comparable to steel wire garment hangers and, thus, do not adequately reflect the production experience of the mandatory respondents.[37]

Consequently, this leaves India as the remaining surrogate country that fulfills the surrogate country selection criteria. While there is no evidence on the record that India is a producer of identical merchandise, the Department has previously relied on Indian producers of comparable merchandise such as nails, fasteners, or screws, because these steel products are produced downstream from steel wire rod or steel wire.[38] Because the Department has information for every FOP available from India as well as useable and complete Indian financial statements on the record from producers of comparable merchandise, we have preliminarily determined that India is the appropriate surrogate country from which to obtain SVs and surrogate financial ratios to calculate an NV. A detailed explanation of the financial statements and SVs used is provided below in the ''Normal Value'' section of this notice.

Affiliation and Single Entity Determinations

Section 771(33) of the Act provides that:

The following persons shall be considered to be 'affiliated' or 'affiliated persons':

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

(B) Any officer or director of an organization and such organization;

(C) Partners;

(D) Employer and employee;

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;

(G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act stipulates that: ''For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restrain or direction over the other person.''

Finally, according to 19 CFR 351.401(f)(1) and (2), two or more companies may be treated as a single entity for antidumping duty purposes if: (1) The producers are affiliated, (2) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production.[39]

The TJ Group

As stated above, the Department selected TJ as a mandatory respondent in this investigation because it was one of two companies accounting for the largest volume of exports of steel wire garment hangers, based on the Q&V responses, to the United States.[40] In its Q&V response, TJ stated that it exported steel wire garment hangers from Vietnam produced by Infinite Industrial Hanger Limited (''Infinite'') and Tan Dinh Enterprise (''Tan Dinh'').[41] It was later corrected in TJ's questionnaire responses that H2I2 Dry Cleaning Supply, Inc. (''H2I2''), a U.S. company, owns Infinite and that H2I2 purchased the hanger manufacturing assets of Tan Dinh prior to the POI.[42] H2I2 planned to create a company called Supreme Hanger Co., Limited which would operate using the hanger manufacturing assets that were purchased from Tan Dinh. However, while hangers were produced on these manufacturing assets during the POI the planned company did not yet have a company registration or a business license, and as such Supreme Hanger Co., Limited only came into existence when it received its business license on May 4, 2012, which is after the POI. For purposes of this determination, we will refer to the entity operating, during the POI, the manufacturing assets that were formerly owned by Tan Dinh as ''the Pre-Supreme Entity.''

Based on the information presented in TJ's questionnaire responses, we preliminarily find that H2I2, Infinite, the Pre-Supreme Entity, and TJ are affiliated pursuant to sections 771(33)(B), (E), (F), and (G) of the Act based on ownership and common control. Due to the business proprietary nature of this issue and for a detailed discussion, *see* the ''TJ Group Affiliation Memo.'' [43] Evidence of this affiliation was provided by TJ's questionnaire responses, ownership/affiliation chart, organization chart, business licenses, and purchase agreements.[44]

[35] *See Policy Bulletin.*

[36] *See* Petitioners' Surrogate Value Submission, dated May 31, 2012, at Exhibit 2; *see also* TJ Rebuttal Surrogate Value Information, dated June 12, 2012, at Exhibits 3 and 4.

[37] *See id.* Petitioners placed financial statements for one Indonesian company on the record: PT Lion Metal Works TBK, which produces safes and office equipment. However, we have previously found that products that require significantly more sophisticated production processes than the simpler fabrication of cutting and shaping wire into steel wire garment hangers are not suitably representative of steel wire garment hanger producers. *See, e.g., PRC Hangers LTFV Prelim,* 73 FR at 15734, unchanged in *PRC Hangers LTFV Final,* and accompanying Issues and Decision Memorandum at Comment 3. Further, TJ placed financial statements for two Indonesian companies on the record PT Lionmesh Prima TBK (''Lionmesh'') and KMI Wire and Cable (''KMI''). Lionmesh produces wire mesh products using a welding process and KMI produces telecom cables from copper or aluminum. The Department has previously rejected financial statements of producers of copper wire products because copper is not comparable to the steel wire used to produce steel wire garment hangers. *See First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 27994 (May 13, 2011) and accompanying Issues and Decision Memorandum at Comment 2 (''*PRC Hangers AR1 Final*''). Therefore, we find that KMI's financial statements are not suitable here because this company produces cables manufactured from metals other than steel wire which we find not to be comparable merchandise. The Department has also previously determined that, even for hangers, ''the nature of the welding process * * * results in a product that is distinct in form and shape (and use) from the hangers covered by the scope * * *'' *See* ''Steel Wire Garment Hangers from the People's Republic of China: Final Scope Ruling on Target's Accessory Hanger,'' dated May 12, 2010. Therefore, we find that Lionmesh's financial statements are not suitable here because this company produces products that require welding processes and we do not find these products to be comparable to steel wire garment hangers.

[38] *See, e.g., PRC Hangers AR1 Final,* and accompanying Issues and Decision Memorandum at Comment 2; *PRC Hangers LTFV Prelim,* unchanged in *PRC Hangers LTFV Final.*

[39] *See* 19 CFR 351.401(f)(1) and (2).

[40] *See* Respondent Selection Memo at 4.

[41] *See* TJ's Q&V Response, dated February 8, 2012, at 2.

[42] *See* TJ's Supplemental Section A Questionnaire Response, dated April 23, 2012, at 24.

[43] *See* Memorandum to the File, through Catherine Bertrand, Program Manager, from Robert Palmer, Analyst, re: ''Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Preliminary Affiliation and Single Entity Determination,'' dated concurrently with this notice (''TJ Group Affiliation Memo'').

[44] *See, e.g.,* TJ's Section A Questionnaire Response, dated March 16, 2012, at Exhibit A–5; TJ's Supplemental Section A Questionnaire Response, dated April 23, 2012, at 22–24 and Exhibit 22.

Furthermore, we find that Infinite, the Pre-Supreme Entity, and TJ (collectively, the ''TJ Group'') should be considered as a single entity for purposes of this investigation.[45] In addition to being affiliated, the TJ Group has production facilities for similar or identical products that would not require substantial retooling and there is a significant potential for manipulation of production based on the level of common ownership and control, shared management, and an intertwining of business operations.[46] Further it has yet to be determined that Supreme Hanger Co., Limited is the successor-in-interest to the Pre-Supreme Entity. Accordingly, Supreme Hanger Co., Limited is also not eligible to use the rate of the TJ Group.[47]

Separate Rates

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME investigations.[48] The process requires exporters and producers to submit a separate rate status application.[49] 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 assessed a single AD rate. It is the Department's policy to assign all exporters of merchandise subject to investigation 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* governmental control over export activities.

The Department analyzes each entity exporting steel wire garment hangers under a test arising from *Sparklers*,[50] as further developed in *Silicon Carbide*.[51] However, if the Department determines that a company is wholly foreign-owned or located in an ME, then a separate rate analysis is not necessary to determine whether it is independent from government control.

A. Separate Rate Recipients

Wholly Foreign-Owned

All the companies of the TJ Group are wholly ME foreign-owned.[52] Therefore, because it is wholly ME foreign-owned, and we have no evidence indicating that its export activities are under the control of Vietnam, a further separate rate analysis is not necessary to determine whether this company is independent from government control.[53] Thus, we have preliminarily granted separate rate status to the TJ Group.

Another of the separate rate applicants, Triloan Hangers Inc. (''Triloan''), reported that it is wholly ME foreign-owned.[54] Therefore, because it is wholly ME foreign-owned, and we have no evidence indicating that its export activities are under the control of Vietnam, a further separate rate analysis is not necessary to determine whether this company is independent from government control.[55] Thus, we have preliminarily granted separate rate status to Triloan.

Wholly NME–Owned Companies

The remaining separate rate applicants, Ju Fu Co., Ltd. (''Ju Fu'') and CTN Limited Company (''CTN''), are wholly NME-owned companies.[56] Therefore, the Department analyzed whether these companies demonstrated the absence of both *de jure* and *de facto* governmental control over export activities.

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 enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[57]

The evidence provided by Ju Fu and CTN supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) and there are formal measures by the government decentralizing control of companies. With respect to Ju Fu and CTN,[58] we find that there is sufficient evidence on the record to preliminarily determine that it is free of *de jure* government control.

b. Absence of *de Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices (''EP'') are set by or are subject to the approval of a governmental 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.[59] The Department has determined that an analysis of *de facto* control is critical in determining

[45] *See* TJ Group Affiliation Memo.

[46] *See* 19 CFR 351.401(f)(1) and (2). For a detailed discussion of this issue, *see* TJ Group Affiliation Memo.

[47] Furthermore, Tan Dinh is also not eligible to use the rate of the TJ Group.

[48] *See Initiation Notice,* 77 FR at 3731, 3735.

[49] *See also Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries* (April 5, 2005) (''*Policy Bulletin 05.1*'') available at *http://ia.ita.doc.gov. Policy Bulletin 05.1* states: ''{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied steel wire garment hangers to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.'' *See Policy Bulletin 05.1* at 6.

[50] *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*'').

[51] *Notice of 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*'').

[52] *See* TJ Section A Questionnaire Response, dated March 16, 2012, at 14–15; *see also* TJ's Supplemental Section A Questionnaire Response, dated April 23, 2012, at 24–25.

[53] *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China,* 64 FR 71104, 71104–71105 (December 20, 1999) (where the respondent was wholly foreign-owned, and thus, qualified for a separate rate).

[54] *See* Separate Rate Application filed by Triloan Hangers, Inc., dated March 26, 2012, at 10.

[55] *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China,* 64 FR 71104–71105 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate).

[56] *See* Separate Rate Applications filed by Ju Fu and CTN, both dated March 26, 2012.

[57] *See Sparklers,* 56 FR at 20589.

[58] *See* Separate Rate Application for CTN, dated March 26, 2012, at 11–14 and Appendix C; *see also* Separate Rate Application for Ju Fu, dated March 26, 2012, at 8–18, and Exhibits 1–10.

[59] *See Silicon Carbide,* 59 FR at 22587; *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 and n.3 (May 8, 1995).

whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates. The evidence provided by CTN and Ju Fu supports a preliminary finding of an absence of *de facto* governmental control based on the following: (1) The EP is not set by or subject to the approval of a governmental agency; (2) the respondent has authority to negotiate and sign contracts and other agreements; (3) the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[60]

Companies Receiving a Separate Rate

The Department has preliminarily determined that the TJ Group is eligible for a separate rate.[61] In addition, we have granted separate rate status to Triloan, CTN, and Ju Fu, which were not selected for individual examination because they are wholly ME foreign-owned or and have demonstrated an absence of government control both in law and in fact.

The evidence placed on the record of this investigation by the separate rate applicants demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporters' exports of steel wire garment hangers, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.*

B. Companies Not Receiving a Separate Rate

The Department is not granting a separate rate to Tan Minh Textile Sewing Trading Company (''Tan Minh Textile'') because, after providing Tan Minh Textile several opportunities to correct deficiencies in its separate rate application,[62] the Department informed Tan Minh Textile that it had still not complied with the Department's regulations regarding the filing of its separate rate application and that we will not consider its separate rate application for this investigation.[63] In addition, the companies that were not responsive to the Department's Q&V questionnaire, submitted late Q&V responses, or did not submit separate rate applications are also ineligible for a separate rate because they did not provide any evidence demonstrating an absence of government control both in law and in fact.[64]

The Department has also made a preliminary determination with respect to Hamico, a mandatory respondent, based on the facts available on the record. A detailed discussion of this determination is provided below in the ''The Vietnam-Wide Entity, Vietnam-Wide Rate and Application of Adverse Facts Available'' section. Based on the below determination, the Department has not granted separate rate status to Hamico.

Calculation of Separate Rate

The statute and our regulations do not address directly how we should establish a rate to apply to imports from companies which we did not select for individual examination in accordance with section 777A(c)(2) of the Act in an administrative review. Generally, we have used section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, as guidance when we establish the rate for respondents not examined individually in an administrative review.[65] Section 735(c)(5)(A) of the Act provides that ''the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, * * *.''

Hamico has not qualified for a separate rate, as explained above, and accordingly it will not receive an individually calculated margin. In this investigation, the TJ Group has an estimated weight-average dumping margin which is above *de minimis* and which is not based on total adverse facts available (''AFA''). Therefore, because there is only one relevant weighted-average dumping margin for this preliminary determination, we will use the weighted-average of the TJ Group's calculated AD margin, which is 135.81 percent.

The Vietnam-Wide Entity, Vietnam-Wide Rate and Application of Adverse Facts Available

Information on the record of this investigation indicates that there were more exporters of steel wire garment hangers from Vietnam than those indicated in the response to our request for Q&V information during the POI.[66] As stated above, we issued our request for Q&V information to 44 potential Vietnamese producers/exporters of steel wire garment hangers. While information on the record of this investigation indicates that there are other producers/exporters of steel wire garment hangers in Vietnam, we received only seven timely-filed solicited Q&V responses and two timely-filed unsolicited Q&V responses, which we considered for respondent selection purposes. Although all producers/exporters were given an opportunity to provide Q&V information, not all producers/exporters provided a response to the Department's Q&V letter.[67]

Additionally, as stated above, the Department selected Hamico as a mandatory respondent in this investigation.[68] Between March 27, 2012 and April 24, 2012, Hamico attempted to submit its responses to the Departments original NME questionnaire and supplemental

[60] *See* Separate Rate Application for CTN, dated March 26, 2012 at 17–22 and Appendix K. *See also* Separate Rate Application for Ju Fu, dated March 26, 2012, at 8–18, and Exhibits 1–10.

[61] As noted above, neither Tan Dinh nor Supreme Hangers Co., Limited is entitled to use the rate of the TJ Group.

[62] *See, e.g.,* Letters from the Department to Tan Minh Textile, dated March 28, April 5, and April 12, 2012.

[63] *See* Letter from the Department to Tan Minh Textile, dated April 17, 2012.

[64] These companies are: Acton Co., Ltd.; Angang Clothes Rack Manufacture Co.; Asmara Home Vietnam; B2B Co., Ltd.; Capco Wai Shing Viet Nam Co., Ltd.; Dai Nam Investment JSC; Diep Son Hangers One Member Co. Ltd.; Dong Nam A Co., Ltd.; Dong Nam A Trading Co.; EST Glory Industrial Ltd.; Focus Shipping Corp.; Godoxa Viet Nam Ltd.; HCMC General Import And Export Investment JSC; Hongxiang Business And Product Co., Ltd.; Linh Sa Hamico Company, Ltd.; Minh Quang Steel Joint Stock Company; Moc Viet Manufacture Co., Ltd.; Nam A Hamico Export Joint Stock; N–Tech Vina Co., Ltd.; NV Hanger Co., Ltd. (A/K/A Nguyen Hoang Vu Co., Ltd.); Ocean Star Transport Co., Ltd.; Quoc Ha Production Trading Service; Quyky (Factory); Quyky Group/Quyky Co., Ltd./Quyky-Yanglei International Co., Ltd.; S.I.I.C.; Tan Minh Textile Sewing Trading Co., Ltd.; Thanh Hieu Manufacturing Trading Co. Ltd.; The Xuong Co., Ltd.; Thien Ngon Printing Co., Ltd.; Top Sharp International Trading Limited; Trung Viet My Joint Stock Company; Viet Anh Imp-Exp Joint Stock Co.; Viet Hanger Investment, LLC/Viet Hanger; Vietnam Hangers Joint Stock Company; VNS/VN Sourcing/Vietnam Sourcing; Yen Trang Co., Ltd.; and South East Asia Hamico Export Joint Stock Company.

[65] *See Notice of Final Results and Partial Rescission Antidumping Duty Administrative Review: Certain Frozen Warmwater Shrimp from the People's Republic of China,* 75 FR 49460 (August 13, 2010); *Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review,* 75 FR 6352 (February 9, 2010), and accompanying Issues and Decision Memorandum at Comment 2.

[66] *See* Respondent Selection Memo.

[67] The following companies were not responsive to the Department's request for Q&V information: Acton Co., Ltd.; Asmara Home Vietnam; B2B Co., Ltd.; Capco Wai Shing Viet Nam Co., Ltd.; Dai Nam Investment JSC; Dong Nam A Co., Ltd.; Focus Shipping Corp.; Dong Nam A Trading Co.; HCMC General Import And Export Investment Joint Stock Company; Hongxiang Business And Product Co., Ltd.; N–Tech Vina Co., Ltd.; Ocean Star Transport Co., Ltd.; Quoc Ha Production Trading Service; Quyky (Factory); Quyky Group/Quyky Co., Ltd./Quyky-Yanglei International Co., Ltd.; S.I.I.C.; The Xuong Co., Ltd.; Thien Ngon Printing Co., Ltd.; Trung Viet My Joint Stock Company; Viet Anh Imp-Exp Joint Stock Co.; VNS/VN Sourcing/Vietnam Sourcing; and Yen Trang Co., Ltd.

[68] *See* Respondent Selection Memo at 4.

questionnaires.[69] However, the Department found that Hamico's responses were consistently and repeatedly non-responsive and incomplete. Further, Hamico attempted to postpone submitting entire sections of its questionnaire responses upon the expectation that it would be accorded an opportunity to submit the data at a time of its own choosing.[70] The Department provided Hamico with numerous opportunities to re-file its untimely and incomplete responses, and indicated that failure to provide a timely and complete response may result in the use of AFA.[71] On May 3, 2012, the Department informed Hamico that, because the Department has provided numerous opportunities for Hamico to: (1) Comply with repeated requests for information; (2) correct the data that was unusable for purposes of calculating an accurate dumping margin; and (3) submit complete information by the established deadlines, the Department would rely on facts otherwise available, which may include adverse inferences.[72]

In its communications with Hamico, the Department notified Hamico of its pervasive non-compliance with the filing regulations, non-responsiveness to the questions asked, and incompleteness of the responses. The Department also established, on the record, that Hamico has repeatedly failed to provide information directly requested by the Department within: (1) The original questionnaire dated February 17, 2012; (2) supplemental questionnaires; and (3) the deficiency letters. Furthermore, as the Department informed Hamico, a respondent does not have the right to postpone submitting entire sections of any questionnaire responses, or parts thereof, upon the expectation that they will be accorded an opportunity to submit the data at a time of its own choosing.[73]

The record reflects that the Department has consistently provided Hamico with multiple opportunities to re-file non-compliant and incomplete questionnaire responses.[74] The Department has also issued exhaustive supplemental questionnaires to Hamico, in which the Department provided Hamico with an opportunity to address the critical items which Hamico repeatedly omitted from its previous responses.[75] Additionally, as discussed above, the Department has determined that Hamico has provided non-compliant and deficient responses to our requests for information, and thus will not receive a separate rate because the Department cannot determine whether Hamico is free of *de jure* and *de facto* control from the government of Vietnam. Consequently, we preliminarily determine that, because Hamico has not qualified for a separate rate, it is now part of the Vietnam-wide entity.

The Department preliminarily determines that there were Vietnamese producers/exporters of steel wire garment hangers during the POI that: (1) Did not respond to the Department's request for information, and (2) did not provide compliant or complete information in a timely manner. Therefore, we are treating these Vietnamese producers/exporters as part of the Vietnam-wide entity because they did not qualify for a separate rate.[76]

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the Vietnam-wide entity, including Hamico, was unresponsive to the Department's requests for information. Certain companies: (1) Did not respond to our questionnaires requesting either Q&V information; or (2) provided pervasively non-compliant, incomplete, and untimely information requested by the Department. As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of facts available (''FA'') is appropriate to determine the Vietnam-wide rate.[77]

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information.[78] We find that, because the Vietnam-wide entity did not respond to our requests for information and did not provide complete, compliant and timely information requested by the Department, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

When employing an adverse inference, section 776 of the Act indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.[79]

[69] *See* Letter from the Department to South East Asia Hamico Export Joint Stock Corporation, re: ''Steel Wire Garment Hangers from the Socialist Republic of Vietnam (''Vietnam''): Final Deficiency Letter regarding Inadequacy of Prior Responses,'' dated May 3, 2012 (''Hamico Final Deficiency Letter'') at 1–4.

[70] *See* Hamico Final Deficiency Letter at 4, footnote 12; *see also, e.g.,* Hamico's Supplemental Section C Questionnaire Response dated April 24, 2012, at 22.

[71] *See, e.g.,* Letter from the Department to Hamico, re: ''Rejection and Removal from the record of Section D Questionnaire Response,'' dated April 17, 2012.

[72] *See* Hamico Final Deficiency Letter at 7.

[73] *See id.*

[74] *See, e.g.,* Letter to Hamico re; rejection and removal from the record of Section D Questionnaire Response, dated April 17, 2012; *see also* Letter to Hamico re; rejection and removal from the record of the Supplemental Section A Questionnaire Response, dated April 23, 2012.

[75] *See* the Department's Supplemental Section A Questionnaire dated March 27, 2012, and the Department's Supplemental Section C Questionnaire dated April 16, 2012.

[76] *See, e.g., Prestressed Concrete Steel Wire Strand From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 74 FR 68232, 68236 (December 23, 2009) (''*PC Strand Prelim*''), unchanged in *Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 28560 (May 21, 2010); *see also Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China,* 70 FR 77121, 77128 (December 29, 2005), unchanged in *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China,* 71 FR 29303 (May 22, 2006).

[77] *See PC Strand Prelim,* 74 FR at 68236.

[78] *See Statement of Administrative Action,* accompanying the Uruguay Round Agreements Act (''URAA''), H.R. Rep. No. 103–316, 870 (1994) (''*SAA*''); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000).

[79] *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China,* 65 FR 34660 (May 21, 2000) and accompanying Issues and Decision Memorandum at Comment 1.

To determine the appropriate AFA margin, the Department first examined whether the highest petition margin was less than or equal to the highest calculated margin. In this case, we compared 220.68 percent from the petition to 187.51 percent from the respondent's calculated margins. As 187.51 is less than 220.68 percent, we could not directly corroborate 220.68 percent.

We then examined whether the component analysis was appropriate in this case to corroborate the highest margin. In this case, it is not clear which control numbers (''CONNUMs'') are appropriate to use for this purpose. Therefore, the component analysis would not be appropriate because it is unknown which CONNUM-specific margin to use for this analysis. Consequently, since we cannot use the component analysis here, we will use the highest calculated margin of 187.51 percent as the Vietnam-wide entity rate.

Therefore, as AFA, we have preliminarily assigned a rate of 187.51 percent to the Vietnam-wide entity, the highest transaction-specific rate calculated for the TJ Group.[80] In this instance, we believe that it is a reasonable exercise of the Department's discretion to select an AFA rate based on data in the investigation, instead of relying on secondary information. Accordingly, we found that the rate of 187.51 percent is the most appropriate antidumping rate for the Vietnam-wide entity. The Vietnam-wide entity rate applies to all entries of steel wire garment hangers except for entries from the TJ Group and the three exporters receiving a separate rate, as stated above.

Date of Sale

19 CFR 351.401(i) states that, ''in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business.'' However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[81] The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.[82] In order to simplify the determination of date of sale for both the respondents and the Department, and in accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless the Department is satisfied that the exporter or producer establishes the material terms of sale on some other date.[83]

In *Allied Tube,* the Court of International Trade (''CIT'') found that a ''party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' [84] After examining the questionnaire responses and the sales documentation that the respondents placed on the record, we preliminarily determine that the invoice date is the most appropriate date of sale for H2I2, the TJ Group's U.S. affiliate.[85]

Fair Value Comparisons

To determine whether sales of steel wire garment hangers to the United States by the TJ Group were made at LTFV, we compared the constructed export price (''CEP'') to NV, as described in the ''U.S. Price,'' and ''Normal Value'' sections of this notice. We compared NV to weighted-average CEPs in accordance with section 777A(d)(1) of the Act.

U.S. Price

CEP

In accordance with section 772(b) of the Act, we based the U.S. price for the TJ Group's sales on CEP because the first sale to an unaffiliated customer was made by H2I2. Specifically, H2I2 reports that it retained title to the steel wire garment hangers throughout the production process as it purchased all raw materials and paid its producers' operating expenses. Further, H2I2 reports that it performed all sales functions such as sales negotiations, issuance of invoices, and receipt of payment from the U.S. customers for all steel wire garment hangers produced by the producers in Vietnam for H2I2.[86] In accordance with section 772(c)(2)(A) of the Act, we calculated CEP by deducting, where applicable, the following expenses from the gross unit price charged to the first unaffiliated customer in the United States: Foreign movement expenses, international freight, and U.S. movement expenses, including brokerage and handling. Further, in accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), where appropriate, we deducted from the starting price the following selling expenses associated with economic activities occurring in the United States: Credit expenses and indirect selling expenses. In addition, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by Vietnamese service providers or paid for in Vietnamese Dong, we valued these services using SVs. For those expenses that were provided by an ME provider and paid for in an ME currency, we used the reported expense.[87]

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a)

[80] *See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review,* 74 FR 66620 (December 16, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

[81] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp.* v. *United States,* 132 F. Supp. 2d 1087, 1090–1092 (CIT 2001) (''*Allied Tube*'').

[82] *See Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007).

[83] For instance, in *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From Taiwan,* 61 FR 14064, 14067–14068 (March 29, 1996), the Department used the date of the purchase order as the date of sale because the terms of sale were established at that point.

[84] *See Allied Tube,* 132 F. Supp. 2d at 1092.

[85] *See* TJ's Section A Questionnaire Response, dated March 16, 2012, and Section C Questionnaire Response dated April 9, 2012.

[86] *See* TJ's Supplemental Section A Questionnaire Response, dated April 23, 2012, at 32. *See Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Rescission, in Par*t, 72 FR 18457 (April 12, 2007), unchanged in *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 (where the Department stated that ''we based U.S. price for certain sales on CEP in accordance with section 772(b) of the Act, because sales were made by Nantong Donchang's U.S. affiliate, Wavort, Inc. {''Wavort''} to unaffiliated purchasers.''); *AK Steel Corp., et al.* v. *United States,* 226 F.3d 1361 (Fed. Cir. 2000).

[87] For details regarding our CEP calculations, *see* ''Memorandum to the File, through Catherine Bertrand, Program Manager, from Robert Palmer, Analyst, re: Analysis Memorandum for the Preliminary Determination of the Investigation of Steel Wire Garment Hangers from the Socialist Republic of Vietnam: TJ Co., Ltd.'' dated concurrently with this notice.

of the Act. The Department bases NV on the FOP because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.[88]

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by the TJ Group for the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available SVs (except as discussed below). In selecting the SVs, among other criteria, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import SVs a 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).[89]

For this preliminary determination, in accordance with the Department's practice, we used Indian GTA import statistics to calculate SVs for the mandatory respondent's FOPs (direct materials, including steel wire, certain energy FOPs, and packing materials). 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 POI, product-specific, and tax-exclusive.[90] The record shows that data in the Indian Import Statistics, as well as that from the other Indian sources, represent data that are contemporaneous with the POI, product-specific, and tax-exclusive.[91]

Furthermore, with regard to the Indian import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.[92] Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[93] Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.[94] Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an ''unspecified'' country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[95] Therefore, we have not used prices from these countries either in calculating the Indian import-based SVs or in calculating ME input values.[96] The Department used Indian Import Statistics from the GTA to value the raw material, certain energy inputs and packing material inputs that the TJ Group used to produce steel wire garment hangers during the POI, except where listed below.

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings.[97] In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (''Yearbook'').

For this preliminary determination, the Department calculated the labor input using the wage method described in *Labor Methodologies.* To value the respondent's labor input, the Department relied on data reported by India to the ILO in Chapter 6A of the Yearbook. The Department further finds the two-digit description under Division 28 (Manufacture of Fabricated Metal Products, Except Machinery and Equipment) of the ISIC-Revision 3 to be the best available information on the record because it is specific to the industry being examined, and is, therefore, derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor data reported by India to the ILO under Division 28 of ISIC-Revision 3 standard, in accordance with Section 773(c)(4) of the Act. A more detailed description of the wage rate calculation methodology is provided in the Prelim SV Memo.

As stated above, the Department used Indian ILO data reported under Chapter 6A of the ILO Yearbook, which reflects

[88] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China,* 71 FR 19695 (April 17, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, in Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079 (September 8, 2006).

[89] *See* ''Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Irene Gorelik, Senior Analyst, Office 9, re; Investigation of Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Determination,'' dated concurrently with this notice (''Prelim SV Memo'') for a detailed description of all SVs used.

[90] *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).

[91] *See* Prelim SV Memo.

[92] *See, e.g., Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia,* 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 Results of 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.

[93] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7.

[94] *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; *see also Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758 (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.

[95] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China,* 69 FR 75294, 75300 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China,* 70 FR 24502 (May 10, 2005).

[96] *See id.,* 69 FR at 75300.

[97] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*''). This notice followed the Federal Circuit decision in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (Fed. Cir. 2010), which found that the regression-based method for calculating wage rates as stipulated by 19 CFR 351.408(c)(3) uses data not permitted by the statutory requirements laid out in section 773 of the Act (*i.e.,* 19 U.S.C. 1677b(c)).

all costs related to labor, including wages, benefits, housing, training, etc. Pursuant to *Labor Methodologies,* the Department's practice is to consider whether financial ratios reflect labor expenses that are included in other elements of the respondent's FOPs (*e.g.,* general and administrative expenses).[98] Additionally, where the financial statements used to calculate the surrogate financial ratios include itemized detail of labor costs, the Department made adjustments to certain labor costs in the surrogate financial ratios.[99]

The Department valued truck freight expenses using an Indian per-unit average rate calculated from publicly available data on the following Web site: *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains inland freight truck rates between many large Indian cities. We did not inflate this rate as it is contemporaneous with the POI.[100]

To value brokerage and handling, the Department used a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is publicly available and compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India as published in *Doing Business 2011: India* (published by the World Bank).

To value factory overhead, selling, general, and administrative (''SG&A'') expenses, and profit, the Department is using the 2010–2011 audited financial statement of Sterling Tools Ltd. (''Sterling''), an Indian fastener manufacturer[101] and the 2010–2011 audited financial statement of Nasco Steels Private Limited (''Nasco''),[102] an Indian manufacturer of steel hinges and nails. The Department has previously relied on Sterling's and Nasco's financial statements in *Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review,* 77 FR 12553 (March 1, 2012) and accompanying Issues and Decision Memorandum at Comment 4 (''*PRC Hangers AR2 Final*''), where we determined these two companies' financial statements were suitable because they are producers of comparable merchandise.

While TJ provided additional Indian financial statements for Deccan Wires & Welding Products PVT Ltd. (''Deccan'') and Balaji Galvanising Industries Limited (''Balaji''),[103] we have determined not to rely on either company's financial statements. Specifically, Balaji's financial statements indicate that Balaji is a producer of galvanized wire with no further production of downstream products from wire.[104] Additionally, as Deccan[105] is a producer of various types of wire and only produces nails as an ancillary product, we find that Deccan's financial statements do not adequately reflect the production experience of the respondent, a company wholly devoted to the production of merchandise produced downstream from steel wire. The Department has frequently determined that ''various fasteners produced by the surrogate companies are comparable to steel wire garment hangers, the merchandise subject to this investigation, because fasteners, like steel wire garment hangers, are a downstream product of wire requiring additional manufacturing processes.''[106]

Currency Conversion

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.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation.[107] Additionally, because we preliminarily find that Infinite, the Pre-Supreme Entity, and TJ, known as the TJ Group, to be a single entity, we are preliminarily assigning the combination rate to the TJ Group as the exporter and producer.[108]

Preliminary Determination

The weighted-average dumping margins are as follows:

Exporter	Producer	Weighted-average margin (percent)
TJ Group[109]	TJ Group	135.81
CTN Limited Company	CTN Limited Company	135.81
Ju Fu Co., Ltd.	Ju Fu Co., Ltd.	135.81
Triloan Hangers, Inc.	Triloan Hangers, Inc.	135.81
Vietnam-Wide Rate[110]		187.51

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

[98] *See Labor Methodologies,* 76 FR at 36093–94.

[99] *See id.,* 76 FR at 36093.

[100] *See* Prelim SV Memo.

[101] *See* Petition at Volume III and Exhibit III–2.

[102] *See* TJ's Surrogate Value Comments dated May 31, 2012, at Exhibit 7.

[103] *See id.,* at Exhibits 8 and 9, respectively.

[104] *See id.,* at Exhibit 9.

[105] *See id.,* at Exhibit 8.

[106] *See PRC Hangers AR2 Final* and accompanying Issues and Decision Memorandum at Comment 4; *see also PRC Hangers AR1 Final* and accompanying Issues and Decision Memorandum at Comment 2 and *PRC Hangers LTFV Prelim,* unchanged in *PRC Hangers LTFV Final.*

[107] *See Initiation Notice,* 77 FR at 3535. and *Policy Bulletin 05.1.*

[108] As noted above, neither Supreme Hangers Co., Limited nor Tan Dinh are entitled to use the rate of the TJ Group.

[109] The only companies entitled to use the rate of the TJ Group are: The Pre-Supreme Entity, Infinite Industrial Hanger Limited, and TJ Co., Ltd. As noted above, neither the Supreme Hangers Co., Limited nor Tan Dinh are entitled to use the rate of the TJ Group.

[110] The Vietnam-Wide entity includes: Acton Co., Ltd.; Angang Clothes Rack Manufacture Co.; Asmara Home Vietnam; B2B Co., Ltd.; Capco Wai Shing Viet Nam Co., Ltd.; Dai Nam Investment JSC; Diep Son Hangers One Member Co. Ltd.; Dong Nam A Co., Ltd.; Dong Nam A Trading Co.; EST Glory Industrial Ltd.; Focus Shipping Corp.; Godoxa Viet Nam Ltd.; HCMC General Import And Export Investment JSC; Hongxiang Business And Product Co., Ltd.; Linh Sa Hamico Company, Ltd.; Minh Quang Steel Joint Stock Company; Moc Viet Manufacture Co., Ltd.; Nam A Hamico Export Joint Stock; N–Tech Vina Co., Ltd.; NV Hanger Co., Ltd.

Continued

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct the U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of steel wire garment hangers from Vietnam as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption from the TJ Group, the non-selected companies receiving a separate rate, and the Vietnam-wide entity on or after the date of publication of this notice in the **Federal Register.** Additionally, we will instruct CBP to require an AD duty cash deposit for each entry equal to the weight-averaged amount by which the NV exceeds U.S. price, as indicated above.[111]

Additionally, the Department has determined in its concurrent CVD investigation of steel wire garment hangers from Vietnam that subject merchandise exported by Infinite and Hamico benefitted from export subsidies.[112] With respect to the TJ Group, we will instruct CBP to require an AD cash deposit equal to the amount by which the NV exceeds the U.S. price, as indicated above, reduced by the export subsidy determined for the TJ Group's in the companion CVD investigation.

However, as noted above, we have determined that Hamico is part of the Vietnam-wide entity in this proceeding. With respect to the Vietnam-wide entity, we have applied, as AFA, the highest transaction-specific rate calculated for a mandatory respondent, the TJ Group. Therefore, pursuant to our practice we will not instruct CBP to deduct any export subsidy from the Vietnam-wide entity's cash deposit rate.[113]

For the separate rate recipients in this case, who are receiving the All-Others rate in the CVD investigation, we will instruct CBP to require an AD cash deposit equal to the amount by which the NV exceeds the U.S. price, as indicated above, reduced by the lesser of the average of the export subsidy rates determined in the CVD investigation or the average of the CVD export subsidy rates applicable to the TJ Group, on which the separate rate dumping margins are based.

For all other entries of steel wire garment hangers from Vietnam, the following cash deposit instructions apply: (1) The rate for the firms listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all non-Vietnamese exporters of steel wire garment hangers which have not received their own rate, the cash-deposit rate will be the rate applicable to the Vietnamese exporter in the combination listed above, that supplied that non-Vietnamese exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of steel wire garment hangers, or sales (or the likelihood of sales) for importation, of the steel wire garment hangers within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, no later than five days after the deadline for submitting case briefs.[114] A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Any interested party may request a hearing within 30 days of publication of this notice.[115] Hearing requests should contain the following information: (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.[116]

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters, who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

As noted above, on June 25, 2012, the TJ Group requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days and extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four month period to a six month period. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) Our preliminary determination is affirmative; (2) the requesting producers/exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal**

(A/K/A Nguyen Hoang Vu Co., Ltd.); Ocean Star Transport Co., Ltd.; Quoc Ha Production Trading Service; Quyky (Factory); Quyky Group/Quyky Co., Ltd./Quyky-Yanglei International Co., Ltd.; S.I.I.C.; Tan Minh Textile Sewing Trading Co., Ltd.; Thanh Hieu Manufacturing Trading Co. Ltd.; The Xuong Co., Ltd.; Thien Ngon Printing Co., Ltd.; Top Sharp International Trading Limited; Trung Viet My Joint Stock Company; Viet Anh Imp-Exp Joint Stock Co.; Viet Hanger Investment, LLC/Viet Hanger; Vietnam Hangers Joint Stock Company; VNS/VN Sourcing/Vietnam Sourcing; Yen Trang Co., Ltd.; and South East Asia Hamico Export Joint Stock Company.

[111] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India,* 69 FR 67306, 67307 (November 17, 2007).

[112] *See Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination,* 77 FR 32930 (June 4, 2012).

[113] *See, e.g., Galvanized Steel Wire From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 77 FR 17430, 17435 (March 26, 2012).

[114] *See* 19 CFR 351.309(c)(1)(i) and 19 CFR 351.309(d)(1).

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

[116] *See* 19 CFR 351.310(d).

Register. Suspension of liquidation will be extended accordingly. We are also granting the request to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four month period to a six month period.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: July 26, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–18905 Filed 8–1–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–849]

Steel Wire Garment Hangers From Taiwan: Preliminary Determination of Sales at Less Than Fair Value

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

SUMMARY: The U.S. Department of Commerce (the ''Department'') preliminarily determines that steel wire garment hangers (''hangers'') from Taiwan are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(b) of the Tariff Act of 1930, as amended (the ''Act''). The estimated margins of sales at LTFV are listed in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* August 2, 2012

FOR FURTHER INFORMATION CONTACT: Scot Fullerton at (202) 482–1386, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2011, the Department received an antidumping duty (''AD'') petition concerning imports of steel wire garment hangers from Taiwan filed in proper form on behalf of M&B Metal Products Company, Inc.; Innovative Fabrication LLC/Indy Hanger; and US Hanger Company, LLC (collectively, the ''Petitioners'').[1] On January 25, 2012, the Department initiated an AD investigation on hangers from Taiwan.[2]

The Department 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 the date of publication of the *Initiation Notice*.[3] We received no comments from interested parties concerning product coverage. The Department also set aside a period of time for parties to comment on product characteristics for use in the AD questionnaire.[4] We received no comments from interested parties concerning product characteristics.

On February 21, 2012, the International Trade Commission (''ITC'') published its affirmative preliminary determination that there is a reasonable indication that imports of hangers from Taiwan are materially injuring the U.S. industry, and the ITC notified the Department of its findings.[5]

On March 9, 2012, we selected Golden Canyon Ltd. (''Golden Canyon'') and Taiwan Hanger Manufacturing Co., Ltd. (''Taiwan Hanger'') as mandatory respondents in this investigation. *See* the ''Selection of Respondents'' section of this notice, below. On March 14, 2012, we issued the AD questionnaire to Golden Canyon and Taiwan Hanger. On April 9, 2012, we again issued the AD questionnaire to Golden Canyon and Taiwan Hanger. We did not receive questionnaire responses from Golden Canyon or Taiwan Hanger.[6] Golden Canyon's questionnaires were returned due to incorrect addresses.[7] Taiwan Hanger did not respond to the questionnaires.[8] On April 27, 2012, Petitioners requested that the preliminary determination be postponed. On May 14, 2012, we postponed our preliminary determination by 50 days.[9]

Period of Investigation

The period of investigation (''POI'') is October 1, 2010, through September 30, 2011.[10]

Scope of Investigation

The merchandise subject to this investigation is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and whether or not fashioned with paper covers or capes (with or without printing) or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers.

Specifically excluded from the scope of the investigation are (a) Wooden, plastic, and other garment hangers that are not made of steel wire; (b) steel wire garment hangers with swivel hooks; (c) steel wire garment hangers with clips permanently affixed; and (d) chrome plated steel wire garment hangers with a diameter of 3.4 mm or greater.

The products subject to the investigation are currently classified under U.S. Harmonized Tariff Schedule (''HTSUS'') subheadings 7326.20.0020 and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters or producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. The data on the record indicates that there are 22 potential producers or exporters of hangers from Taiwan that exported the subject merchandise to the United States during the POI.[11] In the *Initiation Notice* we stated that we intended to select respondents based on U.S. Customs and Border Protection (''CBP'')

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[1] *See* ''Petitions for the Imposition of Antidumping Duties on Steel Wire Garment Hangers from Taiwan and Antidumping and Countervailing Duties on Steel Wire Garment Hangers from the Socialist Republic of Vietnam,'' filed on December 29, 2011 (the ''Petition'').

[2] *See Steel Wire Garment Hangers from the Socialist Republic of Vietnam and Taiwan: Initiation of Antidumping Duty Investigations,* 77 FR 3731 (January 25, 2012) (''*Initiation Notice*'').

[3] *See Initiation Notice.*

[4] *Id.*

[5] *See Steel Wire Garment Hangers from Taiwan and Vietnam,* Investigation Nos. 701–TA–487 and 731–TA 1197–1198 (Preliminary).

[6] *See* Memorandum to the File, ''Steel Wire Hangers from Taiwan: Questionnaire Delivery Attempts,'' dated concurrently with this notice (''Questionnaire Delivery Memo'') which details our attempts to deliver the questionnaires to Golden Canyon and Taiwan Hanger.

[7] *Id.*

[8] *Id.*

[9] *See Steel Wire Garment Hangers from the Socialist Republic of Vietnam and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 77 FR 28356 (May 14, 2012).

[10] *See* section 351.204(b)(1) of the Department's regulations.

[11] *See* the Petition at Exhibit 6.

data for U.S. imports under HTSUS numbers 7326.20.0020 and 7323.99.9080, the two categories most specific to subject merchandise, for entries made during the POI.[12] Moreover, we invited comments on CBP data and selection of respondents for individual examination.[13]

On January 30, 2012, we released the CBP data to all parties with access to information protected by administrative protective order.[14] Based on our review of the CBP data and the consideration of the comments we received from the Petitioners on February 6, 2012, we determined that we had the resources to examine two companies. Accordingly, we selected Golden Canyon and Taiwan Hanger for individual examination in this investigation. These companies are the two producers/exporters of subject merchandise that account for the largest volume of the subject merchandise imported during the POI that we can reasonably examine in accordance with section 777A(c)(2)(B) of the Act.[15]

Golden Canyon

Questionnaires that were sent to Golden Canyon were returned as undeliverable.[16] Therefore, we are classifying Golden Canyon as an ''unlocated company,'' and in accordance with our practice with respect to companies to which we cannot send a questionnaire, we are assigning Golden Canyon the ''all others'' rate, which is 69.98 percent.[17]

Taiwan Hanger

For the reasons stated below, we determine that the use of facts otherwise available with an adverse inference is appropriate for the preliminary determination with respect to Taiwan Hanger. As indicated in the ''Background'' section above, Taiwan Hanger did not respond to the AD questionnaire.[18] Specifically, Taiwan Hanger twice received the questionnaire, and then returned the questionnaire to the Department at a later date.[19]

Because Taiwan Hanger did not respond to our questionnaire, it withheld information necessary to calculate a margin for its sales to the United States. Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, significantly impedes a proceeding under the Act, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; (5) the information can be used without undue difficulties.

In this case, Taiwan Hanger did not respond to our request for information, withheld information the Department requested, and significantly impeded the proceeding. Because Taiwan Hanger failed to provide any information, section 782(e) of the Act is inapplicable. Accordingly, pursuant to section 776(a) of the Act, we are relying upon facts otherwise available for Taiwan Hanger's margin.

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.[20] In addition, the *Statement of Administrative Action accompanying the Uruguay Round Agreements Act,* H.R. Rep. 103–316, Vol. 1, 103d Cong. (1994) (''*SAA*''), explains that the Department may employ an adverse inference ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.''[21] Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.[22] It is the Department's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.

Although we twice served Taiwan Hanger with the AD questionnaire, Taiwan Hanger refrained from participating in this investigation and has failed to provide any response to our request for information. This failure to respond indicates that Taiwan Hanger has determined not to cooperate with our requests for information, or to participate in this investigation. Taiwan Hanger's decision not to participate in this investigation has precluded the Department from performing the necessary analysis and verification of Taiwan Hanger's questionnaire responses, as required by section 782(i)(1) of the Act. Accordingly, the Department concludes that Taiwan Hanger failed to cooperate to the best of its ability to comply with a request for information by the Department pursuant to section 776(b) of the Act. Based on the above, the Department has preliminarily determined that Taiwan Hanger has failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted.[23]

Corroboration of AFA Rate

Where the Department applies AFA because a respondent 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 authorizes the Department to rely on information derived from the petition, a final

[12] *See Initiation Notice.*

[13] *Id.*

[14] *See* Letter to All Interested Parties dated January 30, 2012.

[15] *See* Memorandum to Christian Marsh, ''Antidumping Duty Investigation of Steel Wire Garment Hangers from Taiwan: Respondent Selection Memorandum,'' dated March 9, 2012.

[16] *See* Questionnaire Delivery Memo.

[17] *See, e.g., Chrome-Plated Lug Nuts from Taiwan; Preliminary Results of Antidumping Duty Administrative Review,* 64 FR 55234, 55234 (October 12, 1999), unchanged in *Chrome-Plated Lug Nuts from Taiwan; Final Results of Antidumping Duty Administrative Review,* 65 FR 7491 (February 15, 2000).

[18] *See* Questionnaire Delivery Memo.

[19] *See* Questionnaire Delivery Memo for more details.

[20] *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India,* 70 FR 54023, 54025–26 (September 13, 2005), and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 55792, 55794–96 (August 30, 2002).

[21] *See SAA* at 870; and, *e.g., Certain Polyester Staple Fiber from Korea: Final Results of the 2005–2006 Antidumping Duty Administrative Review,* 72 FR 69663, 69664 (December 10, 2007).

[22] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan,* 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties,* 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp.* v. *United States,* 337 F.3d 1373, 1382–83 (Fed. Cir. 2003).

[23] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan,* 65 FR at 42985, 42986 (July 12, 2000) (where the Department applied total adverse facts available (''AFA'') where the respondent failed to respond to the antidumping questionnaire).

determination, a previous administrative review, or other information placed on the record.[24] In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. Normally, it is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information.[25] The rates in the petition range from 18.90 percent to 125.43 percent.[26] We have selected the petition rate of 125.43 percent.

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. The SAA clarifies that ''corroborate'' means the Department will satisfy itself that the secondary information to be used has probative value.[27] As stated in *Japanese TRBs,* to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.[28] The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[29]

For the purposes of this investigation and to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for purposes of this preliminary determination.[30] We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis we examined the key elements of the export price (''EP'') and normal value calculations used in the petition to derive margins. During our pre-initiation analysis we also examined information from various independent sources provided either in the petition or in supplements to the petition that demonstrated the accuracy and validity of key elements of the EP and normal value calculations used in the petition to derive estimated margins.[31]

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider the Petitioners' calculation of the EP and normal value to be reliable. Therefore, because we confirmed the accuracy and validity of the information underlying the calculation of margins in the petition by examining source documents as well as publicly available information, we preliminarily determine that the margins in the petition are reliable for the purposes of this investigation.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant.[32] Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin.[33]

The rates in the petition reflect commercial practices of the hangers industry and, as such, are relevant to Taiwan Hanger.[34] The courts have acknowledged that the consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.[35] Such consideration typically encompasses the commercial behavior of other respondents under investigation; however, as there are no participating respondents in this investigation, we have relied upon the rates found in the petition, which is the only information regarding the hangers industry reasonably at the Department's disposal. Because the petition rates are derived from the hangers industry and are based on information related to aggregate data involving the hangers industry, we have determined that the petition rates are relevant. Accordingly, by using information that was determined to be reliable in the pre-initiation stage of this investigation and preliminarily determining it to be relevant for the uncooperative respondent in this investigation, we have corroborated the AFA rate of 125.43 percent ''to the extent practicable'' as provided in section 776(c) of the Act. Therefore, we have applied the petition rate of 125.43 percent to Taiwan Hanger, as AFA.

Preliminary Determination

The Department determines that the following margins exist for the manufacturers/exporters under investigation as follows:

Manufacturer/Exporter	Margin (percent)
Golden Canyon Ltd.	69.98
Taiwan Hanger Manufacturing Co., Ltd.	125.43
All Others Rate	69.98

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct CBP to suspend liquidation of all entries of hangers from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit equal to the weighted-average margins, as indicated below, as follows: (1) The rates for Golden Canyon and Taiwan Hanger will be the rates we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this

[24] *See also* section 351.308(c) of the Department's regulations and the *SAA* at 868–870.

[25] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose from Finland,* 69 FR 77216, 77219 (December 27, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from Finland,* 70 FR 28279 (May 17, 2005).

[26] *See Initiation Notice.*

[27] *See SAA* at 870.

[28] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996) (''*Japanese TRBs*''), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825, 11843 (March 13, 1997).

[29] *See* section 351.308(d) of the Department's regulations, and the *SAA* at 870.

[30] *See* ''Antidumping Duty Investigation Initiation Checklist: Steel Wire Garment Hangers from Taiwan'' (''Initiation Checklist'') dated January 18, 2012, at 6–9.

[31] *Id.*

[32] *See Certain Steel Nails from the United Arab Emirates: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 76 FR 68129, 68132 (November 3, 2011), unchanged in *Certain Steel Nails from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value,* 77 FR 17029 (March 23, 2012).

[33] *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest dumping margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

[34] *See* Initiation Checklist at 6–9.

[35] *See, e.g., Ferro Union, Inc.* v. *United States,* 44 F. Supp. 2d 1310, 1334 (1999).

investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 69.98 percent, as discussed in the ''All Others Rate'' section, below. These suspensions of liquidation instructions will remain in effect until further notice.

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins and any margins determined entirely under section 776 of the Act. No respondent has participated in this investigation. Therefore, because the only dumping margins for this preliminary determination are found in the petition, the all others rate is a simple average of these values, which is 69.98 percent.[36]

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination. In accordance with section 735(b)(2) of the Act, if the Department's final determination is affirmative, the ITC will determine before the latter of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of hangers from Taiwan are materially injuring, or threatening material injury to, the U.S. industry.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than forty days after the publication of this preliminary determination. Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs.[37] A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department.[38] Executive summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs must be submitted to the Department electronically using IA ACCESS.[39]

In accordance with section 774 of the Act, the Department will hold a public hearing, if timely requested, to afford interested parties an opportunity to comment on issues raised in case briefs, provided that such a hearing is requested by an interested party by electronically filing the request via IA ACCESS.[40] If a timely request for a hearing is made in this investigation, we intend to hold the hearing two days after the deadline for filing a rebuttal brief. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Any interested party may request a hearing within 30 days of publication of this notice.[41] Hearing requests should contain the following information: (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, parties will be notified 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.[42]

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: July 27, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–18900 Filed 8–1–12; 8:45 am]

BILLING CODE 3510–DS–P

[36] *See* Initiation Checklist at Attachment V; *see, e.g., Certain Steel Nails from the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 77 FR 27421 (May 10, 2012) (where the Department determined the all others rate using a simple average).

[37] *See* section 351.309(d) of the Department's regulations.

[38] *See* section 351.309(c)(2) of the Department's regulations.

[39] Electronic filing requirements via IA ACCESS can be found at section 351.303 of the Department's regulations; *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[40] *Id.*

[41] *See* section 351.310(c) of the Department's regulations.

[42] *See* section 351.310(d) of the Department's regulations.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–814]

Utility Scale Wind Towers From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that utility scale wind towers (''wind towers'') from the Socialist Republic of Vietnam (''Vietnam'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The preliminary margins of dumping are shown in the ''Preliminary Determination'' section of this notice.

DATES: *Effective Date:* August 2, 2012.

FOR FURTHER INFORMATION CONTACT: Charles Riggle, Magd Zalok or LaVonne Clark, 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) 482–0650, (202) 482–4162, or (202) 482–0721, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2011, the Department received a petition concerning imports of wind towers from Vietnam filed in proper form by the Wind Tower Trade Coalition (''Petitioner'').[1] In January 2012, the Department issued requests for information regarding, and clarification of, certain areas of the Petition. Petitioner timely filed responses to these requests. The Department initiated an antidumping duty (''AD'') investigation of wind towers from Vietnam on January 18, 2012.[2]

[1] The Wind Tower Trade Coalition is comprised of Broadwind Towers, Inc., DMI Industries, Katana Summit LLC, and Trinity Structural Towers, Inc. *See* Petitions for the Imposition of Antidumping and Countervailing Duties on Utility Scale Wind Towers from the People's Republic of China and Antidumping Duties on Utility Scale Wind Towers from the Socialist Republic of Vietnam (December 29, 2011) (''Petition'').

[2] *See Utility Scale Wind Towers From the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations,* 77 FR 3440 (January 24, 2012) (''*Initiation Notice*'') at Volume I, Exhibit I–14 of the Petition.

In the *Initiation Notice,* the Department noted that Petitioner listed only two known Vietnamese exporters/producers in the Petition: CS Wind Vietnam Co., Ltd. (''CS Wind Vietnam'') and Vina-Halla Heavy Industries Ltd. (''Vina-Halla''). Accordingly, the Department stated that it would send its AD questionnaire to these two companies.[3] Moreover, in its Petition, Petitioner requested that the Department consider expanding the period of investigation (''POI'') to include more than two fiscal quarters, the period normally covered in an investigation involving a non-market economy (''NME'') country, because a POI of normal duration may not capture a large number of wind tower sales. Accordingly, in the *Initiation Notice,* the Department stated that it would give further consideration to the duration of the POI.[4]

On February 16, 2012, the Department issued the AD questionnaire to CS Wind Vietnam and Vina-Halla and, in a separate questionnaire issued to both companies on the same date, requested quantity and value (''Q&V'') information to evaluate Petitioner's claim with respect to expanding the POI. On March 1, 2012, the Department received a Q&V response from CS Wind Group.[5] The Department did not receive a Q&V response from Vina-Halla. Based on CS Wind Group's Q&V response, the Department concluded that the six-month POI data ensure a sufficient number of sales for its analysis.[6] Accordingly, pursuant to 19 CFR 351.204(b)(1), the Department determined to follow its normal practice and use the six-month POI.[7]

In March and April 2012, CS Wind Group submitted timely responses to the Department's AD questionnaire. The Department did not receive responses to its AD questionnaire from Vina-Halla. Petitioner submitted comments regarding those responses in April and May 2012. The Department issued supplemental questionnaires to CS Wind Group from May to July 2012. CS Wind Group submitted timely responses to the Department's supplemental questionnaires, and Petitioner submitted comments thereon, from May through July 2012.

In the *Initiation Notice,* the Department notified parties that they had an opportunity to comment on the scope of the investigation as well as the appropriate physical characteristics of wind towers to be reported in response to the Department's AD questionnaire.[8] In February 2012, Petitioner and CS Wind Group submitted comments to the Department regarding the scope and the physical characteristics of merchandise under consideration to be used for reporting purposes.

On February 13, 2012, the U.S. International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Vietnam of wind towers.[9]

On January 27, 2012, the Department identified potential surrogate countries for use in the investigation.[10] On March 15, 2012, the Department invited interested parties to comment on surrogate country and surrogate value selection.[11] From April through May 2012, interested parties submitted comments and rebuttal comments on the appropriate surrogate country and surrogate values.

On May 3, 3012, Petitioner made a timely request pursuant to section 733(c)(1)(A) of the Act, and 19 CFR 351.205(b)(2) and (e) for a 50-day postponement of the preliminary determination.[12] On May 17, 2012, the Department published a notice of postponement of the due date of the preliminary AD determination on wind towers from Vietnam.[13]

On June 29, 2012, Petitioner and CS Wind Group filed comments for the Department to consider in its preliminary determination.

Period of Investigation

The POI is April 1, 2011, through September 30, 2011. This period corresponds to the two most recent fiscal quarters prior to the month in which the Petition was filed, December 2011.[14]

Scope of the 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 (''kW'') 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 nonsubject 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 are currently classified in the Harmonized Tariff System of the United States (''HTSUS'') under subheadings 7308.20.0020[15] or

[3] *See Initiation Notice,* 77 FR at 3441, *See also* Volume I of the Petition.

[4] *See Initiation Notice,* 77 FR at 3441.

[5] The Department has preliminarily determined that CS Wind Vietnam and CS Wind Corporation, the Korean parent of CS Wind Vietnam, (collectively, ''CS Wind Group'') should be treated as a single entity for AD purposes. *See* Memorandum from Magd Zalok, International Trade Analyst, through Charles Riggle, Program Manager, AD/CVD Operations, Office 4, to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, regarding ''Affiliation and Single Entity Status of CS Wind Group Vietnam Co., Ltd. and CS Wind Group Corporation'' (July 26, 2012) (''Single Entity Memorandum'').

[6] *See* Memorandum to the File, regarding ''Six-Month Period of Investigation'' (March 12, 2012).

[7] *Id.*

[8] *See Initiation Notice,* 77 FR at 3441.

[9] *See Utility Scale Wind Towers From China and Vietnam,* 77 FR 9700 (February 17, 2012).

[10] *See* Memorandum from Carol Showers, Director, Office of Policy, to Charles Riggle, Program Manager, Office 4, regarding ''Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Utility Scale Wind Towers ('Wind Towers') from the Socialist Republic of Vietnam ('Vietnam')'' (January 27, 2012) (''Surrogate Country Memorandum'').

[11] *See* Letter to All Interested Parties, regarding ''Utility Scale Wind Towers from the Socialist Republic of Vietnam ('Vietnam') Investigation: Request for Surrogate Country and Surrogate Value Comments and Information'' (March 15, 2012).

[12] *See* Letter from Petitioner to the Secretary of Commerce, regarding ''Certain Utility Scale Wind Towers from the People's Republic of China and the Socialist Republic of Vietnam: Request to Fully Extend Preliminary Determination'' (May 3, 2012).

[13] *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).

[14] *See* 19 CFR 351.204(b)(1).

[15] Wind towers are classified under HTSUS 7308.20.0020 when imported as a tower or tower section(s) alone.

8502.31.0000.[16] Prior to 2011, merchandise covered by the investigation were 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, the Department 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.*[17]

On February 7, 2012, the Department received timely comments on the scope of the investigation from Petitioner.[18] Specifically, Petitioner requested that the scope cover all future generations of utility scale wind towers, regardless of the type of the future tower (*e.g.,* lattice mast, space frame tower, *etc.*), that are designed to support turbine generators with a capacity in excess of 100 kW.[19] Petitioner argued that, in a previous case, the Department included scope language that covered future generations of semiconductors.[20] Petitioner also stated that wind tower generating capacities have been consistently increasing, generator efficiencies have been improving, and turbine heights have been rising to altitudes with much stronger winds.[21] Petitioner contends, in fact, that the next generation of wind towers will be over 100 meters in height and capable of supporting generators with capacities of 7.0 megawatt and larger.[22] Accordingly, Petitioner proposed including language in the scope stating that ''{f}uture utility scale wind tower configurations that meet the minimum height requirement and are designed to support wind turbine electrical generators greater than 100 kW are also included within the scope.'' [23]

Section 731 of the Act requires the Department to define the scope of merchandise subject to investigation in each AD investigation. If the Department initiates an investigation based upon a petition, it will continue to review the scope of the merchandise described in the petition to determine the scope of the final order.[24]

Generally, the Department prefers to define product coverage by the physical characteristics of the merchandise subject to investigation.[25] In this proceeding, a wind tower section subject to this investigation ''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 * * *.'' Consequently, to revise the scope language as proposed by Petitioner would expand product coverage beyond the physical characteristics of merchandise currently subject to this investigation by including all products meeting the minimum height and power generating capacity defined in the scope, regardless of physical characteristics. Moreover, in *Semiconductors,* the Department did not cover future generations of semiconductors as claimed by Petitioner but, rather, covered future packaging and assembling of dynamic random access memory. What distinguishes the instant investigation from *Semiconductors* is that, while the Department never contemplated future generations of semiconductors, Petitioner's admitted intention in the instant investigation is to ''cover all future generations of utility scale wind towers regardless of the type of future tower.'' [26] This would result in an open-ended scope, potentially covering products whose physical characteristics differ significantly from the physical characteristics of the merchandise subject to this investigation. Therefore, for this preliminary determination, the Department has not adopted the revised scope language proposed by Petitioner.

Non-Market Economy Country

For purposes of initiation, Petitioner treated Vietnam as an NME.[27] The Department considers Vietnam to be an NME.[28] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the Department.[29] Therefore, the Department continues to treat Vietnam as an NME for purposes of this preliminary determination.

Surrogate 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 (''FOPs'') valued in a surrogate market economy (''ME'') country or countries 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 factors of production in one or more market economy countries that are—(A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise.'' Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOPs in a single surrogate country.

In its Surrogate Country Memorandum, the Department identified Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines as being equally comparable to Vietnam in terms of economic development.[30] Petitioner argues that India should be selected as the surrogate country because India is a significant producer of comparable merchandise, it has a large wind energy industry, and it is the best source for quality surrogate value data and usable financial statements.[31] CS Wind Group, while agreeing that India provides the most appropriate primary surrogate country to value FOPs in this investigation, contends that

[16] 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).

[17] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (''*Preamble*''); *Initiation Notice,* 77 FR at 3441.

[18] *See* Letter from Petitioner to the Secretary of Commerce, ''Certain Utility Scale Wind Towers from the People's Republic of China and the Socialist Republic of Vietnam: Scope Comments'' (February 7, 2012) (''Scope Comments''). No other parties provided comments.

[19] *Id.* at 2.

[20] *Id.* at 2–3; *Initiation of Antidumping Duty Investigation: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea,* 57 FR 21231 (May 19, 1992) (''*Semiconductors*'').

[21] *See* Scope Comments at 3.

[22] *Id.*

[23] *Id.* at 2.

[24] *See Preamble,* 62 FR at 27323.

[25] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China,* 73 FR 31970 (June 5, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

[26] *See* Scope Comments at 2.

[27] *See* Volume IV of the Petition at 9–10; *see also Initiation Notice,* 77 FR at 3444.

[28] *See, e.g., Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 56813 (November 3, 2009), unchanged in *Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value,* 75 FR 16434 (April 1, 2010).

[29] *See 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) (''*CFS Paper from PRC Preliminary Determination*''), 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) (''*CFS Paper from PRC Final Determination*'').

[30] *See* Surrogate Country Memorandum.

[31] *See* Letter from Petitioner to the Department, regarding ''Utility Scale Wind Towers from the Socialist Republic of Vietnam: Surrogate Country Comments'' (April 25, 2012).

Ukraine also maintains a sizeable industry producing substantial quantities of comparable merchandise and offers reliable, quality data to value certain major inputs.[32] Petitioner argued that Ukraine is not on the list of potential surrogate countries and, therefore, is not an appropriate source for surrogate values.[33]

Economic Comparability

The Department considers all six countries listed in the Surrogate Country Memorandum as having satisfied the economic comparability prong of the surrogate country selection criteria. Unless the Department finds that all of the countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data or are unsuitable for use for other reasons, the Department will rely on data from one of these countries.[34] CS Wind Group has recommended that Ukraine also be considered as a potential surrogate country. However, Ukraine is not one of the potential countries included in the Surrogate Country Memorandum, nor is the Ukrainian gross national income (''GNI'') within the range of the GNI's for the countries included in the Surrogate Country Memorandum. Therefore, the Department finds that Ukraine is not as economically comparable as the countries in the Surrogate Country Memorandum, and will not be considered as a potential surrogate country.

Once the countries that are economically comparable to Vietnam have been identified, the Department determines whether each economically comparable country is a significant producer of comparable merchandise.[35]

Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act directs the Department, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. The record contains evidence of production of identical or comparable merchandise in India, Indonesia, Nicaragua and Pakistan. As a proxy for domestic production, export data from the United Nations Comtrade (*www.comtrade.un.org*) show that India, Indonesia, Nicaragua and Pakistan export towers under a Harmonized Tariff System (''HTS'') category that would include merchandise under consideration.[36] However, these data also indicate that Nicaragua's and Pakistan's exports were negligible.[37] The Global Trade Atlas (''GTA'') statistics further identify exports of merchandise under consideration from India of over 4,700,000 kilograms of towers classified under HTS 7308.20.19, which included the subject merchandise, during the most recent six-month period for which the GTA India data are available.[38] Based on information on the record, the Department has determined that India and Indonesia are significant producers of comparable merchandise under consideration. After determining which potential surrogate countries are significant producers of identical or comparable merchandise, the Department then selects the primary surrogate country based upon whether data for valuing the FOPs are both available and reliable.

Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, the Department selects the primary surrogate country from among the potential surrogate countries based on data availability and reliability. When evaluating surrogate value data, the Department considers several factors, including whether the surrogate values are publicly available, contemporaneous with the POI, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.[39] There is no surrogate value information on the record for Bangladesh, Indonesia, Nicaragua, Pakistan, and the Philippines. In contrast, the record contains usable Indian surrogate values for almost every FOP.[40]

Because India is the only country listed on the Surrogate Country Memorandum found to be both economically comparable to Vietnam, a significant producer of comparable merchandise, and for which we have reliable data to value almost every one of the FOPs, we have selected India as the primary surrogate country. Because India satisfies the Department's criteria for the selection of a primary surrogate country, resort to an alternative surrogate country which is not as economically comparable to Vietnam as the countries in the Surrogate Country Memorandum, is not necessary.

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an AD investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.[41]

Single Entity Treatment

To the extent that the Department's practice does not conflict with section 773(c) of the Act, the Department will collapse two or more affiliated entities in a proceeding involving an NME country if the facts of the case warrant such treatment.[42] Pursuant to 19 CFR

[32] *See* Letter from CS Wind Group to the Department, regarding ''CS Wind Group's Surrogate Country Comments: Antidumping Duty Investigation on Utility Scale Wind Towers from the Socialist Republic of Vietnam'' (April 25, 2012).

[33] *See* Letter from Petitioner to the Department, regarding ''Utility Scale Wind Towers from the Socialist Republic of Vietnam: Submission of Additional Comments in Connection with the Department of Commerce's Surrogate Country Selection'' (May 23, 2012).

[34] *See Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination,* 76 FR 67702, 67708 (November 2, 2011) (''*Steel Wheels from PRC Preliminary Determination*''), unchanged in *Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances,* 77 FR 17021 (March 23, 2012) (''*Steel Wheels from PRC Final Determination*'').

[35] *See Steel Wheels from PRC Preliminary Determination,* 76 FR at 67708–09, unchanged in *Steel Wheels from PRC Final Determination.*

[36] *See* Petitioner's April 25, 2012, submission at Exhibit 1.

[37] *See id.*

[38] *See* CS Wind Group's April 25, 2012, submission at Exhibit 2.

[39] *See* Import Administration's Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004), available on the Department's Web site at *http://ia.ita.doc.gov/policy/index.html.*

[40] *See* CS Wind Group's April 25, 2012, letter at 2–7.

[41] In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by any other 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 surrogate value information. *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. Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must provide a written explanation of what information that is already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting.

[42] *See, e.g., Certain Steel Nails From the People's Republic of China: Preliminary Determination of*

Continued

351.401(f)(1), the Department will treat producers as a single entity, or ''collapse'' them, where: (1) Those producers are affiliated; (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for manipulation exists, 19 CFR 351.401(f)(2) states that the Department may consider various factors, including: (1) The level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

Section 771(33) of the Act identifies persons that shall be considered ''affiliated'' or ''affiliated persons,'' including, *inter alia,* (1) any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization; or (2) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.[43] Section 771(33) of the Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

The Department has preliminarily determined that CS Wind Vietnam and CS Wind Corporation, the Korean parent company of CS Wind Vietnam, are affiliated pursuant to sections 771(33)(E) and (F) of the Act and that these companies should be treated as a single entity for AD purposes.[44] In summary, the Department has preliminarily determined that CS Wind Vietnam and CS Wind Corporation meet the statutory definition of ''affiliated persons'' under sections 771(33)(E) and (F) of the Act.[45] Furthermore, the Department has preliminarily found a significant potential for manipulation of production and sales decisions between CS Wind Corporation and CS Wind Vietnam.[46] Accordingly, the Department has determined it appropriate to treat CS Wind Corporation and CS Wind Vietnam as a single entity in this proceeding.

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 assessed a single weighted-average dumping margin.[47] It is the Department's policy to assign all exporters of merchandise under investigation that are 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.[48] The Department analyzes whether each entity exporting the subject merchandise is sufficiently independent under a test arising from *Sparklers,*[49] as further developed in *Silicon Carbide.*[50] In accordance with the separate rates criteria, the Department assigns separate rates in NME cases if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over their export activities. If, however, the Department determines that a company is wholly foreign owned, then a separate rate analysis is not necessary to determine whether it is independent from government control.[51]

CS Wind Group, the respondent in this investigation, provided information indicating that it is a wholly-owned foreign enterprise.[52] Accordingly, a separate rate analysis is not necessary for this company.

Companies not Receiving a Separate Rate

The Department has not granted a separate rate to Vina-Halla because the company failed to submit a timely response to the Department's questionnaires which requested information regarding separate rate eligibility. As indicated above, CS Wind Vietnam and Vina-Halla are the only producers/exporters identified in the Petition. The Department stated in the *Initiation Notice* that it would request information regarding separate rate eligibility in the questionnaire being sent to the two known exporters/producers identified in the Petition (*i.e.,* CS Wind Vietnam and Vina-Halla).[53]

The Vietnam-Wide Entity

As noted above, Vina-Halla did not respond to the Department's questionnaires. Since Vina-Halla has not demonstrated that it is eligible for separate rate status, it is part of the Vietnam-wide entity. Thus, the record indicates that the Vietnam-wide entity withheld information requested by the Department.

Application of Facts Available and Adverse Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

As discussed above, Vina-Halla did not respond to the Department's questionnaires, failed to establish its eligibility for a separate rate and, thus, the Department preliminarily finds that Vina-Halla is a part of the Vietnam-wide entity. Therefore, we find that the Vietnam-wide entity withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded the proceeding by not submitting the requested information. The Vietnam-wide entity did not file documents indicating that it was having difficulty providing the requested information nor did it request that it be allowed to submit the

Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination, 73 FR 3928, 3932 (January 23, 2008), unchanged in *Certain Steel Nails From the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 7254 (February 7, 2008) and *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).

[43] *See* sections 771(33)(E)–(F) of the Act.

[44] *See* Single Entity Memorandum.

[45] *Id.*

[46] *Id.*

[47] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039, 55040 (September 24, 2008) (''*PET Film from PRC Final Determination*'').

[48] *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 amplified by *Notice of 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*'').

[49] *See Sparklers,* 56 FR at 20588.

[50] *See Silicon Carbide,* 59 FR at 22585.

[51] *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China,* 72 FR 52355, 52356 (September 13, 2007).

[52] *See* CS Wind Group's March 20, 2012, letter at A–11.

[53] *See Initiation Notice,* 77 FR at 3445–46.

information in an alternate form. As a result, pursuant to sections 776(a)(2)(A)–(C) of the Act, we find that the use of facts otherwise available is appropriate to determine the rate for the Vietnam-wide entity.[54]

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an inference that is adverse to a party if the party failed to cooperate by not acting to the best of its ability to comply with requests for information.[55] The Department finds that the Vietnam-wide entity's failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.[56] Therefore, because the Vietnam-wide entity did not respond to the Department's requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate.

When employing an adverse inference, section 776(b) of the Act states that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate based on adverse facts available (''AFA''), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[57] It is the Department's practice to select, as an AFA rate, the higher of the: (a) Highest dumping margin alleged in the petition, or (b) highest calculated dumping margin of any respondent in the investigation.[58] The dumping margins alleged in the Petition are 140.54 percent and 143.29 percent.[59] Either of these rates is higher than the calculated rate for CS Wind Group. Thus, as AFA, the Department's practice would be to assign the rate of 143.29 percent to the Vietnam-wide entity.

Corroboration of Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation.''[60] To ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value.[61] Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[62] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[63]

In order to determine the probative value of the dumping margins in the Petition for use as AFA for purposes of this preliminary determination, we examined information on the record and found that we were unable to corroborate either of the dumping margins contained in the Petition. Therefore, for the preliminary determination, we have assigned the Vietnam-wide entity the rate of 59.91 percent, the highest transaction-specific dumping margin for the mandatory respondent, CS Wind Group.[64] No corroboration of this rate is necessary because we are relying on information obtained in the course of this investigation, rather than secondary information from the Petition.[65]

Date of Sale

Pursuant to 19 CFR 351.401(i), ''in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business.'' The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.[66]

Sales during the POI were made pursuant to long-term contracts, and/or purchase orders. Petitioner maintains that CS Wind Group's date of sale involving one of its customers should be based on the purchase order date because: (1) Once production begins (*i.e.,* at the production release date) upon request, the material terms appear to be fixed, pursuant to the long-term agreement, and are reflected in the purchase order; (2) certain terms under the contract make it unlikely that changes are made after the purchase order date; and (3) CS Wind Group has

[54] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam,* 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003).

[55] *See also* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. 103–316, 870 (1994) (''SAA''); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000).

[56] *See Nippon Steel Corp.* v. *United States,* 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a ''failure to cooperate to the best of a respondent's ability'' existed (*i.e.,* information was not provided ''under circumstances in which it is reasonable to conclude that less than full cooperation has been shown'')).

[57] *See* SAA at 870.

[58] *See Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 77 FR 17436, 17438 (March 26, 2012).

[59] *See Initiation Notice,* 77 FR at 3445.

[60] *See Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China,* 73 FR 6479, 6481 (February 4, 2008), and accompanying Issues and Decision Memorandum at Comment 2 (quoting SAA at 870).

[61] *See* SAA at 870.

[62] *Id.*

[63] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[64] *See, e.g., Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318, 64322 (October 18, 2011) (assigning as an AFA rate the highest calculated transaction-specific rate among mandatory respondents).

[65] *See* section 776(c) of the Act and 19 CFR 351.308(c) and (d); *see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube From the People's Republic of China,* 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

[66] *See, e.g., Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review,* 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From Turkey,* 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Date of Sale, Comment 1.

provided no evidence to contradict its agreement with said customer that the material terms of sale change after the purchase order is issued.[67] Petitioner further maintains that information on the record also shows that price adjustments, revising the commercial invoice price for said customer, followed the shipment of some towers. Petitioner, therefore, argues that, to the extent that the Department does not believe that the price is fixed before the commercial invoice is issued, it appears that the shipment of the towers may have occurred prior to the issuance of the final adjustment invoice of the tower. Accordingly, Petitioner argues that the shipment date may serve as an appropriate date of sale.[68] Finally, Petitioner argues that the pro forma invoice, which is issued at the time of shipment to said customer, may be the appropriate date of sale because it appears to be the final iteration of the material terms of sale pursuant to the contractual agreement between CS Wind Group and said customer.[69]

The relevant question in considering whether the purchase order date better reflects the date on which the exporter established the material terms of sale, and thus is the appropriate date of sale, is whether the material terms of sale were subject to change on the purchase order date. The date of sale is the date when the material terms of sale are established and final—that is, no longer subject to change.[70] CS Wind Group provided evidence that the material terms of purchase orders can and do change up until issuance of the commercial invoice.[71] Moreover, record evidence does not suggest that the shipments of towers have occurred prior to the issuance of the commercial invoice to said customer to warrant the use of the shipment date as the date of sale.[72]

In *Allied Tube & Conduit Corp.* v. *United States,* the U.S. Court of International Trade noted that a ''party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.' '' [73] After examining the record, the Department has determined that there is insufficient evidence demonstrating that a date other than the commercial invoice date better reflects that date on which the material terms of sale were established.[74]

Fair Value Comparisons

In accordance with section 777A(d)(1) of the Act, to determine whether CS Wind Group sold merchandise under consideration to the United States at LTFV during the POI, we compared the weighted-average price of U.S. sales of subject merchandise to the weighted-average NV, as described in the U.S. Price and ''Normal Value'' sections of this notice.[75]

U.S. Price

The Department considered the prices of U.S. sales reported by CS Wind Group to be export prices (''EP'') in accordance with section 772(a) of the Act, because these are the prices at which the subject merchandise was first sold before the date of importation by the 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. We calculated the EP based on the packed prices at which merchandise under consideration was sold for exportation to the United States. We made deductions from U.S. price for movement expenses (*i.e.,* foreign inland freight from the plant to the port of exportation and domestic brokerage), in accordance with section 772(c)(2)(A) of the Act. Where foreign inland freight or foreign brokerage and handling fees were provided by Vietnamese service providers or paid for in Dong, we based those charges on surrogate value rates.[76] Where applicable, we also adjusted the U.S. price by the value of certain materials provided free of charge.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and 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. The Department bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.[77] Thus, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). 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; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.[78]

CS Wind Group reported FOP offsets for steel and aluminum scrap. However, because the net total weight of the material inputs and the scrap offsets is less than the total weight of the finished product (exclusive of lifting and transport equipment), we have disallowed CS Wind Group's scrap offsets for purposes of the preliminary determination.[79]

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP

[67] *See* Petitioner's June 15, 2012, letter at 10–22.

[68] *Id.* at 23–25.

[69] *Id.* at 25–27.

[70] *See Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007).

[71] *See* CS Wind Group's May 7, 2012, Supplemental Response at Exhibits S1–1 through S1–3; CS Wind Group's June 6, 2012, Supplemental Response at 1–2, and Exhibits S5–1 through S5–5; and CS Wind Group's June 12, 2012, Supplemental Response at 3–11, and Exhibits S6–1 through S6–10.

[72] *See* CS Wind Group's June 12, 2012, Supplemental Response at 3–11, and Exhibits S6–1 through S6–10.

[73] *See Allied Tube & Conduit Corp.* v. *United States,* 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

[74] *See* Memorandum from Magd Zalok, International Trade Compliance Analyst, to the File, regarding ''Preliminary Determination on CS Wind Group's Date of Sale'' (May 17, 2012).

[75] In this preliminary determination, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average export prices with monthly weighted-average normal values and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.

[76] *See* ''Factor Valuation Methodology'' section below for further discussion of surrogate value rates.

[77] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People's Republic of China,* 71 FR 19695, 19703 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079 (September 8, 2006).

[78] *See* section 773(c)(3)(A)–(D) of the Act.

[79] *See* Memorandum from Magd Zalok and LaVonne Clark to the File, regarding ''Analysis for the Preliminary Determination of Utility Scale Wind Towers from the Socialist Republic of Vietnam: CS Wind Group'' (July 26, 2012) (''Analysis Memorandum'') at Attachment V for the Department's comparison of the net total weight of the material inputs and the scrap offsets to the total weight of the finished product.

data reported by CS Wind Group for the POI. To calculate NV, we multiplied the reported per-unit factor consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered, among other factors, the quality, specificity, and contemporaneity of the data.[80] As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added a surrogate freight cost to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's 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). A detailed description of all surrogate values used for CS Wind Group can be found in the surrogate values memorandum.[81]

For the preliminary determination, except as noted below, we used Indian import data, as reported by the Indian Customs Department and published by GTA, and other publicly available sources from India in order to calculate surrogate values for CS Wind Group's FOPs (*e.g.,* direct materials, packing materials) and certain movement expenses. 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, surrogate values which are non-export average values, contemporaneous with, or closest in time to, the POI, product-specific, and tax-exclusive.[82] The record shows that Indian import data obtained through GTA, as well as data used from other Indian sources are product-specific, tax-exclusive, and generally contemporaneous with the POI.[83] In those instances where we could not obtain publicly available information contemporaneous with the POI with which to value FOPs, we adjusted the surrogate values using, where appropriate, the Indian Producer Price Index (''PPI'') or, for the purposes of valuing labor, the Consumer Price Index (''CPI''), as published in the *International Financial Statistics* by the International Monetary Fund (''IMF'').

In calculating Indian import-based per-unit surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. Guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.[84] Rather, the Department bases its decision on information that is available to it at the time it makes its determination.[85] We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. The Department has found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports from these countries to all markets may be subsidized.[86] Therefore, we have not used prices from these countries in calculating India's import-based surrogate values.

Additionally, in calculating India's import-based per-unit surrogate values, we disregarded prices from NME countries. Finally, we excluded from our calculation of India's import-based per-unit surrogate values imports that were labeled as originating from an ''unspecified'' country because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[87] Detailed calculations are provided in the Surrogate Values Memo.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.,* not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping in Vietnam and/or subsidies.[88] Where the Department finds ME purchases to be of significant quantities (*i.e.,* 33 percent or more), in accordance with its statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs,*[89] the Department uses the actual purchase prices to value the inputs. Information reported by CS Wind Group demonstrates that an input was sourced from an ME country and paid for in ME currencies.[90] The information reported by CS Wind Group also demonstrates that such an input was purchased in significant quantities (*i.e.,* 33 percent or more) from ME suppliers; hence, the Department used CS Wind Group's actual ME purchase prices to value this input.[91] Where appropriate, freight expenses were added to the ME price of the input. For certain other inputs claimed by CS Wind Group as ME purchases, the Department has preliminarily determined not to use such prices because they have been distorted by subsidization.[92]

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings.[93]

[80] *See, e.g., 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 Issues and Decision Memorandum at Comment 9.

[81] *See* Memorandum from LaVonne Clark to The File, regarding ''Antidumping Duty Investigation of Utility Scale Wind Towers from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Determination'' (July 26, 2012) (''Surrogate Values Memo'').

[82] *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).

[83] *See* Surrogate Values Memo.

[84] *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report, H.R. Rep. 100–576 at 590 (1988); *see also CFS Paper from PRC Preliminary Determination,* 72 FR at 30763 (June 4, 2007), unchanged in *CFS Paper from PRC Final Determination.*

[85] *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *PET Film from PRC Final Determination.*

[86] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7; *see also 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 ''II. Programs Determined to Confer Subsidies.''

[87] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China,* 69 FR 75294, 75301 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China,* 70 FR 24502 (May 10, 2005)

[88] *See, e.g., Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27366 (May 19, 1997).

[89] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717–61718 (October 19, 2006) (''*Antidumping Methodologies: Market Economy Inputs''*).

[90] *See* Analysis Memorandum at Attachment III.

[91] *Id.*

[92] *Id at 4–5.*

[93] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies:*

Continued

In *Labor Methodologies,* the Department explained that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country.[94] Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (Yearbook).[95] The latest year for which ILO Chapter 6A reports national data for India is 2005.

The Department finds the two-digit description under Division 28 (Manufacture of Fabricated Metal Products, except Machinery and Equipment) of the ISIC-Revision 3 to be the best available information on the record because it is most specific to the industry being examined, and is, therefore, derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor data reported by India to the ILO under Division 28 of ISIC-Revision 3 standard, in accordance with section 773(c)(4) of the Act. A more detailed description of the labor rate calculation methodology is provided in the Surrogate Values Memo. We find that this information constitutes the best available information on the record because it is the most contemporaneous data available for the POI and, thus, more accurately reflective of actual wages in India.

Therefore, for the preliminary determination, we calculated the labor inputs using the data for average monthly industrial labor rate prevailing during 2005 in India, corresponding to ''Manufacturing'' economic sector, adjusted to current price levels using the Indian CPI. For the preliminary determination, the calculated industry-specific labor rate is 60.81 rupees (''Rs'')/hour. Because the Indian financial statements on the record do not itemize the indirect costs reflected in Chapter 6A data, we find that the facts and information on the record do not warrant or permit an adjustment to the surrogate financial statements.[96] A more detailed description of the labor rate calculation methodology is provided in the Surrogate Values Memo.[97]

We valued electricity using data published by India's Central Electricity Authority.[98] The average cost was 3.80 Rs./kWh in 2008. We selected these data because they were representative of broad market average prices, publicly available, and tax-exclusive. Because the rates listed in this source became effective on a variety of different dates, we did not adjust it for inflation.

We valued oxygen and argon using data from Bhoruka Gases Limited. Because prices are not contemporaneous with the POI, we inflated such prices using the PPI rate for India, as published in the *International Financial Statistics* by the IMF.[99]

We valued truck freight using data from a Web site *www.infobanc.com/logististics/logtruck.htm.* We did not inflate the value for truck freight since it is contemporaneous with the POI.[100]

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. 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 that is published in *Doing Business 2010: India,* published by the World Bank. The price is for 2009. We inflated the value for brokerage and handling using the PPI rate for India.[101]

To value factory overhead, selling, general, and administrative expenses, and profit, we used the financial statements of ISGEC Heavy Engineering Ltd., a producer of comparable merchandise. These financial statements cover the fiscal year ending in September 2011 and, therefore, are contemporaneous.[102]

Currency Conversion

Where necessary, 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.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted by CS Wind Group.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation.[103] This practice is described in Policy Bulletin 05.1.[104]

Preliminary Determination

The weighted-average dumping margins are as follows:

Exporter	Producer	Weighted-average margin (percent)
The CS Wind Group**	The CS Wind Group	52.67
Vietnam-Wide Entity		59.91

** The CS Wind Group consists of CS Wind Vietnam Co., Ltd. and CS Wind Corporation.

Disclosure

We will disclose to parties the calculations performed in this investigation within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, the Department will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of wind towers from Vietnam, as described in the ''Scope of the Investigation'' section, entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**.

The Department will instruct CBP to require a cash deposit equal to the

Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*'').

[94] *See Labor Methodologies,* 76 FR at 36093.

[95] *See Labor Methodologies,* 76 FR at 36093.

[96] *See Labor Methodologies,* 76 FR at 36094.

[97] *See* Surrogate Values Memo at Exhibit 4.

[98] *Id.* at Exhibit 5.

[99] *See* Surrogate Values Memo at Exhibits 2 and 5.

[100] *See* Surrogate Values Memo at Exhibit 7.

[101] *See* Surrogate Values Memo at Exhibits 2 and 8.

[102] *See* Surrogate Values Memo at Exhibit 9.

[103] *See Initiation Notice,* 77 FR at 3446.

[104] *See* Import Administration's Policy Bulletin No. 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries'' (April 5, 2005), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05–1.pdf.*

weighted-average amount by which NV exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the table above will be the rate the Department has determined in this preliminary determination; (2) for all Vietnamese exporters of merchandise under consideration which have not received their own rate, the rate will be the rate for the Vietnam-wide entity; and (3) for all non-Vietnamese exporters of merchandise under consideration which have not received their own rate, the rate will be the rate applicable to the Vietnamese exporter/producer combination that supplied that non-Vietnamese exporter.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of wind tower from Vietnam, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Department no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline for case briefs.[105] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department. The executive summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. 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.[106] 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 intend to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on June 8, 2012, we received a request from CS Wind Group that the Department postpone its final determination by 60 days.[107] Additionally, consistent with 19 CFR 351.210(e)(2), CS Wind Group requested that the Department extend the application of the provisional measures from a four-month period to a six-month period. In accordance with section 735(a) of the Act and 19 CFR 351.210(b), we are granting these requests and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** because: (1) Our preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the merchandise under consideration; and (3) no compelling reasons for denial exist. Suspension of liquidation will be extended accordingly. We are further extending the application of the provisional measures from a four-month period to a six-month period.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: July 26, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–18936 Filed 8–1–12; 8:45 am]

BILLING CODE 3510–DS–P

[105] *See* 19 CFR 351.309(c)(1)(i) and (d).

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

[107] *See* Letter from CS Wind Group to the Department, regarding ''Request to Postpone the Final Determination: Antidumping Duty Investigation on Utility, Scale Wind Towers from the Socialist Republic of Vietnam (Case No. A–552–814),'' dated June 8, 2012.

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Multistakeholder Meetings To Develop Consumer Data Privacy Code of Conduct Concerning Mobile Application Transparency

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meetings.

SUMMARY: The National Telecommunications and Information Administration (NTIA) will convene meetings of a privacy multistakeholder process concerning mobile application transparency.

DATES: The meetings will be held on August 22, 2012, and August 29, 2012, from 9:30 a.m. to 1 p.m., Eastern Daylight Time; and on September 19, 2012, October 10, 2012, November 7, 2012, November 30, 2012, and December 18, 2012, from 9:30 a.m. to 4 p.m., Eastern Time. Please refer to NTIA's Web site, *https://www.ntia.doc.gov/other-publication/2012/privacy-multistakeholder-process-mobile-application-transparency*, for the most current information.

ADDRESSES: The meetings will be held in the Auditorium of the U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Verdi, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4725, Washington, DC 20230; telephone (202) 482–8238; email *jverdi@ntia.doc.gov*. Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

SUPPLEMENTARY INFORMATION:

Background: On February 23, 2012, the White House released *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy* (the ''Privacy Blueprint'').[1] The Privacy Blueprint directs NTIA to convene multistakeholder processes to develop legally enforceable codes of conduct that specify how the Consumer Privacy Bill of Rights applies in specific business contexts.[2] On June 15, 2012,

[1] The Privacy Blueprint is available at *http://www.whitehouse.gov/sites/default/files/privacy-final.pdf.*

[2] *Id.*

NTIA announced that the goal of the first multistakeholder process is to develop a code of conduct to provide transparency in how companies providing applications and interactive services for mobile devices handle personal data.[3] On July 12, 2012, NTIA convened the first meeting of the first privacy multistakeholder process.

Matters To Be Considered: The August 22, 2012, August 29, 2012, September 19, 2012, October 10, 2012, November 7, 2012, November 30, 2012, and December 18, 2012, meetings are part of a series of NTIA-convened multistakeholder discussions concerning mobile application transparency. The first meeting was held on July 12, 2012. Stakeholders will engage in an open, transparent, consensus-driven process to develop a code of conduct regarding mobile application transparency. In addition, the meetings will provide a venue for stakeholders to agree on the schedule, location, and format of future meetings. The August meetings will feature a facilitated discussion that builds on stakeholders' work at the July 12, 2012 meeting.

Time and Date: NTIA will convene meetings of the privacy multistakeholder process on August 22, 2012, and August 29, 2012, from 9:30 a.m. to 1 p.m., Eastern Daylight Time; and on September 19, 2012, October 10, 2012, November 7, 2012, November 30, 2012, and December 18, 2012, from 9:30 a.m. to 4 p.m., Eastern Time. The meeting times are subject to change. Please refer to NTIA's Web site, *https://www.ntia.doc.gov/other-publication/2012/privacy-multistakeholder-process-mobile-application-transparency*, for the most current information.

Place: The meetings will be held in the Auditorium of the U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Avenue NW., Washington, DC. The location of the September—December meetings is subject to change. Please refer to NTIA's Web site, *https://www.ntia.doc.gov/other-publication/2012/privacy-multistakeholder-process-mobile-application-transparency*, for the most current information.

Other Information: The meetings are open to the public and the press. Attendees should arrive at least one-half hour prior to the start of each meeting. Due to security requirements and to facilitate entry to the Department of Commerce building, U.S. nationals must present a valid, government-issued photo identification upon arrival. Foreign nationals must contact John Verdi at (202) 482–8238 or *jverdi@ntia.doc.gov* at least five (5) business days prior to each meeting in order to provide the necessary clearance information, and must present a valid, government-issued photo identification upon arrival. These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to John Verdi at (202) 482–8238 or *jverdi@ntia.doc.gov* at least seven (7) business days prior to each meeting. The meetings will also be webcast. There will be an opportunity for stakeholders viewing the webcast to participate remotely in the meetings through a moderated conference bridge, including polling functionality. Access details for the meetings are subject to change. Please refer to NTIA's Web site, *https://www.ntia.doc.gov/other-publication/2012/privacy-multistakeholder-process-mobile-application-transparency*, for the most current information.

Dated: July 30, 2012.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2012–18950 Filed 8–1–12; 8:45 am]

BILLING CODE 3510–60–P

[3] NTIA, *First Privacy Multistakeholder Meeting: July 12, 2012, http://www.ntia.doc.gov/other-publication/2012/first-privacy-multistakeholder-meeting-july-12-2012.*

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities; Proposed Information Collection; Comment Request

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Committee is submitting to the Office of Management and Budget for their review the following collection as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AbilityOne Program Individual Eligibility Evaluation

DATES: Interested persons are invited to submit comments about the collection on or before August 31, 2012. The agency's 60-day notice informing the public of the intent to begin using this form was published in the **Federal Register** on May 4, 2012 on page 26519–26520.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Jasmeet K. Seehra, OMB Desk Officer, by any of the following two methods within 30 days from the date of publication in the **Federal Register**: (1) By fax to: (202) 395–6974, Attention: Ms. Jasmeet K. Seehra, OMB Desk Office; and (2) Electronically by email to: *Jasmeet_K._Seehra@omb.eop.gov.*

Requests for copies of documents pertaining to the collection should be addressed to Committee for Purchase From People Who Are Blind or Severely Disabled, Attention: Louis Bartalot, Director of Compliance, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259 or emailed to *lbartalot@abilityone.gov.*

SUPPLEMENTARY INFORMATION: The Committee plans to submit a request to OMB that the initial and annual evaluations of competitive employability required by the Committee's regulations (41 CFR 51–4.3) be done on a standardized form. The Committee is requesting a 3-year term of approval for this recordkeeping activity.

Title:. AbilityOne Program Individual Eligibility Evaluation.

OMB Number: 3037–0011.

Agency Number: 3037.

Frequency: At least annually.

Affected Public: Nonprofit agencies serving people who are blind or severely disabled that participate in the AbilityOne Program.

Number of Respondents: 610.

Estimated Time per Respondent: Burden for conducting the evaluations is included in the Committee's recordkeeping requirement under OMB Control number 3037–005. It is estimated that requiring the use of a standardized form will not add to the recordkeeping burden once training is completed and the form adopted. The estimated burden to accomplish the training is estimated at 2 hours per agency.

Total Burden Hours: 1,220.

Total Annual Costs: $36,600.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–18844 Filed 8–1–12; 8:45 am]

BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2012–0030]

Request for Information on Effective Financial Education

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank'') established the Office of Financial Education (''OFE'') within the Bureau of Consumer Financial Protection (''CFPB'') to develop and launch initiatives that will educate consumers and help them make better informed financial decisions. The CFPB's OFE seeks public comment on effective financial education approaches—including tools, topics and dissemination strategies—that will help improve consumers' financial decision-making capabilities.

DATES: Comments must be received on or before October 31, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2012–0030, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Instructions: The CFPB encourages the early submission of comments. All submissions must include the agency name, document title and docket number. Please note the number of the question you are answering at the top of each response (you do not need to answer all questions). In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information such as account numbers or Social Security numbers should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For general inquiries and submission process questions, please contact Monica Jackson, Assistant Executive Secretary, Office of the Executive Secretary, at (202) 435–7275. For financial education questions, please contact Dubis Correal, Strategic Partnerships and Outreach Coordinator, Office of Financial Education, at (202) 435–7937.

SUPPLEMENTARY INFORMATION: The CFPB's OFE seeks public comment on effective financial education approaches that create opportunities for consumers to improve their financial decision making capabilities. OFE is interested in promoting innovation to assist consumers in solving common, discrete financial decision-making problems where behavioral approaches could be valuable. Some of these common financial decisions could be facilitated by a number of approaches that specifically address the behavioral impediments to progress. The questions listed below reflect one or more of the areas mentioned above. Please feel free to respond to any or all of the questions below and please be sure to indicate in your comments on which questions you are commenting. Comments could include, where appropriate, specific examples or related research and/or program evaluation that illustrate your comments.

1. In your experience, what are consumers' most common financial decision-making challenges?

2. Is there a common set (or lack) of habits, attitudes, or practices, and if so, what are they?

3. What are the major challenges in providing financial education that would help adult consumers address the issues identified in questions 1 and 2, and that would lead to good financial outcomes for recipients?

4. Given the five core areas [1] (earning, spending, saving and investing, borrowing, and protecting) identified by the Financial Literacy and Education Commission in 2010, what skills are most helpful for building capability in the areas of spending, savings and borrowing? What information on these and other topics should the CFPB further develop and disseminate?

5. How might CFPB effectively disseminate financial literacy and education resources that will help consumers build the necessary skills to achieve good financial outcomes?

6. What financial education tools, topics, or practices designed to help consumers improve their own financial decision-making lead to measurable outcomes?

7. What research in behavioral economics or other academic fields—published or still in process—provides insight into financial education approaches that can help consumers achieve their own financial goals?

Dated: July 27, 2012.

Garry Reeder,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2012–18830 Filed 8–1–12; 8:45 am]

BILLING CODE 4810–AM–P

[1] *See* Financial Education Core Competencies; Comment Request, Dept. of Treasury, **Federal Register**, Vol. 75, No. 165, pp. 52596–52597 (Thursday, August 26, 2010) (avail. at: *http://www.gpo.gov/fdsys/pkg/FR–2010–08–26/pdf/2010–21305.pdf*).

BUREAU OF CONSUMER FINANCIAL PROTECTION

Proposed Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Bureau of Consumer Financial Protection

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of availability; request for comment.

SUMMARY: This document announces the availability of the Bureau of Consumer Financial Protection (Bureau or CFPB's) guidelines to ensure and maximize the quality, objectivity, utility, and integrity of information disseminated by the Bureau. These guidelines also detail the administrative mechanisms developed by the Bureau to allow affected persons to seek and obtain appropriate correction of information maintained and disseminated by the Bureau that does not comply with the Office of Management and Budget (OMB) or the Bureau guidelines. This notice also provides an opportunity for public comment on the Bureau's guidelines.

DATES: To be considered, comments must be received by September 4, 2012.

ADDRESSES: You may submit comments, identified by the title of this notice, by any of the following methods:

- *Electronic: CFPB_IQ_Submissions@cfpb.gov.*
- *Mail/Hand Delivery/Courier:* Monica Jackson, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275. All comments, including attachments and other supporting materials, will become part of the public

record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Christopher Willey, Chief Information Officer, Consumer Financial Protection Bureau, (202) 435–7741.

SUPPLEMENTARY INFORMATION: This notice and the Bureau's guidelines are required by section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Pub. L. 106–554) and the OMB Guidelines published on January 3, 2002, at 67 FR 369–378 (reprinted February 5, 2002, at 67 FR 5365). The Bureau's draft report is available for public inspection at the Bureau's Web site, *www.consumerfinance.gov.*

Dated: July 19, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–18828 Filed 8–1–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF EDUCATION

Applications for New Awards; State Personnel Development Grants (SPDG) Program

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

ACTION: Notice.

Overview Information:

State Personnel Development Grants (SPDG) Program

Notice Inviting Applications for New Awards for Fiscal Year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.323A.

DATES:

Applications Available: August 2, 2012.

Deadline for Transmittal of Applications: September 4, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program, authorized by the Individuals with Disabilities Education Act (IDEA), is to assist State educational agencies (SEAs) in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

Priorities: This notice contains two absolute priorities and one competitive preference priority.

Absolute Priorities: Priority 1 is from the notice of final priorities and definitions for this program, published elsewhere in this issue of the **Federal Register**. In accordance with 34 CFR 75.105(b)(2)(iv), Priority 2 is from sections 651 through 655 of IDEA.

For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet both of these priorities.

These priorities are:

Priority 1—Effective and Efficient Delivery of Professional Development.

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority to assist SEAs in reforming and improving their systems for personnel (as that term is defined in section 651(b) of IDEA) preparation and professional development of individuals providing early intervention, educational, and transition services in order to improve results for children with disabilities.

In order to meet this priority an applicant must demonstrate in the SPDG State Plan it submits as part of its application under section 653(a)(2) of IDEA that its proposed project will—

(1) Use evidence-based (as defined in this notice) professional development practices that will increase implementation of evidence-based practices and result in improved outcomes for children with disabilities;

(2) Provide ongoing assistance to personnel receiving SPDG-supported professional development that supports the implementation of evidence-based practices with fidelity (as defined in this notice); and

(3) Use technology to more efficiently and effectively provide ongoing professional development to personnel, including to personnel in rural areas and to other populations, such as personnel in urban or high-need local educational agencies (LEAs) (as defined in this notice).

Absolute Priority 2—State Personnel Development Grants.

Statutory Requirements. To meet this priority, an applicant must meet the following statutory requirements:

1. *State Personnel Development Plan.*

An applicant must submit a State Personnel Development Plan that identifies and addresses the State and local needs for the personnel preparation and professional development of personnel, as well as individuals who provide direct supplementary aids and services to children with disabilities, and that—

(a) Is designed to enable the State to meet the requirements of section 612(a)(14) and section 635(a)(8) and (9) of IDEA;

(b) Is based on an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional development of personnel who serve infants, toddlers, preschoolers, and children with disabilities within the State, including—

(1) Current and anticipated personnel vacancies and shortages; and

(2) The number of preservice and inservice programs;

(c) Is integrated and aligned, to the maximum extent possible, with State plans and activities under the Elementary and Secondary Education Act of 1965, as amended (ESEA); the Rehabilitation Act of 1973, as amended; and the Higher Education Act of 1965, as amended (HEA);

(d) Describes a partnership agreement that is in effect for the period of the grant, which agreement must specify—

(1) The nature and extent of the partnership described in accordance with section 652(b) of IDEA and the respective roles of each member of the partnership, including, if applicable, an individual, entity, or agency other than the SEA that has the responsibility under State law for teacher preparation and certification; and

(2) How the SEA will work with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of the persons and organizations;

(e) Describes how the strategies and activities the SEA uses to address identified professional development and personnel needs will be coordinated with activities supported with other public resources (including funds provided under Part B and Part C of IDEA and retained for use at the State level for personnel and professional development purposes) and private resources;

(f) Describes how the SEA will align its personnel development plan with the plan and application submitted under sections 1111 and 2112, respectively, of the ESEA;

(g) Describes strategies the SEA will use to address the identified professional development and personnel needs and how such

strategies will be implemented, including—

(1) A description of the programs and activities that will provide personnel with the knowledge and skills to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; and

(2) How such strategies will be integrated, to the maximum extent possible, with other activities supported by grants funded under section 662 of IDEA;

(h) Provides an assurance that the SEA will provide technical assistance to LEAs to improve the quality of professional development available to meet the needs of personnel who serve children with disabilities;

(i) Provides an assurance that the SEA will provide technical assistance to entities that provide services to infants and toddlers with disabilities to improve the quality of professional development available to meet the needs of personnel serving those children;

(j) Describes how the SEA will recruit and retain highly qualified teachers and other qualified personnel in geographic areas of greatest need;

(k) Describes the steps the SEA will take to ensure that poor and minority children are not taught at higher rates by teachers who are not highly qualified; and

(l) Describes how the SEA will assess, on a regular basis, the extent to which the strategies implemented have been effective in meeting the performance goals described in section 612(a)(15) of IDEA.

2. *Partnerships.*

Required Partners.

Applicants must establish a partnership with LEAs and other State agencies involved in, or concerned with, the education of children with disabilities, including—

(a) Not less than one institution of higher education; and

(b) The State agencies responsible for administering Part C of IDEA, early education, child care, and vocational rehabilitation programs.

Other Partners.

An SEA must work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, which may include:

(a) The Governor;

(b) Parents of children with disabilities ages birth through 26;

(c) Parents of nondisabled children ages birth through 26;

(d) Individuals with disabilities;

(e) Parent training and information centers or community parent resource centers funded under sections 671 and 672 of IDEA, respectively;

(f) Community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

(g) Personnel as defined in section 651(b) of IDEA;

(h) The State advisory panel established under Part B of IDEA;

(i) The State interagency coordinating council established under Part C of IDEA;

(j) Individuals knowledgeable about vocational education;

(k) The State agency for higher education;

(l) Public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice;

(m) Other providers of professional development that work with infants, toddlers, preschoolers, and children with disabilities;

(n) Other individuals; and

(o) An individual, entity, or agency as a partner in accordance with section 652(b)(3) of IDEA, if State law assigns responsibility for teacher preparation and certification to an individual, entity, or agency other than the SEA.

3. *Use of Funds.*

(a) Professional Development Activities—Each SEA that receives a grant under this program must use the grant funds to support activities in accordance with the State's Personnel Development Plan, including one or more of the following:

(1) Carrying out programs that provide support to both special education and regular education teachers of children with disabilities and principals, such as programs that—

(i) Provide teacher mentoring, team teaching, reduced class schedules and case loads, and intensive professional development;

(ii) Use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic achievement and functional standards and with the requirements for professional development, as defined in section 9101 of the ESEA; and

(iii) Encourage collaborative and consultative models of providing early intervention, special education, and related services.

(2) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively use and integrate technology—

(i) Into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decision-making, school improvement efforts, and accountability;

(ii) To enhance learning by children with disabilities; and

(iii) To effectively communicate with parents.

(3) Providing professional development activities that—

(i) Improve the knowledge of special education and regular education teachers concerning—

(A) The academic and developmental or functional needs of students with disabilities; or

(B) Effective instructional strategies, methods, and skills, and the use of State academic content standards and student academic achievement and functional standards, and State assessments, to improve teaching practices and student academic achievement;

(ii) Improve the knowledge of special education and regular education teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices, and that—

(A) Provide training in how to teach and address the needs of children with different learning styles and children who are limited English proficient;

(B) Involve collaborative groups of teachers, administrators, and, in appropriate cases, related services personnel;

(C) Provide training in methods of—

(I) Positive behavioral interventions and supports to improve student behavior in the classroom;

(II) Scientifically based reading instruction, including early literacy instruction;

(III) Early and appropriate interventions to identify and help children with disabilities;

(IV) Effective instruction for children with low-incidence disabilities;

(V) Successful transitioning to postsecondary opportunities; and

(VI) Classroom-based techniques to assist children prior to referral for special education;

(D) Provide training to enable personnel to work with and involve parents in their child's education, including parents of low income and limited English proficient children with disabilities;

(E) Provide training for special education personnel and regular education personnel in planning, developing, and implementing effective and appropriate individualized education programs (IEPs); and

(F) Provide training to meet the needs of students with significant health, mobility, or behavioral needs prior to serving those students;

(iii) Train administrators, principals, and other relevant school personnel in conducting effective IEP meetings; and

(iv) Train early intervention, preschool, and related services providers, and other relevant school personnel in conducting effective individualized family service plan (IFSP) meetings.

(4) Developing and implementing initiatives to promote the recruitment and retention of highly qualified special education teachers, particularly initiatives that have proven effective in recruiting and retaining highly qualified teachers, including programs that provide—

(i) Teacher mentoring from exemplary special education teachers, principals, or superintendents;

(ii) Induction and support for special education teachers during their first three years of employment as teachers; or

(iii) Incentives, including financial incentives, to retain special education teachers who have a record of success in helping students with disabilities.

(5) Carrying out programs and activities that are designed to improve the quality of personnel who serve children with disabilities, such as—

(i) Innovative professional development programs (which may be provided through partnerships that include institutions of higher education), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy and that are consistent with the definition of professional development in section 9101 of the ESEA; and

(ii) The development and use of proven, cost effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning.

(6) Carrying out programs and activities that are designed to improve the quality of early intervention personnel, including paraprofessionals and primary referral sources, such as—

(i) Professional development programs to improve the delivery of early intervention services;

(ii) Initiatives to promote the recruitment and retention of early intervention personnel; and

(ii) Initiatives to promote the recruitment and retention of early intervention personnel; and

(iii) Interagency activities to ensure that early intervention personnel are adequately prepared and trained.

(b) Other Activities—Each SEA that receives a grant under this program must use the grant funds to support activities in accordance with the State's Personnel Development Plan, including one or more of the following:

(1) Reforming special education and regular education teacher certification (including re-certification) or licensing requirements to ensure that—

(i) Special education and regular education teachers have—

(A) The training and information necessary to address the full range of needs of children with disabilities across disability categories; and

(B) The necessary subject matter knowledge and teaching skills in the academic subjects that the teachers teach;

(ii) Special education and regular education teacher certification (including re-certification) or licensing requirements are aligned with challenging State academic content standards; and

(iii) Special education and regular education teachers have the subject matter knowledge and teaching skills, including technology literacy, necessary to help students with disabilities meet challenging State student academic achievement and functional standards.

(2) Programs that establish, expand, or improve alternative routes for State certification of special education teachers for highly qualified individuals with a baccalaureate or master's degree, including mid-career professionals from other occupations, paraprofessionals, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective special education teachers.

(3) Teacher advancement initiatives for special education teachers that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

(4) Developing and implementing mechanisms to assist LEAs and schools in effectively recruiting and retaining highly qualified special education teachers.

(5) Reforming tenure systems, implementing teacher testing for subject matter knowledge, and implementing teacher testing for State certification or licensure, consistent with title II of the HEA (20 U.S.C. 1021 et seq.).

(6) Funding projects to promote reciprocity of teacher certification or licensing between or among States for special education teachers, except that no reciprocity agreement developed under this absolute priority may lead to the weakening of any State teacher certification or licensing requirement.

(7) Assisting LEAs to serve children with disabilities through the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.

(8) Developing, or assisting LEAs in developing, merit-based performance systems and strategies that provide differential and bonus pay for special education teachers.

(9) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic achievement and functional standards, and State assessments for all children with disabilities, to improve instructional practices and improve the academic achievement of children with disabilities.

(10) When applicable, coordinating with, and expanding centers established under section 2113(c)(18) of the ESEA to benefit special education teachers.

(c) Contracts and Subgrants—An SEA that receives a grant under this program—

(1) Must award contracts or subgrants to LEAs, institutions of higher education, parent training and information centers, or community parent resource centers, as appropriate, to carry out the State Personnel Development Plan; and

(2) May award contracts and subgrants to other public and private entities, including the lead agency under Part C of IDEA, to carry out the State plan.

(d) Use of Funds for Professional Development—An SEA that receives a grant under this program must use—

(1) Not less than 90 percent of the funds the SEA receives under the grant for any fiscal year for the Professional Development Activities described in paragraph (a); and

(2) Not more than 10 percent of the funds the SEA receives under the grant for any fiscal year for the Other Activities described in paragraph (b).

Competitive Preference Priority: This priority is from the notice of final priorities and definitions for this program, published elsewhere in this issue of the **Federal Register**. For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award an additional three points to an application that meets this priority. We will award

points on an ''all or nothing'' basis (i.e., three points or zero points) to an applicant that addresses the competitive preference priority in its application based on whether the applicant meets the priority. These points are in addition to any points the application earns under the selection criteria. To be considered for the competitive preference, an applicant must state in its application that it is seeking to meet this competitive preference priority.

This priority is:

Competitive Preference Priority—Targeting Teachers' Professional Development Needs Based on Student Growth.

The Assistant Secretary establishes a priority for projects that are designed to provide professional development targeted to meet specific needs of teachers identified by teacher evaluation systems that take into account student growth (as defined in this notice) as a significant factor in determining performance levels.

To meet this priority, an applicant must include, as part of its application, a plan describing how it will use the results of teacher evaluation systems to identify the professional development needs of teachers of students with disabilities to ensure that such teachers develop the knowledge and skills required to deliver evidence-based instruction to students with disabilities. The teacher evaluation systems used to make these determinations must be based on student growth in significant part, and must include students with disabilities.

The plan must describe the applicant's timeline for using the results of evaluation systems to identify the professional development needs of teachers of students with disabilities. Under this timeline, the applicant must begin using the evaluation system results to identify the professional development needs of teachers of students with disabilities no later than the beginning of the third year of the grant's project period.

Definitions.

The definitions are from the notice of final priorities and definitions for this program, published elsewhere in this issue of the **Federal Register**.

Evidence-based refers to practices for which there is strong evidence or moderate evidence of effectiveness.

Fidelity means the delivery of instruction in the way in which it was designed to be delivered.

High-need LEA means, in accordance with section 2102(3) of the ESEA, an LEA—

(a) That serves not fewer than 10,000 children from families with incomes below the poverty line (as that term is defined in section 9101(33) of the ESEA), or for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line; and

(b) For which there is (1) a high percentage of teachers not teaching in the academic subjects or grade levels that the teachers were trained to teach, or (2) a high percentage of teachers with emergency, provisional, or temporary certification or licensing.

Student achievement means—

(a) For tested grades and subjects: (1) a student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Student growth means the change in student achievement (as defined in this notice) for an individual student between two or more points in time.

Program Authority: 20 U.S.C. 1451–1455.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 97, 98, and 99. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485. (c) The notice of final priorities and definitions for this program, 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.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $26,400,000

Estimated Range of Awards: $500,000—$2,200,000 (for the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico). In the case of outlying areas (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands), awards will be not less than $80,000.

Note: We will set the amount of each award after considering—

(1) The amount of funds available for making the grants;

(2) The relative population of the State or outlying area;

(3) The types of activities proposed by the State or outlying area;

(4) The alignment of proposed activities with section 612(a)(14) of IDEA;

(5) The alignment of proposed activities with State plans and applications submitted under sections 1111 and 2112, respectively, of the ESEA; and

(6) The use, as appropriate, of scientifically based research and instruction.

Estimated Average Size of Awards: $1,000,000 excluding the outlying areas.

Estimated Number of Awards: 24.

Note: The Department is not bound by any estimates in this notice.

Project Period: Not less than one year and not more than five years.

III. Eligibility Information

1. *Eligible Applicants:* An SEA of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

Note: Public Law 95–134, which permits the consolidation of grants to the outlying areas, does not apply to funds received under this competition.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other: General Requirements*—The projects funded under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

Additional SPDG Requirements

Projects funded under this program must:

(a) Budget for a three-day Project Directors' meeting in Washington, DC, during each year of the project;

(b) Budget $4,000 annually for support of the State Personnel Development Grants Program Web site currently administered by the University of Oregon (*www.signetwork.org*); and

(c) If a project receiving assistance under this program authority maintains a Web site, include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: *www.ed.gov/*

fund/grant/apply/grantapps/index.html. 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 package from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.323A.

To obtain a copy from the program office, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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 competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 100 pages, using 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.
- 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. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: August 2, 2012.

Deadline for Transmittal of Applications: September 4, 2012.

Applications for grants under this competition may be submitted electronically using the *Grants.gov* Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, 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.

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 competition.

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, Central Contractor Registry, and System for Award Management:* 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)—and, after July 24, 2012, with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR or SAM 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 or SAM 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 registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

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 competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We are participating as a partner in the Governmentwide Grants.gov Apply site. The State Personnel Development Grants Program competition, CFDA number 84.323A, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use 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.

You may access the electronic grant application for the State Personnel Development Grants Program competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your

search (e.g., search for 84.323, not 84.323A).

Please note the following:

- Your participation in Grants.gov is voluntary.
- 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 competition 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 *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 submit your application in paper format.
- If you submit your application electronically, 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.
- If you submit your application electronically, 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.
- 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.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), 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 84.323A), 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 submit your application in paper format by hand delivery, you (or a courier service) 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 84.323A), 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 selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

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).

3. *Additional Review and Selection Process Factors:*

In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *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 part 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:* The goal of the SPDG Program is to reform and improve State systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities. The Department has revised the performance measures developed for this program pursuant to the Government Performance and Results Act of 1993 to better assess the success of the program in meeting these goals. The revised measures assess the extent to which:

- Projects use evidence-based professional development practices to support the attainment of identified competencies.
- Participants in SPDG professional development demonstrate improvement in implementation of SPDG-supported practices over time.
- Projects use SPDG professional development funds to provide follow-up activities designed to sustain the use of SPDG-supported practices.
- Highly qualified special education teachers who have participated in SPDG supported special education teacher retention activities remain as special education teachers two years after their initial participation in these activities.

Each grantee funded under this competition must collect and annually report data related to its performance on these measures in the project's annual and final performance report to the Department in accordance with section 653(d) of IDEA and 34 CFR 75.590. Applicants should discuss in the application narrative how they propose to collect performance data for these measures.

5. *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: Jennifer Coffey, U.S. Department of Education, 400 Maryland Avenue SW., room 4097, Potomac Center Plaza (PCP), Washington, DC 20202–2600. Telephone: (202) 245–6673.

If you use a TDD or a TTY, call the Federal Relay Service (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 compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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: July 30, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–18918 Filed 8–1–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards: Personnel Development To Improve Services and Results for Children With Disabilities; Center To Support the Development of Effective Educators To Serve Students With Disabilities

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

ACTION: Notice.

Overview Information

Personnel Development to Improve Services and Results for Children With Disabilities—Center To Support the Development of Effective Educators To Serve Students With Disabilities.

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.325A.

DATES: *Applications Available:* August 2, 2012.

Deadline for Transmittal of Applications: September 4, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for highly qualified personnel in special education, related services, early intervention, and regular education to work with infants, toddlers, and children with disabilities; and (2) ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined through scientifically based research and experience, to be successful in serving those children.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (see sections 662 and 681 of the Individuals With Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is: *Center To Support the Development of Effective Educators To Serve Students With Disabilities.*

Background: The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a Center to Support the Development of Effective Educators to Serve Students with Disabilities (Center). The Center will provide technical assistance (TA) to: (a) State educational agencies (SEAs) in reviewing and reforming certification or licensure standards, in collaboration with institutions of higher education (IHEs), local educational agencies (LEAs), and non-profit organizations with teacher and leader preparation programs(non-profit organizations), in order to ensure that these standards are derived from practices determined through evidence-based research and that they reflect the knowledge and skills necessary for teachers and leaders to be effective in serving students with disabilities in inclusive [1] classrooms and school settings; (b) IHEs, LEAs, and non-profit organizations to help them, in collaboration with SEAs, to restructure and improve teacher and leader preparation programs [2] in order to align program requirements with the reformed certification or licensure standards and ensure that program graduates have the knowledge and skills necessary to address the diverse needs of students with disabilities; and (c) SEAs and IHEs, LEAs, and non-profit organizations that are ready to evaluate and improve special education teacher preparation programs by using data on outcomes for students with disabilities in kindergarten through grade 12 (K–12) that are linked to data on special education teachers. Sources of the linked data would include, for example, statewide longitudinal data systems, other sources of objective third-party data, or district teacher evaluation systems. In 2010, America's schools educated just over 5.8 million students with disabilities, ages 6–21. Nearly 95 percent of these students spent part or all of their school day in general education classrooms; and 61 percent spent at least 80 percent of their school day in general education classrooms (*www.IDEAdata.org*). As students with disabilities spend an increasing amount of time in general education classrooms, all teachers and leaders must have the knowledge and skills necessary to address their diverse needs.

Meeting the diverse needs of students with disabilities in inclusive classrooms and school settings requires a complex combination of knowledge and skills, including the use of evidence-based practices (Blanton, Pugach, & Florian,

[1] For the purposes of this priority, ''inclusive'' or ''inclusion'' refers to an '' 'active commitment to equity for all students' so as to 'maximize the participation of all learners, by making learning opportunities relevant and high-quality.' '' (NIUSI Leadscape, 2011).

[2] These teacher and leader preparation programs include programs that prepare teachers, school principals, and assistant principals in general and special education from kindergarten through grade 12.

2011; Voltz, Sims, & Nelson, 2010). To address this need, organizations such as the Council of Chief State School Officers (CCSSO) and the Council for Exceptional Children (CEC) have developed model standards of essential knowledge and skills that they believe teachers need in order to customize learning and be effective in improving student achievement, including the achievement of students with disabilities. Furthermore, resource materials prepared by CCSSO's Interstate Assessment and Support Consortium (InTASC) recommend that SEAs, professional organizations, and teacher education programs take a systemic approach to using core teaching standards in developing policies and programs that prepare, license, support, and evaluate today's teachers.

Traditionally, SEAs have exerted influence over the operations and content of teacher and leader preparation programs through certification or licensure standards. Although the content of teacher and leader preparation programs is determined in part by an SEA's requirements for certification or licensure, the content also reflects the values and views of faculty in colleges of education and relevant disciplinary departments (e.g., special education, curriculum and instruction) (Committee on the Study of Teacher Preparation Programs in the United States, 2010).

Research suggests that aligning the curricula in teacher and leader preparation programs with State standards that reflect current knowledge and skills and the use of evidence-based practices will be more effective than revising standards alone (Augustine et al., 2009). Therefore, it is crucial that IHEs, LEAs, nonprofits, and SEAs collaborate to review current teacher and leader certification or licensure standards to determine if they reflect the knowledge and skills necessary for teachers and leaders to effectively teach students with disabilities.

While current literature suggests that cooperation between SEAs and IHEs, LEAs, and non-profit organizations is key to providing teachers and leaders with the critical knowledge and skills needed to improve student achievement (Blanton & Pugach, 2007; Darling-Hammond et al., 2005), few SEAs and IHEs, LEAs, and non-profit organizations regularly engage in these cooperative practices (Levine, 2005; Goe, 2009).

In addition to reforming State teacher and leader certification or licensure standards and integrating these revised standards into preparation programs, States need to ensure that the knowledge and skills teachers and leaders develop in preparation programs help to improve K–12 outcomes for students with disabilities. SEAs and IHEs, LEAs, and non-profit organizations must be able to evaluate the performance of all teachers, including special education teachers, by analyzing and using student outcome data. They must also be able to use that data to inform the development and reform of preparation programs that train teachers and leaders.

States are already involved in a number of efforts to use student outcome data to improve teacher preparation programs. Under the Higher Education Act of 1965, as amended (HEA), States annually report on the quality of teacher preparation programs and, using multiple sources of data, identify low-performing preparation programs. States participating in the State Fiscal Stabilization Fund program provided assurances that they would establish longitudinal data systems that included a teacher identifier system with the ability to match teachers to students. At this time, 45 States have reported that they have such a system in place. The remaining five States have until the end of 2013 to meet this requirement. Furthermore, the 12 States that received grants under Phases 1 and 2 of the Race to the Top (RTT) program have committed to measuring student growth for particular teachers and linking those data back to preparation programs. The 32 States and the District of Columbia (including the 12 RTT States with Phase 1 or Phase 2 awards) that as of July 19, 2012, have received waivers of certain requirements of the Elementary and Secondary Education Act of 1965, as amended (ESEA), have similarly committed to using student growth as one of multiple measures to evaluate the performance of teachers, though they have not necessarily committed to connecting those data back to preparation programs. Given these developments, many SEAs are positioned to begin using K–12 student outcome data to inform preparation programs (Gansle, Noell, Knox, & Schafer, 2010; Goldhaber & Liddle, 2011).

OSEP has a history of funding projects that support SEA and IHE collaboration to improve outcomes for students with disabilities. In 1997, OSEP funded a grant to support the development of licensing standards for beginning teachers who would be teaching students with disabilities.[3] To further this work, in 2002, OSEP funded the Center for Improving Teacher Quality[4] to work with States on implementing the new licensure standards and to create models for improving teacher preparation, licensure standards, and professional development. From this work, a model emerged that described the critical role of SEAs and IHEs, LEAs, and non-profit organizations in redesigning preparation programs so that general and special education teachers are better prepared for their roles and responsibilities in classrooms with respect to students with disabilities (Blanton & Pugach, 2007).

Finally, OSEP has funded Special Education Preservice Program Improvement Grants[5] since 2007 to support the improvement and restructuring, through expansion or redesign, of K–12 special education teacher preparation programs to ensure that program graduates meet the highly qualified teacher requirements in IDEA and effectively serve students with high-incidence disabilities in inclusive classrooms and school settings. Many of these projects have incorporated inclusive practices so that their graduates are qualified to be licensed to teach both general and special education students. However, this program focused only on high-incidence disabilities and was limited to individual IHEs, LEAs, and non-profit organizations.

In order to build on information and experience obtained through prior OSEP investments, we propose a priority for a center that will assist SEAs and IHEs, LEAs, and non-profit organizations to collaboratively develop State systems that ensure teachers and leaders have the necessary knowledge and skills, derived from practices that have been determined through evidence-based research, to be successful in serving the diverse needs of students with disabilities. We believe that by funding a center, we can have a broader, more systemic influence on a larger number of SEAs and IHEs, LEAs, and non-profit organizations.

Priority: The purpose of this priority is to fund a cooperative agreement to

[3] The work was completed by the Interstate New Teacher Assessment and Support Consortium (InTASC), which was comprised of SEAs and national education organizations dedicated to the reform of the preparation, licensing, and ongoing professional development of teachers (see *www.ccsso.org/resources/programs/interstate_teacher_assessment_consortium_(intasc).html*).

[4] The following Web site provides more information on the work of the Center for Improving Teacher Quality: *http://aacte.org/Programs/Center-for-Improving-Teacher-Quality-CTQ*.

[5] The following Web site provides further information on the work of these grants: *http://ncipp.education.ufl.edu/325T.php*.

support the establishment and operation of a Center to Support the Development of Effective Educators to Serve Students with Disabilities (Center). The Center will provide TA to: (a) SEAs in reviewing and reforming certification or licensure standards, in collaboration with IHEs, LEAs, and non-profit organizations that operate teacher and leader preparation programs (non-profit organizations), in order to ensure that these standards are derived from practices determined through evidence-based research and that they reflect the knowledge and skills necessary for teachers and leaders to be effective in serving students with disabilities in inclusive classrooms and school settings; (b) IHEs, LEAs, and non-profit organizations, to help them in collaboration with SEAs, restructure and improve teacher and leader preparation programs in order to align them with the reformed certification or licensure standards, and ensure that program graduates have the knowledge and skills necessary to address the diverse needs of students with disabilities; and (c) SEAs and IHEs, LEAs, and non-profit organizations that are ready to evaluate and improve special education teacher preparation programs by using data on outcomes for students with disabilities in kindergarten through grade 12 (K–12) that are linked to data on special education teachers. Sources of the linked data would include, for example, statewide longitudinal data systems, other sources of objective third-party data, or district teacher evaluation systems.

Application Requirements. An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project; **Note:** The following Web sites provide more information on logic models: *www.researchutilization.org/matrix/logicmodel_resource3c.html and www.tadnet.org/model_and_performance.*

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A budget for a summative evaluation to be conducted by an independent third party;

(e) A budget for attendance at the following:

(1) A one and one-half day kick-off meeting to be held in Washington, DC, after receipt of the award, and an annual planning meeting held in Washington, DC, with the OSEP Project Officer during each subsequent year of the project period.

Note: Within 30 days of the receipt of the award, a post-award teleconference must be held between the OSEP Project Officer and the grantee's Project Director or other authorized representative.

(2) A three-day Project Directors' Conference in Washington, DC, during each year of the project period.

(3) Three, two-day trips annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(f) A line item in the proposed budget for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's activities, as those needs are identified in consultation with OSEP.

Note: With approval from the OSEP Project Officer, the Center must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period.

Project Activities. To meet the requirements of this priority, the Center, at a minimum, must conduct the following activities:

Knowledge Development Activities

(a) During the first six months of the project, conduct a comprehensive review of literature and available research to accomplish two purposes—

(1) To identify policies and practices that will assist SEAs in:

(i) Reviewing and reforming State certification or licensure standards for teachers and leaders to include current knowledge and skills, including the use of evidence-based practices, needed to effectively serve students with disabilities in inclusive classrooms and school settings;

(ii) Coordinating with IHEs, LEAs, and non-profit organizations to facilitate the integration of the evidence-based content to meet those reformed certification or licensure standards within their preparation programs; and

(iii) Analyzing and using K–12 outcome data (e.g., data from statewide longitudinal data systems) for students with disabilities to evaluate and improve the preparation programs of the K–12 students' teachers and leaders.

(2) To identify effective strategies for achieving institutional change and reform in IHEs, LEAs, and non-profit organizations. Specific focus must be placed on strategies for restructuring and improving teacher or leader preparation programs and strategies for instituting change in a variety of IHEs (e.g., public, private, large, small, and diverse). At a minimum, this review must include:

(i) The literature on restructuring and improving the preparation of teachers and leaders for meeting the diverse needs of students with disabilities in inclusive classrooms and school settings, and with a particular focus on relevant coursework and clinical learning opportunities.

(ii) Information on effective practices from projects funded under CFDA 84.325T (Special Education Preservice Program Improvement Grants) in fiscal years 2007–2011 to determine strategies for restructuring and improving preparation programs. The Center shall review information available from these projects to identify:

(A) Key strategies used to plan and implement a restructured preparation program, including the processes used to restructure and improve curricula, the processes used to restructure and improve clinical learning opportunities, and strategies used to involve key personnel from IHEs, LEAs, and non-profit organizations and their role in program restructuring and improvement;

(B) Examples of how education departments within the IHE have collaborated with other departments (or LEAs and non-profit organizations have collaborated with IHEs) to improve teacher preparation in ''core academic subjects'' as defined in section 9101(11) of the Elementary and Secondary Education Act of 1965, as amended (ESEA);[6]

(C) Training and coaching strategies to ensure that preparation program faculty use existing high-quality training resources on evidence-based practices, such as those developed by the National Center on Response to Intervention (see *www.rti4success.org*) and Doing What Works (see *www.dww.ed.gov*);

(D) Strategies to integrate into the teacher and leader preparation program evidence-based practices and extended

[6] For the purposes of this priority, the term ''core academic subjects'' means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

clinical learning opportunities that support teaching and school leadership in inclusive settings; and

(E) Effective methods for evaluating program outcomes, including the effect of the implementation of the restructured program on the quality of services provided by program graduates, as well as effective methods to collect, analyze, and use data, including outcome data for K–12 students with disabilities, to improve instructional practices and interventions for teacher and leader preparation programs.

(b) Using the knowledge gained in the comprehensive review of literature, develop a model plan that incorporates the key components and strategies necessary to restructure or redesign teacher and leader preparation programs so that graduates have the knowledge and skills necessary to address the diverse needs of students with disabilities in inclusive classrooms and school settings. The model plan must then be customized for the unique attributes of an IHE, LEA, or non-profit.

(c) Using the knowledge gained in the comprehensive review of literature, develop a model needs assessment to identify areas in which SEAs and IHEs, LEAs, and non-profit organizations require technical assistance consistent with the purpose of this priority. Areas may include strategies for incorporating knowledge and skills derived from evidence-based practices into certification or licensure standards; capacity of the State to analyze and use student outcome data to evaluate and improve preparation program; instructional delivery strategies, including effective strategies for distance education; course content on evidence-based practices; and support provided to the teacher and leader candidates (e.g., mentoring and supervision of clinical learning opportunities).

(d) Using the knowledge gained in the comprehensive review of literature, recommend policies and practices that can be incorporated into the Center's TA activities. Clearly articulate the strength (i.e., internal validity) and the breadth (i.e., external validity) of the research supporting the policies and practices described in the report.

(e) Disseminate the findings of the Knowledge Development Activities described in paragraph (a) of this section.

(f) Make the results of the literature review accessible on the Internet to interested parties, including stakeholders from SEAs, IHEs, LEAs, and non-profit organizations.

Technical Assistance and Dissemination (TA&D) Activities

(a) In years one through four, annually identify a minimum of five SEAs, with at least three cooperating IHEs, LEAs, or non-profit organizations within each State, to develop and implement plans to receive intensive TA from the Center. The application must include a description of both the process and the selection criteria that the Center proposes to use to identify the SEAs and IHEs, LEAs, and non-profit organizations that will receive intensive TA. The Center must obtain approval from OSEP before finalizing the selection criteria and selecting the SEAs. Factors for consideration in recruiting and selecting SEAs to receive intensive TA must include, but are not limited to, an SEA's—

(i) Intent to reform teacher and leader certification or licensure standards to ensure that the standards address the knowledge and skills needed to teach students with disabilities in inclusive classrooms and school settings;

(ii) Procedures for certification or licensure of teachers and leaders;

(iii) Priorities and initiatives to support improved preparation programs for teachers and leaders;

(iv) Current capacity and infrastructure for coordinating work with IHEs, LEAs, and non-profit organizations;

(v) Commitment of its regular and special education leadership to coordinate efforts to work in partnership with at least three IHEs, LEAs, or non-profit organizations on their certification or licensure standards reform process;

(vi) Demonstrated commitment from colleges of education, schools of education, or other preparation programs located in or operated by at least three IHEs, LEAs, or non-profit organizations within the State to restructure and improve their teacher and leader preparation program and align it with reformed certification or licensure standards so that teachers and leaders have the knowledge and skills necessary to address the diverse needs of students with disabilities, especially those in inclusive classrooms and school settings. The criteria that the Center may use to determine the IHEs, LEAs, and non-profit organizations to receive TA include, but are not limited to, factors such as the composition and size of a university system or program, enrollment, and type of preparation programs (i.e., teacher or leader); and

(vii) Capacity to use K–12 outcome data for students with disabilities to improve its special education teacher preparation programs.

(b) Using the models and plan developed under paragraphs (b) and (c) in the *Knowledge Development Activities* section, conduct a needs assessment with each SEA and IHE, LEA, or non-profit organization that is to receive TA as described in the *Technical Assistance and Dissemination Activities* section of this notice to determine areas where TA is needed most. Results of the needs assessment must be used in planning TA to the SEA and designing professional development training for preparation program faculty at each identified IHE, LEA, or non-profit.

The following TA&D activities are intended to be carried out collaboratively with the Center, SEAs, and IHEs, LEAs, and non-profit organizations; however, for clarification purposes the remainder of this section is divided into three parts specific to the recipient of the TA.

SEA TA&D Activities

(a) Identify a core team of SEA personnel responsible for collaborating with the IHEs, LEAs, and non-profit organizations and the Center to lead the teacher and leader certification or licensure review and reform efforts.

(b) Design a TA plan with the core team of SEA personnel that describes the goals, activities, outputs, and outcomes expected as a result of the certification or licensure review and reform effort. The TA plan must include a review and evaluation of current SEA teacher and leader certification or licensure standards and how the SEA will collaborate with the IHEs, LEAs, and non-profit organizations on any reforms to the standards. Reformed teacher and leader certification or licensure standards must reflect current knowledge and skills derived from practices that have been determined through evidence-based research to effectively serve students with disabilities in inclusive classrooms and school settings.

(c) Develop an evaluation plan that must include a description of how the Center will work with the SEA core team to—

(1) Measure the extent to which evidence-based practices are incorporated in the revised certification or licensure standards;

(2) Collect and analyze K–12 outcome data for students with disabilities linked to the preparation program graduates to inform and improve preparation programs; and

(3) Use the results from the evaluation to inform and validate changes to the teacher and leader certification or

licensure standards made as a result of the reform efforts.

IHE, LEA, or Non-Profit Organization TA&D Activities

(a) Identify a core team of faculty from each preparation program that will be responsible for collaborating with the core team of SEA personnel and the Center to build capacity of all teacher and leader education faculty at their IHE, LEA, or non-profit to implement the restructured and improved program that is aligned with reformed certification or licensure standards.

(b) Design a TA plan with the core team of faculty that describes the goals, activities, outputs, and outcomes expected as a result of the restructuring and improvement efforts. The TA plan must also include a clear plan for evaluating each IHE's, LEA's, or non-profit organization's program outcomes. The evaluation plan must include a description of how the Center will work with the core team to—

(1) Assess the extent to which evidence-based practices are integrated within the program;

(2) Collect and analyze data on program faculty members' implementation of the restructured program;

(3) Collect and analyze data on teachers' and leaders' competencies prior to their exiting the restructured program;

(4) Collect and analyze K–12 outcome data for students with disabilities to determine the quality of services provided by program graduates; and

(5) Use the results from the evaluation to inform and validate changes to the restructured program.

(c) Provide TA on effective strategies and methods for integrating evidence-based practices into the curricula of preparation programs. Activities related to TA with IHEs, LEAs, and non-profit organizations must be planned and implemented in collaboration with Department-funded centers that support IHEs, LEAs, and non-profit organizations in the preparation of effective teachers and leaders.

General TA&D Activities

(a) Provide a continuum of general TA and dissemination activities (e.g., managing Web sites, listservs, and communities of practice; holding forums and training institutes), including—

(1) Supporting and maintaining a password-protected, Web-based system accessible to all SEA and IHE, LEA, or non-profit core team members for sharing information, documents, presentations, and resources (e.g., State certification or licensure documents, course syllabi, lesson plans, and video clips) across the SEAs and IHEs, LEAs, and non-profit organizations receiving TA. At a minimum, this Web-based resource must include the following: Contact information for each core team (both SEA and IHE, LEA, or non-profit organization members); a description of the SEA's current certification or licensure standards; a description of the TA plans for reviewing and reforming the SEA's certification or licensure standards; a description of the IHE's existing preparation program; and the goals, activities, outputs, and outcomes expected as a result of the restructuring efforts.

(2) Plan and implement activities, which could include webinars, meetings, video conferences, and managing Web sites for researchers, policymakers, administrators, practitioners, and other appropriate stakeholders, to exchange information on building State systems for improving educator effectiveness. The focus of these activities must include reforming State certification or licensure standards, implementing reformed standards within preparation programs, and using K–12 outcome data for students with disabilities for continuous feedback to preparation programs on how well their teachers and leaders effectively educate students with disabilities in inclusive classrooms and school settings.

(3) Coordinating with the National Center to Inform Policy and Practice in Special Education Professional Development (NCIPP) during the last six months of NCIPP's project period to transfer information, resources, and TA support materials for the Special Education Preservice Program Improvement Grants (CFDA 84.325T) from NCIPP's Web site to the Center's Web site. This coordination will archive and disseminate knowledge gained from the Special Education Preservice Program Improvement Grants.

(4) Maintain a Web site that meets government or industry-recognized standards for accessibility and that links to the Web site operated by the Technical Assistance Coordination Center (TACC).

(5) Prepare and disseminate reports, briefs, and other materials, including publications in peer-reviewed journals, related to the purposes of this priority and related topics as requested by OSEP for specific audiences, including State licensing agencies, IHEs, LEAs, and non-profit organizations with teacher and leader preparation programs, policymakers, and researchers.

(6) Prior to developing any new product (e.g., document, video clips, Web-based resources, etc.) related to the purposes of this priority, submit a proposal for the product to the TACC database for approval from the OSEP Project Officer. The development of new products should be consistent with the product definition and guidelines posted on the TACC Web site (*www.tadnet.org*).

Leadership and Coordination Activities

(a) Develop collaborative partnerships with professional organizations that promote effective preparation of teachers and leaders (e.g., the American Association of Colleges of Teacher Education, CCSSO, CEC, the National Board for Professional Teaching Standards, the National Association of Elementary School Principals, the National Association of Secondary School Principals, the Council for the Accreditation of Educator Preparation, the National Council for Accreditation of Teacher Education and Teacher Education Accreditation Council, and the National Association of State Directors of Special Education). Partnership activities developed under this section must be coordinated with Department-funded centers that support IHEs, LEAs, and non-profit organizations in the preparation of effective teachers and leaders. The Center, in consultation with these partners, must—

(1) Establish and coordinate a network of experts to provide TA to the SEAs and IHEs, LEAs, and non-profit organizations receiving intensive TA on the identified areas of need; and

(2) Develop and disseminate tools that are designed to assist SEAs and IHEs, LEAs, and non-profit organizations to address their identified needs.

(b) Consult with a group of persons, including representatives from SEA, IHE, and LEA personnel involved with reforming or implementing certification or licensure standards; IHE faculty and deans of schools or colleges of education involved with preparation programs for regular and special education teachers; individuals with disabilities or parents of students with disabilities; project directors of OSEP-funded State Personnel Development Grants; statewide longitudinal data systems directors and researchers; the partners identified in paragraph (a) of this section; and Technical Assistance Centers, as appropriate on the activities and outcomes of the Center and solicit programmatic support and advice from various representatives in the group, as appropriate. The Center may convene meetings, whether in person, by phone

or other means, for this purpose, or may consult with group participants individually. The Center must identify the members of the group to OSEP within eight weeks after receipt of the award.

(c) Communicate and collaborate, on an ongoing basis, with other relevant projects funded by the U.S. Department of Education. This collaboration could include the joint development of products, the coordination of TA services, and the planning and carrying out of TA meetings and events.

(d) Participate in, organize, or facilitate communities of practice (CoPs) that align with the needs of the Center's target audience. CoPs should align with the Center's objectives to support discussions and collaboration among key stakeholders. The following Web site provides more information on CoPs: *www.tadnet.org/communities*.

(e) Prior to developing any new product, submit a proposal for the product to the TACC database for approval from the OSEP Project Officer. The development of new products should be consistent with the product definition and guidelines posted on the TACC Web site (*www.tadnet.org*).

(f) Contribute, on an ongoing basis, updated information on the Center's approved and finalized products and services to the TACC database.

(g) Coordinate with the TACC to develop an efficient and high-quality dissemination strategy that reaches broad audiences.

(h) Maintain ongoing communication with the OSEP Project Officer, including reporting on the impact of coordination efforts, through monthly phone and email communication.

Fourth and Fifth Years of the Project: In deciding whether to continue funding the Center for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting in Washington, DC that will be held during the last half of the second year of the project period;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) The quality, relevance, and usefulness of the Center's activities and products, and the degree to which the Center's activities and products have contributed to changed practice and improved outcomes for students with disabilities and students at risk of a disability.

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Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1462 and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 304.

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 agreement.

Estimated Available Funds: $5,000,000.

Maximum Awards: We will reject any application that proposes a budget exceeding $5,000,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months with the potential for an additional 24 months based on performance.

Applications must include plans for both the 36-month award and the 24-month extension.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other: General Requirements*—

(a) The projects funded under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant and grant recipient funded under this program must involve

individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html*.

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 competition as follows: CFDA number 84.325A.

To obtain a copy from the program office, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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 competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using 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.
- 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. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: August 2, 2012.

Deadline for Transmittal of Applications: September 4, 2012.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, 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.

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, Central Contractor Registry, and System for Award Management:* 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)—and, after July 24, 2012, with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR or SAM 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 or SAM 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 registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

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 competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We are participating as a partner in the Governmentwide Grants.gov Apply site. The Center to Support the Development of Effective Educators to Serve Students with Disabilities, CFDA number 84.325A, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use

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.

You may access the electronic grant application for the Center to Support the Development of Effective Educators to Serve Students with Disabilities, CFDA number 84.325A 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 84.325, not 84.325A).

Please note the following:

- Your participation in Grants.gov is voluntary.
- 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 competition 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 *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 submit your application in paper format.
- If you submit your application electronically, 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.
- If you submit your application electronically, 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.
- 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.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), 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 84.325A), 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 submit your application in paper format by hand delivery, you (or a courier service) 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 84.325A), 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 selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* (a) 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.

(b) 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).

3. *Additional Review and Selection Process Factors:*

In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *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:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. For purposes of this priority, the Center will use these measures, which focus on the extent to which projects provide high-quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice. Grantees will be required to report information on their project's performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Bonnie Jones, U.S. Department of Education, 400 Maryland Avenue SW., room 4114–1, Potomac Center Plaza (PCP), Washington, DC 20202–2600. Telephone: (202) 245–7395.

If you use a TDD or a TTY, call the Federal Relay Service (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 compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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: July 30, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–18906 Filed 8–1–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC12–12–000]

Commission Information Collection Activities (FERC–576); Comment Request

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection FERC–576 (Report of Service Interruptions) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (77 FR 28369, May 14, 2012) requesting public comments. FERC received no comments on the FERC–576 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by September 4, 2012.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0004, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov,* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC12–12–000, by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC Form 576, Report of Service Interruptions.

OMB Control No.: 1902–0004.

Type of Request: Three-year extension of the FERC–576 information collection requirements with no changes to the reporting requirements.

Abstract: A natural gas company must obtain Commission authorization to engage in the transportation, sale, or exchange of natural gas in interstate commerce under the Natural Gas Act (NGA).[1] The NGA also empowers the Commission to oversee continuity of service in the transportation of natural gas in interstate commerce. The information collected under FERC–576 notifies the Commission of: (1) Damage to jurisdictional natural gas facilities as a result of a hurricane, earthquake, or other natural disaster, or terrorist activity, (2) serious interruptions to service, and (3) damage to jurisdictional natural gas facilities due to natural disaster or terrorist activity that creates the potential for serious delivery problems on the pipeline's own system or the pipeline grid.

In cases of emergency and pending the determination of any application on file with the Commission for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, an application may be made for a temporary certificate authorizing the construction and operation of extensions of existing facilities, interconnections of pipeline systems, sales of natural gas that may be required to assure maintenance of adequate service or to service particular customers.

Filings (in accordance with the provisions of section 4(d) of the NGA)[2] must contain information necessary to advise the Commission when a change in service has occurred. 18 CFR 157.17 authorizes the Commission to issue an application for a temporary certificate authorizing the construction and operation of extensions of existing facilities, interconnections of pipeline systems, or sales of natural gas that may be required to assure maintenance of adequate service, or to service particular customers. Respondents to the FERC–576 may submit the initial reports by email to *pipelineoutage@ferc.gov.* 18 CFR 260.9(b) requires that a report of service interruption or damage to natural gas facilities state: (1) The location of the service interruption or damage to natural gas pipeline or storage facilities; (2) The nature of any damage to pipeline or storage facilities; (3) Specific identification of the facilities damaged; (4) The time the service interruption or damage to the facilities occurred; (5) The customers affected by the service interruption or damage to the facilities; (6) Emergency actions taken to maintain service; and (7) Company contact and telephone number. The Commission may contact other pipelines to determine available supply, and if necessary, authorize transportation or construction of

[1] Public Law 75–688; 15 U.S.C. 717 & 15 U.S.C. 717(w).

[2] 15 U.S.C. 717f(c).

facilities to alleviate the problem in response to these reports.

Additionally, a report required by 18 CFR 260.9(a)(1)(i) of damage to natural gas facilities resulting in loss of pipeline throughput of storage deliverability shall be provided to the Director of the Commission's Division of Pipeline Certificates at the earliest feasible time and again when pipeline throughput or storage deliverability has been restored.

In any instance in which an incident or damage report involving jurisdictional natural gas facilities is required by Department of Transportation (DOT) reporting requirements under the Natural Gas Pipeline Safety Act of 1968, a copy of such report shall be submitted to the Director of the Commission's Division of Pipeline Certificates, within 30 days of the reportable incident.[3]

Type of Respondents: Pipeline and storage company operators.

Estimate of Annual Burden:[4] The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–576 (IC12–12–000)—REPORT OF SERVICE INTERRUPTIONS

	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
Submittal of original email	40	2	80	1	80
Submittal of damage reports	40	1	40	.25	10
Submittal of DOT incident report	40	1	40	.25	10
Total					100

The total estimated annual cost burden to respondents is $6,901 [100 hours ÷ 2,080[5] hours/year = 0.04808 * $143,540/year[6] = $6,900.96].

The estimated annual cost of filing the FERC–576 per response is $43.13 [$6,901 ÷ 160 responses = $43.13/response].

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: July 27, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–18859 Filed 8–1–12; 8:45 am]

BILLING CODE 6717–01–P

[3] 18 CFR 260.9(d).

[4] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[5] 2080 hours = 40 hours/week * 52 weeks (1 year).

[6] Average annual salary plus benefits per employee in 2012.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14066–002]

Inside Passage Electric Cooperative; Notice of Application Accepted for Filing With the Commision, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, Intent To Waive Scoping, Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions, and Establishing an Expedited Schedule for Processing

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 14066–002.

c. *Date filed:* May 25, 2012.

d. *Applicant:* Inside Passage Electric Cooperative.

e. *Name of Project:* Gartina Falls Hydropower Project.

f. *Location:* On Gartina Creek, near the Town of Hoonah, Alaska. The project would not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r) (2006).

h. *Applicant Contact:* Mr. Peter A. Bibb, Operations Manager, Inside Passage Electric Cooperative, P.O. Box 210149, 12480 Mendenhall Loop Road, Auke Bay, AK 99821, (907) 789–3196, *pbibb@ak.net.*

i. *FERC Contact:* Ryan Hansen, (202) 502–8074, or email at *ryan.hansen@ferc.gov.*

j. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–14066). For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY (202) 502–8659.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *The proposed Gartina Falls project would consist of:* (1) A 56-foot-long, 14-foot-high concrete diversion structure at the head of Gartina Falls; (2) a sluiceway constructed on the left side of the center diversion section to convey flow to an intake chamber; (3) an approximately 54-inch-diameter, 225-foot-long steel penstock that would convey water from the intake chamber to the powerhouse; (4) a powerhouse containing a single 445-kilowatt cross-flow turbine/generator unit, discharging flows directly to Gartina Creek; (5) an approximately 3.8-mile-long, 12.5-

kilovolt transmission line; (6) an approximately 0.5-mile-long access road; and (7) appurtenant facilities. The estimated annual generation output for the project is 1.81 gigawatt-hours.

m. Due to the small size and remote location of this project, the applicant's close coordination with tribal, state, and federal agencies during the preparation of the application, and the lack of any study requests submitted during pre-filing consultation and in response to the Commission's tendering notice, we intend to waive scoping and shorten the filing and comment date on final terms and conditions, recommendations, and prescriptions. Based on a review of the application, resource agency consultation letters, and comments filed to date, Commission staff intends to prepare a single environmental assessment (EA). The issues that need to be addressed in its EA have been adequately identified during the pre-filing period for the application, which included a public meeting and site visit, and no new issues are likely to be identified through additional scoping.

n. *Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions:* Due to the small size and remote location of this project, as well as the applicant's close coordination with the National Marine Fisheries Service, U.S. Fish and Wildlife Service, City of Hoonah, Huna Totem Corporation, Sealaska Corporation, Hoonah Indian Association, Alaska Department of Fish and Game, Alaska Department of Natural Resources, and the Alaska State Historic Preservation Office in the preparation of the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the date of this notice.

All documents may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

o. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. *Procedural schedule and final amendments:* We intend to accept the consultation that has occurred on this project during the pre-filing period as satisfying our requirements for the standard 3-stage consultation process under 18 CFR 4.38 and for National Environmental Policy Act scoping and the application will be processed according to the following procedural schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Comments, recommendations, and terms and conditions due	August 27, 2012.
Reply comments due	September 11, 2012.
Notice of the availability of the EA	November 14, 2012.

Dated: July 27, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–18858 Filed 8–1–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13305–004]

Whitestone Power and Communications; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Whitestone Poncelet River-in-Stream Energy Conversion Project, located on the Tanana River near the town of Delta Junction, in Alaska, and has prepared an Environmental Assessment (EA) for the project. The project would not be located on federal lands.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed.

To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Dianne Rodman at (202) 502–6077.

Dated: July 27, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–18860 Filed 8–1–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0407; FRL–9709–2]

Agency Information Collection Activities; Proposed Collection; Comment Request; EPA's ENERGY STAR Program in the Commercial and Industrial Sectors; EPA ICR No. 1772.06

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on January 31, 2013. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0407, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery:* Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0407. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Alexandra Sullivan, Climate Protection Partnerships Division, Mail Code: 6202J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–343–9040; fax number: 202–343–2204; email address: *sullivan.alexandra@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2006–0407, which is available for online viewing at

www.regulations.gov, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected Entities: Entities potentially affected by this action are participants in EPA's ENERGY STAR Program in the Commercial and Industrial Sectors.

Title: Information Collection Activities Associated with EPA's ENERGY STAR Program in the Commercial and Industrial Sectors.

ICR Numbers: EPA ICR No. 1772, OMB Control No. 2060–0347.

ICR Status: This ICR is currently scheduled to expire on January 31, 2013. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA created ENERGY STAR as a voluntary program to help businesses and individuals protect the environment through superior energy efficiency. The program focuses on reducing utility-generated emissions by reducing the demand for energy. In 1991, EPA launched the Green Lights Program to encourage corporations, State and local governments, colleges and universities, and other organizations to adopt energy-efficient lighting as a profitable means of preventing pollution and improving lighting quality. Since then, EPA has rolled Green Lights into ENERGY STAR and expanded ENERGY STAR to encompass organization-wide energy performance improvement, such as building technology upgrades, product purchasing initiatives, and employee training. At the same time, EPA has streamlined the reporting requirements of ENERGY STAR and focused on providing incentives for improvements (*e.g.,* ENERGY STAR Awards Program). EPA also makes tools and other resources available on the Web to help the public overcome the barriers to evaluating their energy performance and investing in profitable improvements.

To join ENERGY STAR, organizations are asked to complete a Partnership Letter or Agreement that establishes their commitment to energy efficiency. Partners agree to undertake efforts such as measuring, tracking, and benchmarking their organization's energy performance by using tools such as those offered by ENERGY STAR; developing and implementing a plan to improve energy performance in their facilities and operations by adopting a strategy provided by ENERGY STAR; and educating staff and the public about their Partnership with ENERGY STAR, and highlighting achievements with the ENERGY STAR, where available.

Partners also may be asked to periodically submit information to EPA as needed to assist in program implementation.

Partnership in ENERGY STAR is voluntary and can be terminated by Partners or EPA at any time. EPA does not expect organizations to join the program unless they expect participation to be cost-effective and otherwise beneficial for them.

In addition, Partners and any other interested party can seek recognition and help EPA promote energy-efficient technologies by evaluating the efficiency of their buildings using EPA's on-line tools (*e.g.,* Portfolio Manager) and applying for recognition. EPA does not expect to deem any information collected under ENERGY STAR to be Confidential Business Information (CBI).

Burden Statement: The burden for joining the ENERGY STAR Program and related activities is expected to vary depending on the type of Partner. The burden is estimated to be 30 minutes for a Commercial and Industrial Sector Partner to prepare/submit a Partnership Letter, 1 hour for a Service and Product Provider (SPP) to prepare/submit a Partnership Agreement and related documents, and 2.5 hours for an Energy Efficiency Program Sponsor (EEPS) to prepare/submit a Partnership Agreement and a brief plan outlining the key activities it intends to undertake to promote ENERGY STAR. These organizations also may undertake other activities related to their partnership during the year. The burden is estimated to be about 1 hour for a SPP Partner to update its contact information and

communicate efforts and successes each year and about 3 hours for an EEPS Partner to update its brief plan and contact information and promote ENERGY STAR each year.

The burden for benchmarking in Portfolio Manager is estimated to vary depending on the type of benchmarking method used. The burden is estimated to be about 2.75 hours per building for manual benchmarks, 1 hour per building for benchmarks using the Excel import spreadsheet, and 30 minutes per building for benchmarks using the Automated Benchmarking System. In addition, the burden for using the ENERGY STAR Energy Performance Indicator is estimated to range from 10 to 15 minutes per plant. The burden for tracking a plant's energy performance under the ENERGY STAR Challenge for Industry (*e.g.,* using the ENERGY STAR Energy Tracking Tool) is estimated to be 2.5 hours per plant. These burden estimates include the time for conducting initial set-up, gathering facility and energy data, and entering the data to track energy performance during the year.

The burden for applying to EPA for recognition is estimated to vary depending on the type of recognition. The burden is estimated to range up to 5 hours to apply for the ENERGY STAR. This includes the time for gathering information and completing/submitting the application materials. The burden is estimated to be about 3 hours to apply for the ''Designed to Earn the ENERGY STAR.'' This includes the time for gathering and entering data into Target Finder and completing/submitting the application materials. The burden is estimated to range up to 17 hours for an organization to apply for an ENERGY STAR Award. This includes the time for preparing and submitting the application materials.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 18,000.

Frequency of response: One-time, on occasion, monthly, annually, and/or periodically, depending on the type of respondent and collection.

Estimated total annual burden hours: 125,023.

Estimated total annual costs: $14,659,784, including $8,694,520 in labor costs and $5,965,264 in O&M costs. There are no capital/start-up costs to respondents.

Are there changes in the estimates from the last approval?

The burden estimates presented in this notice are from the last approval. EPA is currently evaluating and updating these estimates as part of the ICR renewal process. EPA will discuss its updated estimates, as well as changes from the last approval, in the next **Federal Register** notice to be issued for this renewal.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 25, 2012.

Elizabeth Craig,

Director, Climate Protection Partnerships Division.

[FR Doc. 2012–18873 Filed 8–1–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9710–5]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, As Amended; Anaconda Copper Mine Site

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for public comments.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), as amended, 42 U.S.C. 9622(i), notice is hereby given of a proposed Settlement Agreement and Order on Consent for Removal Action by Bona Fide Administrative Agreement for Recovery of Past Response Costs (''Agreement,'' Region 9 Docket No. 9–2012–07) pursuant to Section 122(h) of CERCLA concerning the ANACONDA COPPER MINE SITE (the ''Site''), located in Yerington, Lyon County, Nevada. The respondent is Singatse Peak Services (''Respondent''). Through the proposed Agreement, the Respondent will fund up to $420,000 toward a response action by EPA to address releases from the Arimetco heap leach fluid management system (''FMS''). Respondent will conduct a study to assess options to ensure approximately five years of fluid capacity in the FMS, and may pay toward any response to implement a selected option. The Agreement provides Respondent with a covenant not to sue for past costs at the Site and response actions funded in the Agreement, as well as contribution protection. For thirty (30) days following the date of publication of this Notice, the Agency will receive written comments relating to the proposed Agreement, and EPA's responses to comments received will be available for public inspection at EPA's Region IX offices, located at 75 Hawthorne Street, San Francisco, California 94105.

DATES: Comments must be submitted on or before September 4, 2012.

ADDRESSES: The proposed Agreement may be obtained from Bryan Goodwin, in the Office of Regional Counsel, telephone (415) 972–3686. Comments regarding the proposed Agreement should be addressed to Mr. Goodwin at the U.S. Environmental Protection Agency (ORC–3), 75 Hawthorne Street, San Francisco, California 94105, and should reference the Singatse Peak Services Agreement for the Anaconda Copper Mine Site, and Region IX Docket No. 9–2012–07.

FOR FURTHER INFORMATION CONTACT: Andrew Helmlinger, Office of Regional Counsel, (415) 972–3904, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Dated: July 23, 2012.

Jane Diamond,

Director, Superfund Division.

[FR Doc. 2012–18870 Filed 8–1–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 1, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0876.

Title: Section 54.703, USAC Board of Directors Nomination Process and Sections 54.719 through 54.725, Review of the Administrator's Decision.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities and not-for-profit institutions.

Number of Respondents: 432 respondents; 432 responses.

Estimated Time per Response: 20 hours to 32 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151 through 154, 201 through 205, 218 through 220, 254, 303(r), 403 and 405.

Total Annual Burden: 13,680 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the FCC. However, respondents may request confidential treatment of their information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission is seeking OMB approval for an extension of this information collection in order to obtain their full three year approval. There is no change to the reporting and/or third party disclosure requirements. There is a change to the Commission's burden estimates. We are reporting a 28,160 burden reduction adjustment. This reduction is due to a reduction in the number of respondents based on updated information.

The information in this collection is used by the Commission to select Universal Service Administrative Company (USAC) Board of Directors and to ensure that requests for review are filed properly with the Commission.

Section 54.703 states that industry and non-industry groups may submit to the Commission for approval nominations for individuals to be appointed to the USAC Board of Directors.

Sections 54.719 through 54.725 describes the procedures for Commission review of USAC decisions including the general filing requirements pursuant to which parties may file requests for review.

Federal Communications Commission.

Bulah P. Wheeler,

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

[FR Doc. 2012–18829 Filed 8–1–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCMENT: 77 FR 44617 (July 30, 2012).

DATE AND TIME: Thursday, August 2, 2012 At 10 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

CHANGES IN THE MEETING: The following item has been added to the agenda:

Draft Advisory Opinion 2012–28:

CTIA—The Wireless Association.

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.

Signed:

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2012–18954 Filed 7–31–12; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice.

SUMMARY: The FTC intends to conduct an evaluation of Admongo, its advertising literacy program for children ages 8–12. The evaluation will involve a randomized controlled trial of the Admongo program involving 6,000–8,000 students. This research will be conducted to further the FTC's mission of protecting consumers from unfair and deceptive marketing. The information

collection requests described below are being submitted to the Office of Management and Budget for review, as required by the Paperwork Reduction Act (''PRA'').

DATES: Comments must be submitted on or before September 4, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment sub-part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Admongo Evaluation, FTC File No. P085200'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/admongoevaluationPRA2,* 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 J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to David Givens, Economist, Bureau of Economics, Federal Trade Commission, 600 Pennsylvania Avenue NW., Mail Stop NJ–4136, Washington, DC 20580. Telephone: (202) 326–3397.

SUPPLEMENTARY INFORMATION:

I. Background

As the nation's consumer protection agency, the FTC is responsible for enforcing laws that prohibit unfair and deceptive advertising and marketing practices. Part of this mission involves educating consumers, including young consumers. In April 2010, the FTC launched a youth-directed multi-media advertising literacy campaign called Admongo and distributed accompanying lesson plans to 100,000 educators in every U.S. public school with a fifth or sixth grade class. Admongo aims to help children from 8 to 12 become more discerning consumers of information. The program has three broad objectives: (1) Raising awareness of advertising and marketing messages; (2) teaching critical thinking skills that will allow children to better analyze and interpret advertisements; and (3) demonstrating the benefits of being an informed consumer. The program teaches students specific skills: How to identify ads, how to identify the ways advertisers target certain groups of consumers, how to spot persuasive techniques commonly employed by ads, and how to apply an understanding of advertising techniques to make smarter purchases. The campaign includes an online game, in-school lesson plans, sample ads that can be used at home and in the classroom, and teacher videos. All materials can be viewed at *www.admongo.gov.*

The proposed evaluation will test a large group of students in these skills and then compare the performance of those who have been exposed to the Admongo curriculum with those who have not. The results will give the FTC valuable insight into the optimal design of youth-directed consumer education. Specifically, the FTC is interested in: Pre-existing levels of ad literacy by age, the average effect of the Admongo program on ad literacy, and the variation in Admongo's effect by age and other demographic and academic characteristics.[1] The FTC also intends to interview teachers who have used the Admongo lessons in their classrooms. Teacher feedback will help us tailor the lessons to real-world classroom conditions.

II. Paperwork Reduction Act

Under the PRA, 44 U.S.C. 3501–3521, federal agencies must get OMB approval for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c).

On December 2, 2011, the FTC sought public comment on the information collection requests associated with the proposed Admongo evaluation study.[2] No comments were received. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, the Commission is providing this second opportunity for public comment.

As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment while pursuing OMB approval for the Admongo study.

The FTC invites comments on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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.

A. Description of the Collection of Information and Proposed Use

Subject to OMB approval, the FTC will conduct a randomized trial of the Admongo program in one or more school districts, involving 6,000–8,000 students ages 8–12. Classrooms in each participating school will be randomly assigned to treatment or control status. In the treatment classrooms, the Admongo lesson plans will be taught over the course of one week, and students will be given in-class time to play the online Admongo game. At the end of the trial, treatment students will take a test in advertising literacy. Students in the control classrooms will take the same test before they are exposed to Admongo.[3] Admongo's effect on ad literacy will be estimated from the difference in test scores. Additional controls measuring classroom, student, and teacher characteristics will increase the precision of the estimate of Admongo's impact.

B. Estimated Burden Hours

Each student's typical social studies or language arts teacher will teach the Admongo lessons. The paper-based test will last approximately 20 minutes. The time required to experience the Admongo lessons, play the online game, and take the test should total approximately five hours and twenty minutes per student (four 45-minute in-class lessons, one hour of online game playing, one hour of homework assignments, and 20 minutes for the test). With an estimated 6,000–8,000 students involved,[4] cumulative burden for students will be in the range of 32,000–42,667 hours. Teachers will require the same time per task as students, but will also need time for lesson planning—estimated at four hours per teacher. Thus, with an estimated 240–320 teachers involved,[5] their time commitment, will range from 2,240 to 2,987 hours. The combined time for the Admongo trial should thus fall in the range of 34,240–45,654 hours.

These estimates likely overstate the actual time burden of the study. The Admongo lesson plans, tied to national standards of learning, will satisfy pre-existing content requirements for

[1] All student-level data will be stripped of personally identifiable information by participating school districts before it reaches the FTC.

[2] 76 FR 75549.

[3] With this protocol, the FTC gets a valid control group while still providing all experiment participants the benefit of the treatment.

[4] Based on an anticipated school district's participation and its approximate student composition at present.

[5] Based on an estimated class size of 25 students and assuming a unique teacher for each classroom. [6,000 ÷ 25 = 240; 8,000 ÷ 25 = 320]

participating schools.[6] Thus, the incremental PRA burden for teachers and students would be much less than the estimates shown above.[7] For example, if only the time required to take or administer the 20-minute test is considered, the resulting total would be a small fraction of the totals noted above.

A few participating teachers (20–40) also will take part in focus group discussions, lasting approximately 90 minutes. The estimated teacher time in focus groups, including an added hour of round-trip transportation to and from the discussion site, is 50–100 hours. Finally, administering the study will impose a small time burden on school district staff charged with scoring the tests and with compiling a master data set of 8–12 year-old students, stripped of personally identifiable information (to facilitate random assignment to treatment and control groups). These programming and data management tasks should take approximately 10–15 hours.

The cumulative burden for participating students, teachers, and school district staff for the Admongo evaluation will total 34,300–45,769 hours. Again, however, the bulk of this time would be subsumed within pre-existing classroom requirements.

C. Estimated Costs

The cost per respondent should be negligible in both the evaluation and focus group components of the study. The participation of the school district in the evaluation is voluntary, and the district will use the Admongo program to meet curriculum requirements. Thus, participation in the evaluation study will not impose any start-up, capital, or labor expenditures beyond those ordinarily incurred by the district to administer curriculum units. Participation by students in the evaluation and teachers in the focus groups also will be voluntary and not impose any start-up, capital, or labor expenditures. Teachers participating in the focus groups will be compensated at the standard rate paid by the contractor to focus group participants. The school district will be compensated for the cost of the staff time to perform the data management and test-scoring tasks.

D. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 4, 2012. Write ''Admongo Evaluation, FTC File No. P085200'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone'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. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[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 FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[8] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/admongoevaluationPRA2,* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Admongo Evaluation, FTC File No. P085200'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. 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 on or before September 4, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Willard K. Tom,

General Counsel.

[FR Doc. 2012–18846 Filed 8–1–12; 8:45 am]

BILLING CODE 6750–01–P

[6] *See http://www.admongo.gov/state-standards/.*

[7] *See* 5 CFR 1320.3(b)(2)(A) (a collection of information incurred by persons in the normal course of their activities is excluded from ''burden'' to the extent that the activities necessary to comply with it are ''usual and customary'').

[8] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day 12–0840]

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 Kim Lane, CDC Reports Clearance Officer, 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

Formative Research and Tool Development—(OMB # 0920–0840, Exp. 3/31/2013)—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention request approval to collect formative research and tool development data over a three-year period. This information collection request has been revised to include one additional type of formative research information collection activity, additional detail regarding the previously approved categories of formative research, and instrument testing for data collection activities used to inform many aspects of surveillance, communications, health promotion, and research project development for NCHHSTP's four priority diseases (HIV/AIDS, sexually transmitted diseases/infections (STD/STI), viral hepatitis, and tuberculosis elimination). Formative research is the basis for developing effective strategies including communication channels, for influencing behavior change. It helps researchers identify and understand the characteristics (interests, behaviors and needs) of target populations that influence their decisions and actions.

Formative research is research that occurs before a program is designed and implemented, or while a program is being conducted and is and is integral in developing programs as well as improving existing and ongoing programs. Formative research also looks at the community in which a public health intervention is being or will be implemented and helps the project staff understand the interests, attributes and needs of different populations and persons in that community.

Formative research is also an integral part of adapting programs that deal with the complexity of behaviors, social context, cultural identities, and health care that underlie the epidemiology of HIV/AIDS, viral hepatitis, STDs, and tuberculosis (TB) in the U.S.

CDC conducts formative research to develop public-sensitive communication messages and user-friendly tools prior to developing or recommending interventions, or care. Sometimes these studies are entirely behavioral but most often they are cycles of interviews and focus groups designed to inform the development of a product.

Products from these formative research studies will be used for prevention of HIV/AIDS, Sexually Transmitted Infections (STI), viral Hepatitis, and Tuberculosis. Findings from these studies may also be presented as evidence to disease-specific National Advisory Committees, to support revisions to recommended prevention and intervention methods, as well as new recommendations.

Much of CDC's health communication takes place within campaigns that have fairly lengthy planning periods—timeframes that accommodate the standard Federal process for approving data collections.

This request includes studies investigating the utility and acceptability of proposed sampling and recruitment methods, intervention contents and delivery, questionnaire domains, individual questions, and interactions with project staff or electronic data collection equipment. These activities will also provide information about how respondents answer questions and ways in which question response bias and error can be reduced.

This request also includes collection of information from public health programs to assess needs related to initiation of a new program activity or expansion or changes in scope or implementation of existing program activities to adapt them to current needs. The information collected will be used to advise programs and provide capacity-building assistance tailored to identified needs.

Overall, these development activities are intended to provide information that will increase the success of the surveillance or research projects through increasing response rates and decreasing response error, thereby decreasing future data collection burden to the public. The studies that will be covered under this request will consist of healthcare providers and the general public as respondents and will include one or more of the following investigational modalities: (1) Structured and qualitative interviewing for surveillance, research, interventions and material development, (2) cognitive interviewing for development of specific data collection instruments, (3) methodological research, (4) usability testing of technology-based instruments and materials, (5) field testing of new methodologies and materials, (6) investigation of mental models for health decision-making, to inform health communication messages, and (7) organizational needs assessment to support development of capacity. Respondents who will participate in individual and group interviews (qualitative, cognitive, and computer assisted development activities) are selected purposively from those who respond to recruitment advertisements.

In addition to utilizing advertisements for recruitment, respondents who will participate in research on survey methods may be selected purposively or systematically from within an ongoing surveillance or research project. Participation of respondents is voluntary.

There is no cost to participants other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average hours per response	Total response burden (hours)
General public and health care providers	Screener	97440	1	10/60	16240
General public and health care providers	Consent Forms	48720	1	5/60	4060
General public and health care providers	Individual interview	7920	1	1	7920
General public and health care providers	Group interview	4800	1	2	9600
General public and health care providers	Survey of Individual	36000	1	30/60	18000
Total		194880			55820

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. 2012–18851 Filed 8–1–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Public Health Preparedness and Response (BSC, OPHPR)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates:

9:30 a.m.–3 p.m., August 21, 2012; 9:30 a.m.–3 p.m., August 22, 2012.

Place: CDC, 1600 Clifton Road NE., Roybal Campus, Building 19, Auditorium B2, Atlanta, Georgia 30329.

Status: Open to the public limited only by the space available. The meeting room will accommodate up to 30 people. Public participants should pre-register for the meeting as described in Additional Information for Public Participants.

Purpose: This Board is charged with providing advice and guidance to the Secretary, Department of Health and Human Services (HHS), the Assistant Secretary for Health (ASH), the Director, Centers for Disease Control and Prevention (CDC), and the Director, Office of Public Health Preparedness and Response (OPHPR), concerning strategies and goals for the programs and research within OPHPR, monitoring the overall strategic direction and focus of the OPHPR Divisions and Offices, and administration and oversight of peer review of OPHPR scientific programs. For additional information about the Board, please visit: *http://www.cdc.gov/phpr/science/counselors.htm.*

Matters to be Discussed: Agenda items for this meeting include: (1) Briefings and BSC deliberation on the following topics: OPHPR International Activities; National Health Security Preparedness Index Update; update on the activities of the joint BSC-National Biodefense Science Board Strategic National Stockpile ad hoc working group; CDC's response to laboratory biosafety issues; Public Health Emergency Medical Countermeasure Enterprise (PHEMCE) and CDC's smallpox vaccine program; OPHPR's national policy initiatives; history and overview of the Preparedness and Emergency Response Learning Centers; update on CDC's biosurveillance and situational awareness activities; (2) BSC liaison representative updates to the Board highlighting organizational activities relevant to the OPHPR mission.

Agenda items are subject to change as priorities dictate.

Additional Information for Public Participants: Members of the public that wish to attend this meeting should pre-register by submitting the following information by email, facsimile, or phone (see Contact Person for More Information) no later than 12 noon (EDT) on Monday, August 13, 2012:

- Full Name,
- Organizational Affiliation,
- Complete Mailing Address,
- Citizenship, and
- Phone Number or Email Address.

Contact Person for More Information: Marquita Black, Office of Science and Public Health Practice Executive Assistant, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop D–44, Atlanta, Georgia 30333, telephone (404) 639–7325; facsimile (404) 639–7977; email: *OPHPR.BSC.Questions@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 27, 2012.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–18852 Filed 8–1–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No.FDA–2012–N–0001]

Statistical Process Controls for Blood Establishments; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled: ''Statistical Process Controls for Blood Establishments.'' The purpose of this public workshop is to discuss the implementation of statistical process controls to validate and monitor manufacturing processes in blood establishments. The public workshop has been planned in partnership with the AABB, America's Blood Centers, and the Department of Health and Human Services (HHS) Office of the Assistant Secretary for Health. The public workshop will include presentations and discussions led by experts from government and industry.

Dates and Times: The public workshop will be held on October 19, 2012, from 8:30 a.m. to 5 p.m.

Location: The public workshop will be held at the FDA White Oak Campus, The Great Room, Bldg. 31, 10903 New Hampshire Ave. Silver Spring, MD, 20993. Please visit the following Web site for location, parking, security, and travel information: *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.* The public workshop will also be available to be viewed online via webcast.

Streaming Webcast of the Public Workshop: For those unable to attend in person, FDA will webcast the public workshop. To join the web-cast of the public workshop, please go to: *https://collaboration.fda.gov/stat101912/.*

If you have never attended a Connect Pro meeting before: Test your connection: *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* Get a quick overview: *http://www.adobe.com/go/connectpro_overview.*

Contact Person: Jennifer Scharpf, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6128, FAX: 301–827–2843, email: *CBEROBRRWorkshops@fda.hhs.gov.*

Registration: Mail, fax, or email your registration information (including name, title, firm name, address, telephone and fax numbers, and email address) to Jennifer Scharpf (*see Contact Person)* by September 27, 2012. Please indicate if you will attend the workshop in person or if you will participate in the webcast. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Those who wish to present at the workshop must attend in person. Registration on the day of the public workshop will be provided on a space-available basis beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Jennifer Scharpf (*see Contact Person)* at least 7 days in advance.

Requests for Oral Presentations: Interested persons are invited to make presentations relevant to the public workshop topic. Attendees who wish to make presentations at the public workshop should notify the Contact Person and submit a brief statement of the general nature of the presentation before September 27, 2012. Presentations will be scheduled on the afternoon of October 19, 2012. Time allotted for each presentation may be limited depending on the number of individuals requesting to speak.

SUPPLEMENTARY INFORMATION: Statistical process control is the application of statistical methods to the monitoring, or quality control, of a manufacturing process. The implementation of acceptable statistical process controls ensures that a process performs predictably to manufacture a product that meets specific standards. FDA monitors manufacturing procedures, validation summaries, and quality control data prior to licensure and during periodic inspection of facilities.

Millions of units of Whole Blood and blood components, including those collected by apheresis, are manufactured in the United States annually. Blood establishments manufacture these products in accordance with specific standards established by FDA regulations and guidance, as well as in accordance with specifications established by device manufacturers and industry standards. To ensure that product standards are met, blood establishments validate manufacturing processes at implementation and then monitor these processes on a regular basis, using quality control methods.

Manufacturing biologic products, including Whole Blood and blood components, comes with specific challenges due to biologic variability and the potential risk to recipients if products are not manufactured appropriately. Recognizing these issues, FDA has developed statistical plans that are capable of identifying when the manufacturing process varies or has a high frequency of nonconformance.

The goal of the workshop is to educate participants on statistical process control theory and options for the implementation of scientifically sound sampling plans in blood establishments. The public workshop will include presentations and discussions on the following topics: (1) The evolution of statistical process control for Whole Blood and blood components; (2) statistical methods used for biologic product quality control; (3) FDA considerations for sampling plans for blood establishments; and (4) industry perspectives and case studies on implementing statistical process controls.

Transcripts: Please be advised that a transcript of the public workshop will be posted as soon as possible on the Internet at: *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/TranscriptsMinutes/default.htm.* Transcripts of the public workshop may also be requested in writing from the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857.

Dated: July 27, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–18854 Filed 8–1–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the Agency; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Telehealth Resource Center Performance Measurement Tool (OMB No. 0915–xxxx)–[New]

To ensure the best use of public funds and to meet the Government Performance Review Act (GPRA) requirements, HRSA's Office for the Advancement of Telehealth (OAT), in collaboration with the Telehealth Resource Centers (TRCs), created a set of performance measures that grantees can use to evaluate the technical assistance services provided by the TRCs. Grantee goals are to customize the provision of telehealth technical assistance across the country. The TRCs provide technical assistance to health care organizations, health care networks and health care providers in the implementation of cost-effective telehealth programs to serve rural and medically underserved areas and populations. The TRC Performance Indicator Data Collection Tool contains the data elements that would need to be collected by the TRCs in order to report on the performance metrics. This tool can be easily translated into the web-based data collection system, Performance Improvement and Measurement System (PIMS). Reporting via PIMS allows the TRCs and OAT to track project performance. The tool assists in the production of annual reports, available to Congress, that demonstrate the value added from the TRC Grant Program.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Telehealth Resource Center Performance Data Collection Tool	14	72	1,008	0.07	70.56
Total	14		1,008		70.56

Email comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 25, 2012.

Wendy Ponton,

Director, Office of Management.

[FR Doc. 2012–18945 Filed 8–1–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 77 FR 38071–38072 dated June 26, 2012).

This notice reflects organizational changes to the Health Resources and Services Administration. This notice updates the functional statement for the Healthcare Systems Bureau (RR) and the Bureau of Primary Health Care (RC). Specifically, this notice: (1) Transfers the Division of National Hansen's Disease Program from the Bureau of Primary Health Care (RC), to the Healthcare Systems Bureau (RR); and (2) updates the functional statement for the Office of the Associate Administrator Healthcare Systems Bureau (RR).

Chapter RR—Healthcare Systems Bureau

Section RR–10, Organization

Delete in its entirety and replace with the following:

The Healthcare Systems Bureau (RR) is headed by the Associate Administrator, who reports directly to the Administrator, Health Resources and Services Administration. The Healthcare Systems Bureau includes the following components:

(1) Office of the Associate Administrator (RR);

(2) Division of Transplantation (RR1);

(3) Division of Vaccine Injury Compensation (RR4);

(4) Office of Pharmacy Affairs (RR7);

(5) Division of Poison Control and Healthcare Facilities (RR9); and

(6) Division of National Hansen's Disease Program (RRH).

Section RR–20, Functions

(1) Delete the functional statement for the Office of the Associate Administrator (RR) and replace in its entirety; and (2) add the functional statement for the Division of National Hansen's Disease Program (RRH).

Office of the Associate Administrator (RR)

The Healthcare Systems Bureau leads the Agency in providing health care programs to eligible organizations around the country. Specifically, (1) Administers the Organ Transplantation Program to include the Organ Procurement and Transplantation Network to facilitate the allocation of donor organs to patients waiting for an organ transplant and the Scientific Registry of Transplant Recipients that provides analytic support to the Organ Procurement and Transplantation Network in the development and assessment of organ allocation and other Organ Procurement and Transplantation Network policies; (2) administers the C.W. Bill Young Cell Transplantation Program to increase the number of unrelated blood stem cell transplants and improve the outcomes of blood stem cell transplants; (3) administers the National Cord Blood Inventory to increase the number of high quality cord blood units available for transplantation; (4) develops and maintains a national program of grants and contracts to organ procurement organizations and other entities to increase the number of organs made available for transplantation; (5) manages the national program for compliance with the Hill-Burton uncompensated care requirement and other assurances; (6) directs and administers a congressionally-directed grant program for the construction/renovation/equipping of health care and other facilities; (7) directs and administers the National Vaccine Injury Compensation Program; (8) manages and promotes the 340B Drug Pricing Program; (9) directs and administers the Poison Center Support, Enhancement, and Awareness Act; (10) implements and administers the Countermeasures Injury Compensation Program under PREP Act authorities; and (11) manages the National Hansen's Disease Programs in accordance with regulations of the Public Health Service.

Division of National Hansen's Disease Program (RRH)

Manages the National Hansen's Disease Program in accordance with regulations of the Public Health Service. Specifically: (1) Provides care and treatment for persons with Hansen's disease, including managing a national outpatient health care delivery program; (2) conducts research and provides education and training on Hansen's disease; and (3) provides consultation to and coordinates activities within HRSA and HHS, and with other Federal agencies, State and local governments, and other public and private organizations involved in Hansen's disease activities.

Chapter RC—Bureau of Primary Health Care

Section RC–10, Organization

(1) Delete in its entirety and replace with the following:

The Bureau of Primary Health Care (RC) is headed by the Associate Administrator, who reports directly to the Administrator, Health Resources and Services Administration. The Bureau of Primary Health Care includes the following components:

(1) Office of the Associate Administrator (RC);

(2) Office of Administrative Management (RCM);

(3) Office of Training and Technical Assistance Coordination (RCS);

(4) Office of Policy and Program Development (RCH);

(5) Office of Quality and Data (RCK);

(6) Office of Special Population Health (RCG);

(7) Northeast Division (RCU);

(8) Central Southeast Division (RCV);

(9) North Central Division (RCT); and

(10) Southwest Division (RCW).

Section RC–20, Functions

(1) Delete the functional statement for the Office of the Associate Administrator (RC) and replace in its entirety.

Office of the Associate Administrator (RC)

Provides overall leadership, direction, coordination, and planning in support of BPHC programs. Specifically: (1) Establishes program goals, objectives and priorities, provides oversight to their execution; (2) plans, directs, coordinates and evaluates BPHC-wide management activities; and (3) maintains effective relationships within HRSA and with other Department of Health and Human Services (HHS) organizations, other Federal agencies, state and local governments, and other public and private organizations concerned with primary health care, eliminating health disparities, and improving the health status of the Nation's underserved and vulnerable populations.

Section RC–30, Delegations of Authority

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is effective upon date of signature.

Dated: July 16, 2012.

Mary K. Wakefield,

Administrator.

[FR Doc. 2012–18897 Filed 8–1–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the NIH Advisory Board for Clinical Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of other and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: NIH Advisory Board for Clinical Research.

Date: October 1, 2012.

Open: 10 a.m. to 1:15 p.m.

Agenda: Discussion of intramural clinical research operational and funding issues.

Place: National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4–2551, Bethesda, MD 20892.

Closed: 1:15 p.m. to 2 p.m.

Agenda: To discuss personnel matters.

Place: National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4–2551, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Mark O. Hatfield Clinical Research Center, National Institutes of Health, Building 10, Room 6–2551, Bethesda, MD 20892, (301) 496–2897.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: July 27, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–18877 Filed 8–1–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Program Project: Immune Regulation by Cannabinoids.

Date: September 5–6, 2012.

Time: 7 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Scott Jakes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301–495–1506, *jakesse@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 27, 2012.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–18876 Filed 8–1–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: August 27, 2012.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Maja Maric, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, Room 3266, Bethesda, MD 20892–7616, 301–451–2634, *maja.maric@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreement (U01).

Date: August 28, 2012.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Jay Bruce Sundstrom, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC–7616, Room 3119, Bethesda, MD 20892–7616, 301–496–7042, *sundstromj@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 27, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–18875 Filed 8–1–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Published Privacy Impact Assessments on the Web

AGENCY: Privacy Office, DHS.

ACTION: Notice of publication of Privacy Impact Assessments (PIA).

SUMMARY: The Privacy Office of the Department of Homeland Security (DHS or Department) is making available fifteen new or updated PIAs on various programs and systems in DHS. These assessments were approved and published on the Privacy Office's Web site between March 1, 2012 and May 31, 2012.

DATES: The PIAs will be available on the DHS Web site until October 1, 2012, after which they may be obtained by contacting the DHS Privacy Office (contact information below).

FOR FURTHER INFORMATION CONTACT: Mary Ellen Callahan, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, or email: *pia@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Between March 1, 2012 and May 31, 2012, the Department's Chief Privacy Officer approved and published fifteen Privacy Impact Assessments (PIAs) on the DHS Privacy Office Web site, *www.dhs.gov/privacy*, under the link for ''Privacy Impact Assessments.'' These PIAs cover fifteen separate DHS programs and systems. Below is a short summary of those programs and systems, indicating the responsible DHS component and the date on which the PIA was approved. Additional information can be found on the Web site or by contacting the Privacy Office.

System: DHS/USSS/PIA–009 Field Investigative Reporting System (FIRS).

Component: United States Secret Service (USSS).

Date of approval: March 7, 2012.

The USSS has created the Field Investigative Reporting System (FIRS). The USSS's Criminal Investigative Division is the business owner of FIRS. FIRS consists of seven applications for the reporting of law enforcement activities that fall within the USSS's jurisdiction, such as investigating counterfeiting and electronic crimes. The USSS completed this PIA because FIRS is a new system that contains PII about the subjects of criminal investigations.

System: DHS/NPPD/PIA–010(a) Federal Protective Service (FPS) Dispatch Incident Records Management System Update.

Component: National Protection and Programs Directorate (NPPD).

Date of approval: March 13, 2012.

The PIA updates the NPPD's FPS Dispatch and Incident Record Management Systems to add the Field Interview Report (FIR) system to its suite of records management systems and to include administrative changes to the existing PIA. FPS uses the FIR system to collect and analyze information from field interviews, contacts, and stops at protected federal facilities around the country that have been identified as a significant vulnerability. NPPD updated this PIA because this new FIR system provides a new mechanism to collect additional/new PII about members of the public.

System: DHS/MGMT/PIA–006 Email Secure Gateway (EMSG).

Component: Directorate for Management.

Date of approval: March 22, 2012.

The Department manages and operates the EMSG, which is used by all DHS email users. This service was previously managed under the DHS Directory Services Electronic Mail System. EMSG handles email traffic in, out, and between DHS, its components, and the Internet, and provides a directory of users' official contact information. This PIA was conducted to assess the risk associated with the PII that is received and processed within the EMSG system. This PIA does not cover the PII that may be contained within the body of an email or attachment.

System: DHS/FEMA/PIA–021 Advanced Call Center Network (ACCN) Platform.

Component: Federal Emergency Management Agency (FEMA).

Date of approval: March 4, 2012.

FEMA, Office of Response and Recovery, Recovery Directorate, Individual Assistance Division, operates the ACCN Platform. ACCN provides intelligent call routing for FEMA's National Processing and Service Centers in support of disaster survivors who are applicants for FEMA individual assistance (''individual assistance disaster applicants''). The purpose of this system is to provide applicants requesting assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the highest quality of technology and support services. FEMA conducted this PIA because ACCN uses individual assistance disaster applicants' PII to provide status updates regarding their individual assistance disaster application.

System: DHS/FEMA/PIA–022 Student Training/Exercise Application and Registration Records (STARRS).

Component: FEMA.

Date of approval: March 29, 2011.

FEMA collects, uses, maintains, retrieves, and disseminates STARRS of training sponsors, hosts, and attendees and conducts numerous training and exercise programs/systems, including conferences and seminars hosted by FEMA, in support of its mission. These programs collect PII to register individuals for the respective training and exercise programs/systems; coordinate field exercises; and support the general administration of all registration, training, and exercise delivery and course evaluation for FEMA employees, contractors, members of the first responder community, and others. Where possible, FEMA's training and exercise programs/systems collect non-sensitive PII such as contact information, business card information, biographies, and phone lists; however some programs and systems collect Sensitive PII (SPII) such as Social Security Numbers, performance information, financial information, name plus date of birth, and medical information because of the nature of the training or exercise program. This PIA documents how FEMA collects, uses, maintains, retrieves, and disseminates both PII and SPII in support of its training and exercise missions.

System: DHS/USSS/PIA–010 Enterprise Investigative System (EIS).

Component: USSS.

Date of approval: March 30, 2012.

The USSS uses EIS to collect information about ongoing and resolved investigative cases and about individuals seeking access to USSS -protected events. EIS is a compilation of six applications that reside on the USSS mainframe computer system. These applications are used collectively to protect the integrity of the nation's financial systems and are managed by several entities within the Office of Investigations. This PIA was conducted because EIS collects PII.

System: DHS/ICE/PIA–006(b) Data Analysis and Research for Trade Transparency System (DARTTS) Update.

Component: Immigration and Customs Enforcement (ICE).

Date of approval: April 2, 2012.

The original PIA for DARTTS was published in October 2008, and re-

published with changes in April 2010. With this update to the PIA, ICE is adding two new data sets to DARTTS and modifying its retention period. ICE is also expanding the use of DARTTS within DHS to permit select U.S. Customs and Border Protection customs officers and import specialists to access and use the system. Finally, ICE is establishing a separate instance of DARTTS for use by foreign government partners that operate trade transparency units and have customs information sharing agreements with the United States.

System: DHS/ICE/PIA–015(d) Enforcement Integrated Database (EID) ENFORCE Alien Removal Module Update.

Component: ICE.

Date of approval: April 6, 2012.

The EID is a DHS shared database repository for several DHS law enforcement and homeland security applications. EID, which is owned and operated by ICE, captures and maintains information related to the investigation, arrest, booking, detention, and removal of persons encountered during immigration and criminal law enforcement investigations and operations conducted by the ICE, U.S. Customs and Border Protection, and U.S. Citizenship and Immigration Services (USCIS) components within DHS. The PIA for EID was last updated in November 2011. ICE added additional functionality to ENFORCE, necessitating this current PIA update. This functionality includes: (1) Technology which helps ICE prioritize aliens for immigration enforcement action based on criminal history; and (2) a methodology which helps ICE conduct risk classification assessments of aliens arrested under the immigration laws during the intake process and while in ICE custody.

System: DHS/TSA/PIA–018(e) Secure Flight Program Update.

Component: Transportation Security Administration (TSA).

Date of approval: April 13, 2012.

The TSA Secure Flight program screens aviation passengers and certain non-travelers before they access airport sterile areas or board aircraft. This screening compares these individuals to the No Fly and Selectee portions of the consolidated and integrated terrorist watch list, against other watch lists maintained by the federal government when warranted by security considerations, and against a list of passengers with redress numbers, i.e., passengers who have been assigned a unique number by the DHS Traveler Redress Inquiry Program. In August 2011, TSA updated the Secure Flight PIA to reflect a number of changes, including:

1. The initiation of a Known Traveler proof of concept starting with individuals enrolled within CBP Trusted Traveler programs, and expected to expand to include other populations such as transportation sector workers receiving TSA security threat assessments and members of the military; and

2. The receipt by Secure Flight of aircraft operator frequent flyer status codes for use in conjunction with risk-based security rules using Secure Flight Passenger Data.

This PIA update reflects the transition from proof of concept to operational program of the Known Traveler and frequent flyer concepts within a program known as TSA Pre✓™. In addition to the populations noted above, TSA intends to initiate new pilot programs designed to test the expansion of the Known Traveler program to other populations, such as eligible members of the U.S. Armed Forces and certain active security clearance holders. In addition, TSA will create, maintain, and screen against a watch list of individuals who, based upon their involvement in violations of security regulations of sufficient severity or frequency, are disqualified from receiving expedited screening for some period of time or permanently.

This PIA Update further provides updated information on TSA's use of CBP's Automated Targeting System. Unless otherwise noted, the information provided in previously published PIAs remain in effect. Individuals are encouraged to read all program PIAs to have an understanding of TSA's privacy assessment of the Secure Flight program.

System: DHS/OPS/PIA–002 Homeland Security Information Network–SBU Update.

Component: Office of Operations Coordination and Planning (OPS).

Date of Approval: April 16, 2012.

The OPS Homeland Security Information Network-SBU system has undergone a PIA 3-Year Review. The PIA requires no changes, other than to update the name from HSIN–COI to HSIN–SBU, and continues to accurately relate to its stated mission. The HSIN–SBU is designed to facilitate the secure integration and interoperability of information sharing resources amongst federal, state, local, tribal, private sector commercial, and other non-governmental stakeholders involved in identifying and preventing terrorism as well as in undertaking incident management activities. As part of the information sharing efforts HSIN–SBU supports, HSIN–SBU has established different communities of interest within the HSIN–SBU network. The above mentioned PIA has had no changes to privacy risks and mitigations identified in the published PIA. The information technology certification and accreditation approval has been extended to June 2015.

System: DHS/USCG/PIA–018 Coast Guard Business Intelligence (CGBI).

Component: United States Coast Guard (USCG).

Date of Approval: April 17, 2012.

The USCG owns and operates the CGBI System. CGBI is a Business Intelligence (BI) and mission support tool which provides USCG users with a web-based reporting and analysis capability. CGBI utilizes standardized enterprise data and metrics, consisting of the Enterprise Data Warehouse, and a front-end BI application providing standardized reports and data cubes. This system was created to provide an integrated reporting and analysis environment for organizational Knowledge and Performance Management by providing ''one version of the truth.'' This PIA is required as the system contains PII obtained from authoritative, transactional source systems; this data may be transferred or viewed by other personnel or systems upon data sponsor approval, with limited PII data available within the CGBI interface to authorized users.

System: DHS/USCIS/PIA–041 Electronic Immigration System (ELIS–1) Temporary Accounts and Draft Benefit Requests.

Component: USCIS.

Date of Approval: May 16, 2012.

USCIS is the component of DHS that oversees lawful immigration to the United States. USCIS is transforming its operations by creating a new electronic environment known as the USCIS ELIS, which allows individuals requesting a USCIS benefit to register online and submit certain benefit requests through the online system. This system will improve customer service; increase efficiency for processing benefits; better identify potential national security concerns, criminality, and fraud; and create improved access controls and better auditing capabilities. This PIA was conducted because USCIS ELIS collects and uses PII. This new electronic environment is divided into three distinct processes: (1) Temporary Account and Draft Benefit Requests; (2) Account and Case Management; and (3) Automated Background Functions. This PIA addresses the Temporary Account and Draft Benefit Requests process by describing how Applicants or their Representatives can create a temporary

account, draft a benefit request, and submit or abandon that request.

System: DHS/USCIS/PIA–042 Electronic Immigration System (ELIS–2) Account and Case Management.

Component: USCIS.

Date of Approval: May 16, 2012.

USCIS is the component of DHS that oversees lawful immigration to the United States. USCIS is transforming its operations by creating a new electronic environment known as the USCIS ELIS, which allows individuals requesting a USCIS benefit to register online and submit certain benefit requests through the online system. This system will improve customer service; increase efficiency for processing benefits; better identify potential national security concerns, criminality, and fraud; and create improved access controls and better auditing capabilities. This PIA was conducted because USCIS ELIS collects and uses PII. This new electronic environment is divided into three distinct processes: (1) Temporary Account and Draft Benefit Requests; (2) Account and Case Management; and (3) Automated Background Functions. This PIA addresses the Account and Case Management process by describing how USCIS ELIS uses information provided on initial and subsequent benefit requests and subsequent collections to create or update USCIS ELIS accounts; gather any missing information; manage workflow; assist USCIS in making a benefit determination; and provide a repository of data to assist with future benefit requests.

System: DHS/USCIS/PIA–043 Electronic Immigration System (ELIS–3) Automated Background Functions.

Component: USCIS.

Date of Approval: May 16, 2012.

USCIS is the component of DHS that oversees lawful immigration to the United States. USCIS is transforming its operations by creating a new electronic environment known as the USCIS ELIS, which allows individuals requesting a USCIS benefit to register online and submit certain benefit requests through the online system. This system will improve customer service; increase efficiency for processing benefits; better identify potential national security concerns, criminality, and fraud; and create improved access controls and better auditing capabilities. This PIA was conducted because USCIS ELIS collects and uses PII. This new electronic environment is divided into three distinct processes: (1) Temporary Account and Draft Benefit Requests; (2) Account and Case Management; and (3) Automated Background Functions. This PIA addresses the Automated Background Functions process, which includes the actions USCIS ELIS takes to ensure that serious or complex cases receive additional scrutiny by detecting duplicate and related accounts and identifying potential national security concerns, criminality, and fraud.

System: DHS/FEMA/PIA–023 Enterprise Coordination and Approval Processing System (eCAPS).

Component: FEMA.

Date of Approval: May 21, 2012.

FEMA, Office of Response and Recovery (OR&R) operates the eCAPS application. Following a Presidentially-declared disaster, OR&R utilizes eCAPS, a FEMA intranet-based application, to collect, use, maintain, and disseminate PII from federal and state points of contact (POCs) who request disaster support from FEMA. eCAPS tracks action requests, electronic coordination and approval of internal requisitions for services and supplies, and mission assignments. This PIA was conducted because eCAPS collects, uses, maintains, and disseminates PII from federal and state POCs.

Dated: July 16, 2012.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2012–18813 Filed 8–1–12; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4069–DR; Docket ID FEMA–2012–0002]

Minnesota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota (FEMA–4069–DR), dated July 6, 2012, and related determinations.

DATES: *Effective Date:* July 26, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 6, 2012.

Cass and Itasca Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–18856 Filed 8–1–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4068–DR; Docket ID FEMA–2012–0002]

Florida; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4068–DR), dated July 3, 2012, and related determinations.

DATES: *Effective Date:* July 26, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 26, 2012.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially

Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–18867 Filed 8–1–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4069–DR; Docket ID FEMA–2012–0002]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–4069–DR), dated July 6, 2012, and related determinations.

DATES: *Effective Date:* July 6, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 6, 2012, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Minnesota resulting from severe storms and flooding during the period of June 14–21, 2012, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark A. Neveau, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Minnesota have been designated as adversely affected by this major disaster:

Aitkin, Carlton, Cook, Crow Wing, Dakota, Goodhue, Kandiyohi, Lake, Meeker, Pine, Rice, Sibley, and St. Louis Counties and the Fond du Lac Band of Lake Superior Chippewa, Grand Portage Band of Lake Superior Chippewa, and the Mille Lacs Band of Ojibwe for Public Assistance.

All counties within the State of Minnesota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–18853 Filed 8–1–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4071–DR; Docket ID FEMA–2012–0002]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–4071–DR), dated July 23, 2012, and related determinations.

DATES: *Effective Date:* July 23, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 23, 2012, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of West Virginia resulting from severe storms and straight-line winds during the period of June 29 to July 1, 2012, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Dolph A. Diemont, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of West Virginia have been designated as adversely affected by this major disaster:

Barbour, Boone, Braxton, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hardy, Harrison, Jackson, Jefferson, Kanawha, Lewis, Lincoln, Logan, Marshall, Mason, McDowell, Mercer, Mingo, Monroe, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood, and Wyoming Counties for Public Assistance.

All counties within the State of West Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–18865 Filed 8–1–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4070–DR; Docket ID FEMA–2012–0002]

New Jersey; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4070–DR), dated July 19, 2012, and related determinations.

DATES: *Effective Date:* July 19, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 19, 2012, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New Jersey resulting from severe storms and straight-line winds on June 30, 2012, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William L. Vogel, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Jersey have been designated as adversely affected by this major disaster:

Atlantic, Cumberland, and Salem Counties for Public Assistance.

All counties within the State of New Jersey are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–18863 Filed 8–1–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–B–1264; Docket ID FEMA–2012–0003]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before October 31, 2012.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1264, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *www.fema.gov/pdf/media/factsheets/2010/srp_fs.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community Map Repository Address
City of Homer, Alaska	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionX/HomerSpit/Preliminary%20Maps/Forms/AllItems.aspx*	
City of Homer	City Hall, 491 East Pioneer Avenue, Homer, AK 99603.
Collin County, Texas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://riskmap6.com/Community.aspx?cid=292&sid=5*	
City of Allen	City Hall, 305 Century Parkway, Allen, TX 75013.
City of Frisco	City Hall, 6101 Frisco Square Boulevard, 3rd Floor, Frisco, TX 75034.
City of McKinney	Engineering Department, 221 North Tennessee Street, McKinney, TX 75069.
City of Plano	City Hall, Engineering Department, 1520 Avenue K, Plano, TX 75074.
City of Richardson	Civic Center/City Hall, 411 West Arapaho Road, Room 204, Richardson, TX 75080.
Unincorporated Areas of Collin County	Collin County Engineering, 825 North McDonald Street, McKinney, TX 75069.

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

Dated: July 12, 2012.

Sandra K. Knight,

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

[FR Doc. 2012–18866 Filed 8–1–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2012–N065; 40120–1112–0000–F2]

Endangered and Threatened Wildlife and Plants; Receipt of Application for Incidental Take Permit; Availability of Proposed Low-Effect Habitat Conservation Plan and Associated Documents; Lee County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment/information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) application and Habitat Conservation Plan (HCP). The City of Cape Coral (applicant) requests an ITP under the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking about 75 acres of Florida scrub-jay habitat in Lee County, Florida, for the construction of a 215-acre multi-use recreational park, several nearby single-family residences, and associated infrastructure. The

applicant's HCP describes the minimization and mitigation measures proposed to address the effects of the project on the scrub-jay.

DATES: Written comments on the ITP application and HCP should be sent to the South Florida Ecological Services Office (see **ADDRESSES**) and should be received on or before September 4, 2012.

ADDRESSES: You may request documents by email, U.S. mail, or fax (see below). These documents are also available for public inspection by appointment during normal business hours at the office below. Send your comments or requests by any one of the following methods.

Email: Trish_Adams@fws.gov. Use ''Attn: Permit number TE75891A–0'' as your message subject line.

Fax: Trish Adams, 772–562–4288, Attn.: Permit number TE75891A–0.

U.S. mail: Trish Adams, HCP Coordinator, South Florida Ecological Services Field Office, Attn: Permit number TE75891A–0, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.

In-person drop-off: You may drop off information during regular business hours at the above office address.

FOR FURTHER INFORMATION CONTACT: Ms. Trish Adams, HCP Coordinator, South Florida Ecological Services Office, Vero Beach, Florida (see **ADDRESSES**), telephone: 772–469–4232.

SUPPLEMENTARY INFORMATION: The City of Cape Coral (applicant) anticipates taking 75 acres of habitat used for breeding, feeding, and sheltering by the Florida scrub-jay (*Aphelocoma coerulescens*) in Lee County, Florida. The Service listed the scrub-jay as threatened on June 3, 1987 (52 FR 20715). The listing became effective July 6, 1987.

Applicant's Proposed Project

We received an application for an incidental take permit (ITP), along with a proposed habitat conservation plan (HCP). The applicant requests a 25-year permit under section 10(a)(1)(B) of the Act (87 Stat. 884; 16 U.S.C. 1531 *et seq.*). If we approve the permit, the applicant anticipates taking 75 acres of Florida scrub-jay habitat for construction of Festival Park (a 215-acre multi-use recreational park), single-family residences, and associated infrastructure. The project is located in the north-central part of the City of Cape Coral at latitude 26.701016, longitude—81.999287, Lee County, Florida.

The applicant proposes to mitigate for the loss of 75 acres of occupied scrub-jay habitat by restoring 125 acres of off-site scrub habitat to be managed by Lee County, and to establish a fund that will provide for the long-term management of the mitigation area.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, issuance of the ITP is a ''low-effect'' action and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA) (40 CFR 1506.6), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1), and as defined in our Habitat Conservation Planning Handbook (November 1996).

We base our determination that issuance of the ITP qualifies as a low-effect action on the following three criteria: (1) Implementation of the project would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the project would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. As more fully explained in our environmental action statement and associated Low-Effect Screening Form, the applicant's proposed project qualifies as a ''low-effect'' project. This preliminary determination may be revised based on our review of public comments that we receive in response to this notice.

Next Steps

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP would comply with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP. If it is determined that the requirements of the Act are met, the ITP will be issued for the incidental take of the scrub-jay.

Submitting Comments

If you wish to submit comments or information, you may do so by any one of several methods. Please reference permit number TE75891A–0 in such comments. You may mail comments to the Service's South Florida Ecological Services Office (see **ADDRESSES**). You may also comment via email to *trish_adams@fws.gov.* Please also include your name and return address in your email message. If you do not receive a confirmation from us that we have received your email message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**. Finally, you may hand deliver comments to the Service office listed under **ADDRESSES**.

Availability of Public Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

Dated: July 26, 2012.

Larry Williams,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. 2012–18991 Filed 8–1–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Listening Sessions on Sacred Sites on Federal Lands

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Indian Affairs will conduct listening sessions with Indian tribes to obtain oral and written comments concerning sacred sites located on Federal lands. See the **SUPPLEMENTARY INFORMATION** section of this notice for details.

DATES: See the **SUPPLEMENTARY INFORMATION** section of this notice for the dates of the tribal listening sessions. We will consider all comments received

by close of business on September 21, 2012.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section of this notice for the locations of the tribal listening sessions. Submit comments by email to: *consultation@bia.gov* or by U.S. mail to: Office of the Assistant Secretary—Indian Affairs, U.S. Department of the Interior, attn.: Dion Killsback, Mail Stop 4141 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dion Killsback, Counselor to the Assistant Secretary—Indian Affairs, (202) 208–6939.

SUPPLEMENTARY INFORMATION: The Department, through the Office of the Assistant Secretary—Indian Affairs, intends to develop policy to strengthen the protection of sacred sites on Federal lands. For many years the Department has received input on sacred sites and to that end, the Department is seeking input specific, but not limited to, the following topics regarding sacred sites

- Meanings of sacred sites and whether the Department should attempt to define the term ''sacred site'';
- Personal views of existing Departmental practices or policies, if any, that should be revised to protect sacred sites and steps necessary to make appropriate revisions;
- Potential development of Departmental practices or policies to protect sacred sites;
- How the Department should facilitate tribal access to sacred sites;
- How the Department should control and grant access to tribally provided information regarding sacred sites;
- Whom the Department should include (recognized leaders of tribal government, tribal spiritual leaders, et.al.) in determining whether a site is considered ''sacred'' by a tribe.

Tribal listening sessions will be held at the following dates and locations:

Date	Time	Venue
August 13, 2012	1 p.m.–4 p.m	BIA Southwest Regional Office, Pete V. Domenici Building, 1001 Indian School Road, Albuquerque, New Mexico 87104, (505) 563–3103.
August 16, 2012	9 a.m.–12 p.m	Holiday Inn-Grand Montana-Billings, 5500 Midland Road, Billings, Montana 59101, (406) 248–7701.
August 23, 2012	1 p.m.–4 p.m	Mystic Lake Casino Hotel, 2400 Mystic Lake Boulevard, Prior Lake, MN 55372, (952) 445–9000.
August 24, 2012	9 a.m.–12 p.m	Mohegan Sun Casino, 1 Mohegan Sun Boulevard, Uncasville, Connecticut 06382,(860) 862–7311.

Dated: July 27, 2012.

Donald E. Laverdure,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2012–18891 Filed 7–30–12; 4:15 pm]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[LLIDI002000.13300000.EO0000]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Husky 1-North Dry Ridge Phosphate Mine and Reclamation Plan, Caribou County, ID

AGENCY: Bureau of Land Management, Interior; Forest Service, Agriculture.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969, the Federal Land Policy and Management Act (FLPMA) of 1976, and the Mineral Leasing Act of 1920, as amended, notice is hereby given that the Department of the Interior, Bureau of Land Management (BLM), Pocatello Field Office, and the U.S. Department of Agriculture, Forest Service (FS), Caribou-Targhee National Forest, will jointly prepare an Environmental Impact Statement (EIS) to determine and analyze the effects of a proposed phosphate mine and reclamation plan on Federal mineral leases held by Nu-West Mining, Inc., in eastern Idaho. The EIS will also consider the effects of increasing the size of existing leases through lease modifications.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the scope of the analysis described in this notice by September 4, 2012. The BLM will announce future meetings and any other public involvement activities at least 15 days in advance through public notices, media news releases, and/or mailings.

ADDRESSES: Written comments may be submitted to: Husky 1-North Dry Ridge Mine EIS, C/O Tetra Tech, Address: 2525 Palmer Street, Suite 2, Missoula, MT 59808, or via email at: *BLM_ID_HUSKY1NDR_EIS@blm.gov.* Please reference ''Husky 1-North Dry Ridge Mine EIS'' on all correspondence.

FOR FURTHER INFORMATION CONTACT: Bill Stout, Bureau of Land Management, Pocatello Field Office, 4350 Cliffs Drive, Pocatello, Idaho 83204, phone 208–478–6367. Scoping information will also be available at the BLM's Web-site at *http://www.blm.gov/pgdata/content/id/en/info/nepa.html,* or the FS Web site at *http://www.fs.usda.gov/projects/ctnf/landmanagement/projects.*

SUPPLEMENTARY INFORMATION: The BLM, as the Federal lease administrator, will serve as the lead agency and the FS as the co-lead agency. The Idaho Department of Environmental Quality is a cooperating agency. The mining and reclamation plans have been developed and submitted for agency review for the proposed open pit mining operations on the Federal phosphate leases IDI–05549 (Husky 1), lease IDI–8289 (North Dry Ridge), and on a portion of the IDI–04 (Maybe Canyon Lease), as well as in areas north and south of the Husky 1 lease within federally designated known phosphate lease area (KPLA) boundaries, in Caribou County, Idaho. Open pit mining operations would be conducted by Nu-West Mining, Inc., doing business as Agrium Conda Phosphate Operations (Agrium). Agrium's proposed mine plan includes two different mining areas separated by the historically operated, now inactive, Maybe Canyon Mine. Portions of the Maybe Canyon Mine are currently undergoing investigation and remediation through the Comprehensive, Environmental Response, and Liability Act (CERCLA). The Husky 1-North Dry Ridge Phosphate Mine Project area is located about 19 miles northeast of Soda Springs, Idaho.

The proposed new mining operations at the Husky 1-North Dry Ridge Mine Project area occur on Federal phosphate leases administered by the BLM, on unleased parcels of National Forest System Lands, and on private lands.

The leases are primarily located on National Forest System lands. The National Forest System lands involved lie within the Soda Springs Ranger District of the Caribou-Targhee National Forest. The existing leases grant the lessee, Agrium in this case, exclusive rights to mine and otherwise dispose of the federally owned phosphate deposit at the site. Through development of this EIS, the BLM and the FS will analyze environmental impacts of the proposed mining and reclamation operations and reasonable alternatives to the proposed action. Appropriate mitigation measures will also be formulated.

Agency Decisions

The BLM Idaho State Director or delegated official will approve, approve with modifications, or deny the proposed mine and reclamation plan, the proposed lease modifications and appropriate land use authorizations on leased lands. Decisions will be based on the EIS and any recommendations the FS may have regarding surface management of leased National Forest System lands. The FS Caribou-Targhee National Forest Supervisor will make:

(1) Recommendations to the BLM concerning surface management and mitigation on leased lands within the Caribou-Targhee National Forest; and

(2) Decisions on mine-related activities that occur off-lease within the Caribou-Targhee National Forest. Special Use Authorizations from the FS would be necessary for any support structures and facilities for the mine located off-lease within the Caribou-Targhee National Forest.

The applicable land use plans have been reviewed relative to the proposed action and at this time it is not anticipated that any amendments would be needed.

The Army Corps of Engineers may also make decisions related to permits under Section 404 of the Clean Water Act.

Background

Agrium plans open-pit mining of the phosphate on their existing leases according to the terms of the leases. The proposed Husky 1-North Dry Ridge Mine Project would include an open-pit phosphate mine and associated features including growth media stockpiles, temporary and permanent overburden storage areas, storm water retention ponds and mine pit backfill areas, haul roads, equipment staging areas, and re-routing of an existing National Forest System Road (#134) for approximately 13 years. A power line may also be needed for the duration of mining and reclamation.

The existing three leases contain 3,026.59 acres. In order to maximize phosphate mineral recovery, the lessee has proposed lease modifications (enlargements) to both the Husky 1 and North Dry Ridge leases totaling 470 acres. Agrium has also requested off-lease Special Use Authorizations covering 395 additional acres to accommodate access roads, storm water retention facilities, and staging areas. While a portion of Federal Lease IDI–8289 (North Dry Ridge) occurs on Idaho Department of Fish and Game lands, no disturbance on these lands is proposed in the mine plan. The EIS will analyze a proposed disturbance of approximately 1,051.64 acres on private and National Forest System Lands; about 645.86 acres on the three existing leases, 397.24 acres on requested lease modifications and Special Use Authorizations, and about 8.54 acres off lease on private lands.

Within the disturbance area on National Forest System Lands, approximately 65 acres are in the Dry Ridge Inventoried Roadless Area. The Proposed Action is consistent with the exemptions for phosphate mining within the General Forest, Rangeland, and Grassland theme of the 2008 Idaho Roadless Rule.

The mining sequence included in the Proposed Action is to mine the North Dry Ridge and Husky 1 consecutively, but with some transitional overlap. Mining will begin in the North Dry Ridge area, and then progress to the Husky 1 as production at North Dry Ridge slows. It is anticipated that mining of the North Dry Ridge deposit will occur for approximately 2.6 years followed by approximately 11 years of mining operations on the Husky 1 deposit. Mining in the North Dry Ridge area will progress from north to south, with overburden placed in the existing North Maybe Canyon pit as backfill, followed by overburden placement in the North Dry Ridge pit itself as room is made available. In the Husky 1 area, mining will again proceed generally from north to south. Initially, overburden from the Husky 1 pit would be placed in a waste dump and into the existing South Maybe Canyon southern pit as overburden backfill. As mining progresses southeast in the Husky 1 pit, overburden would be placed in the South Maybe pit, the North Maybe Canyon pit, or the previously mined out areas of the North Dry Ridge as overburden backfill.

Agrium has proposed management practices in its mine and reclamation plan to reduce environmental impacts. Reclamation would be conducted concurrently with mining. Agrium's plan also emphasizes the backfilling of mine pits, thereby limiting the amount of overburden placed in permanent external storage areas. To reduce the potential for contaminant release to water or uptake by reclamation vegetation, Agrium is proposing to limit the amount of time that seleniferous (selenium-bearing) overburden is exposed to the elements, to return all seleniferous overburden material to the mine pits as backfill, and to cap overburden with a combination of low-seleniferous material and liner material.

Agrium proposes building new facilities associated with its mining operations including a staging area, fuel storage area, and dust suppression wells with water fill stands. In addition, existing offices and shop facilities at the nearby Dry Valley Mine would be used.

Off-lease facilities on private lands would include haul roads, stockpile areas, and a train load-out facility (tipple).

Potential impacts to water quality from dissolved metals including selenium will be addressed in the EIS. Agrium has proposed to implement practices designed to reduce, eliminate, or mitigate these impacts as described above. Suitable soil or other growth media would be salvaged from disturbed areas for use in reclamation. Concurrent mine reclamation would include backfilling pits as mining progresses, grading slopes, capping overburden disposal areas and pit backfills, reestablishing drainages, spreading growth media, stabilizing surfaces, promoting revegetation, and testing and treatment for any remaining contaminants. Facilities and equipment would be removed at closure. Environmental monitoring would be performed to ensure impacts do not exceed those authorized.

Issues initially identified for the proposed mining of the Husky 1—North Dry Ridge Mine Project include potential effects on groundwater and surface water quantity and quality; uptake of contaminants by vegetation, loss of soil and mineral resources; changes to air quality; loss of wildlife and their habitats (including fisheries); reduction of livestock grazing; impacts to wetlands and riparian habitat; reduced opportunity for recreation; impacts to inventoried roadless areas, changes in socio-economics such as employment and the continued operation of a fertilizer plant and support businesses; reduced opportunity to implement Native American rights, treaties, and land uses; changes to visual resources.

The BLM and FS will use and coordinate NEPA public participation

requirements to assist the agency in satisfying public involvement under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM and Forest Service will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts to treaty rights and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed project that is being evaluated, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM or FS to participate in the development of the environmental analysis as cooperating agencies.

Alternatives and Schedule

The EIS will analyze the Proposed Action and the No Action Alternative. Other alternatives may be considered that could provide mitigation of potential impacts.

The tentative EIS project schedule is as follows:

- Begin public scoping period and meetings: Summer 2012;
- Release draft EIS and associated comment period: January 2015;
- Final EIS publication: Fall 2016; and
- Records of Decision: Fall 2016.

Scoping Procedure

The scoping procedure to be used for this EIS will involve notification in the **Federal Register**; a mailing to interested and potentially affected individuals, groups, Federal, State, and local government entities requesting input by way of comments, issues and concerns; news releases or legal notices; and public scoping meetings.

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. Comments will be available for public review at the BLM address listed above during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except Federal holidays.

The BLM and the FS are seeking information and written comments concerning the Proposed Action from Federal, State, tribal, and local agencies, individuals, and organizations interested in, or affected by, the Proposed Action or Alternatives. To assist the BLM and the FS in identifying issues and concerns related to the Proposed Action, scoping comments should be as specific as possible.

At least three ''open-house'' style public scoping meetings will be held which will include displays explaining the project and a forum for asking questions and commenting on the project.

Meetings are planned to be held in Pocatello, Fort Hall, and Soda Springs, Idaho. The dates, times, and locations of the public scoping meetings will be announced in mailings and public notices issued by the BLM (see **DATES** above).

Authority: 43 U.S.C. 4321 *et seq.;* 40 CFR parts 1500–1508; 43 CFR part 46; 43 U.S.C. 1701; and 43 CFR part 3590.

Joe Kraayenbrink,

District Manager, Idaho Falls District, Bureau of Land Management.

Brent Larson,

Forest Supervisor, Caribou-Targhee National Forest.

[FR Doc. 2012–18883 Filed 8–1–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME1R05173]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on September 4, 2012.

DATES: Protests of the survey must be filed before September 4, 2012 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 4 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Regional Director, Rocky Mountain Region, Bureau of Indian Affairs, and was necessary to determine the boundaries of tribal trust lands. The lands we surveyed are:

Principal Meridian

T. 25 N., R. 23 E.

The plat, in one sheet, representing the dependent resurvey of the south boundary of the Fort Belknap Indian Reservation, through Township 25 North, Range 23 East, of the Principal Meridian, Montana, was accepted July 12, 2012.

We will place a copy of the plat, in one sheet, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in one sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in one sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Steve L. Toth,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2012–18855 Filed 8–1–12; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000- L19100000–BJ0000–LRCS42800800]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on September 4, 2012.

DATES: Protests of the survey must be filed before September 4, 2012 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the U.S. Army Corps of Engineers, Omaha District, and was necessary to determine federal interest lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 23 N., R. 42 E.

The plat, in seven sheets, representing the supplemental plat of sections 13 and 14, showing the amended lottings created by the segregation of various parcels, Township 23 North, Range 42 East, Principal Meridian, Montana, was accepted July 12, 2012.

We will place a copy of the plat, in seven sheets, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in seven sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in seven sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Steve L. Toth,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2012–18881 Filed 8–1–12; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORB00000.L17110000.PH0000.L.X.SS.020H0000; HAG12–0251]

Call for Nominations for Steens Mountain Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, and the U.S. Department of the Interior, Bureau of Land Management (BLM), the Steens Mountain Advisory Council (SMAC) will meet as indicated below:

DATES: The SMAC will hold a public meeting Thursday, August 16, 2012, from 1 p.m. to 5 p.m. and Friday, August 17, 2012, from 8 a.m. to 12 p.m. at the BLM Burns District Office, 28910 Hwy 20 West, in Hines, Oregon, 97738. Public comment is scheduled for 4:30 p.m. on August 16 and 11 a.m. on August 17. Unless otherwise approved by the SMAC Chair, the public comment period will last no longer than 30 minutes, and each speaker may address the SMAC for a maximum of 5 minutes. Meeting times and the duration scheduled for public comment periods may be extended or altered when the authorized representative considers it necessary to accommodate necessary business and all who seek to be heard regarding matters before the SMAC.

FOR FURTHER INFORMATION CONTACT: Tara Martinak, Public Affairs Specialist, BLM Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738–9424, (541) 573–4519, or email *tmartina@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The SMAC was initiated August 14, 2001, pursuant to the Steens Mountain Cooperative Management and Protection Act (CMPA) of 2000 (Pub. L. 106–399). The SMAC provides representative counsel and advice to the BLM regarding new and unique approaches to management of the land within the bounds of the Steens Mountain CMPA; recommending cooperative programs and incentives for landscape management that meet human needs, and the maintenance and improvement of the ecological and economic integrity of the area. Tentative agenda items for the August 16–17, 2012, meeting include: A discussion regarding fencing in and around the No Livestock Grazing Area within the Steens Mountain Wilderness; updates on current litigation, the North Steens Transmission Line Project, the Blizten Stewardship contract, projects in the Wildlands Juniper Management Area, land exchanges and acquisitions, the Steens Mountain Comprehensive Recreation Plan, and the South Steens Allotment Management Plan; and planning future meeting agendas, dates, and locations. Any other matters that may reasonably come before the SMAC may also be addressed. This meeting is open to the public in its entirety. Information to be distributed to the SMAC is requested prior to the start of each meeting.

Before including your address, phone number, email address, or other personal identifying information in your comments, please 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.

Brendan Cain,

Burns District Manager.

[FR Doc. 2012–18879 Filed 8–1–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR936000–L14300000–ET0000; HAG–0177; OROR–47417]

Notice of Application for Proposed Withdrawal Extension and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service (USFS) has filed an application with the Bureau of Land Management

(BLM) requesting the Secretary of the Interior extend the duration of Public Land Order (PLO) No. 6986 for an additional 20-year term. PLO No. 6986 withdrew approximately 4,239.95 acres of National Forest System land from the United States mining laws in order to protect the scenic, recreation, and fish/wildlife habitat values in the scenic section of the Illinois Wild and Scenic River between the mouth of Deer Creek and the mouth of Briggs Creek. The withdrawal created by PLO No. 6986 will expire on June 30, 2013, unless extended. This notice also gives an opportunity to comment on the application and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by October 31, 2012.

ADDRESSES: Comments and meeting requests should be sent to the BLM Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Michael L. Barnes, BLM Oregon/Washington State Office, 503–808–6155; or Dianne Torpin, USFS Pacific Northwest Region, 503–808–2422. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to reach either of the contacts stated above. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with either of the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The USFS has filed an application requesting that the Secretary of the Interior extend PLO No. 6986 (58 FR 35408 (1993)), which withdrew approximately 4,239.95 acres of National Forest System lands in the Siskiyou National Forest, from location and entry under the United States mining laws (30 U.S.C. ch. 2), but not from leasing under the mineral leasing laws, for an additional 20-year term, subject to valid existing rights. PLO No. 6986 is incorporated herein by reference.

The purpose of the proposed withdrawal extension is to continue the protection of the scenic, recreation, and fish/wildlife habitat values in the scenic section of the Illinois Wild and Scenic River between the mouth of Deer Creek and the mouth of Briggs Creek.

The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection.

The USFS would not need to acquire water rights to fulfill the purpose of the requested withdrawal extension.

Records related to the application may be examined by contacting Michael L. Barnes at the above address or phone number.

For a period of 90 days from the date of publication of this notice in the **Federal Register**, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM State Director at the address indicated above.

Comments, including names and street addresses of respondents, will be available for public review at the address indicated above during regular business hours.

Individual respondents may request confidentiality. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organization or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the BLM State Director at the address indicated above by October 31, 2012. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

Authority: 43 CFR 2310.3–1(b).

Fred O'Ferrall,

Chief, Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2012–18895 Filed 8–1–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of land management

[MT–LLB05000–LL14300000–FQ0000; MTM 40412]

Public Land Order No. 7792; Partial Revocation, Power Site Reserve No. 109; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a withdrawal created by an Executive Order insofar as it affects 40 acres of public land withdrawn for protection of water power values by Power Site Reserve No. 109. This order also opens the land to exchange.

DATES: *Effective Date:* August 2, 2012.

FOR FURTHER INFORMATION CONTACT: Jeff Daugherty, Bureau of Land Management, Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725–9431, 406–683–8045, *jdaugher@blm.gov* or Sandra Ward, Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–683–8038, *sward@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact either of the above individuals. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with either of the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has determined that a portion of the withdrawal created by the Executive Order dated July 2, 1910, which established Power Site Reserve No. 109, is no longer needed for the purpose for which the land was withdrawn and partial revocation is needed to facilitate a pending land exchange. The Federal Energy Regulatory Commission has no objections to the partial revocation.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. The withdrawal created by the Executive Order dated July 2, 1910, which established Power Site Reserve No. 109, is hereby revoked insofar as it affects the following described land:

Principal Meridian, Montana

T. 14 S., R. 3 W.,
Sec. 5, NE¼; SW¼.

The area described contains 40 acres in Beaverhead County.

2. The State of Montana has been notified of their 90-day preference right for public highway rights-of-way or material sites. Any location, entry, selection, or subsequent patent shall be subject to any rights granted to the State as provided by Section 24 of the Act of June 10, 1920, as amended, 16 U.S.C. 818.

3. At 9 a.m. on August 2, 2012 the land described in Paragraph 1 is hereby opened to exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Authority: 43 CFR 2091.6.

Dated: July 18, 2012.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2012–18888 Filed 8–1–12; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[SDM 013790]

Public Land Order No. 7793; Partial Revocation of Public Land Order No. 1535; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes the withdrawal created by Public Land Order No. 1535 insofar as it affects 14.43 acres of National Forest System land withdrawn for use by the U.S. Forest Service as a roadside zone. This order also opens the land to exchange.

DATES: *Effective Date:* August 2, 2012.

FOR FURTHER INFORMATION CONTACT: Valerie Hunt, U.S. Forest Service, Rocky Mountain Region, 740 Simms Street, Golden, Colorado 80401, 303–275–5071, *vbhunt@fs.fed.us*, or Sandra Ward, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5052, *sward@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact either of the above individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with either of the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The U.S. Forest Service has determined that a portion of the withdrawal created by Public Land Order No. 1535 is no longer needed for the purpose for which it was withdrawn and has requested a partial revocation. The revocation is needed to facilitate a pending U.S. Forest Service land exchange.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. The withdrawal created by Public Land Order No. 1535, which withdrew National Forest System land from all forms of appropriation under the public land laws, including the United States mining laws, but not from leasing under the mineral leasing laws or the Act of July 31, 1947, as amended, and reserved them on behalf of the U.S. Forest Service for use as roadside zones, is hereby revoked only insofar as it affects the following described land:

Black Hills National Forest

Black Hills Meridian

T. 1 S., R. 6 E.,
Sec. 22, a strip of land 330 feet on each side of the centerline of old U.S. Highway Nos. 16 and 16A through the NW¼;SE¼;.

The area described contains 14.43 acres in Pennington County.

2. At 9 a.m. on August 2, 2012, the land described in Paragraph 1 will be opened to exchange pursuant to the General Exchange Act of March 20, 1922, (16 U.S.C. 485), as amended, and Section 206 of the Federal Land Policy and Management Act of 1976, as amended, (43 U.S.C. 1716), subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Authority: 43 CFR 2091.6.

Dated: July 13, 2012.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2012–18885 Filed 8–1–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR932000.L10200000.PH0000; HAG–12–0218]

Call for Nominations for Advisory Groups, Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Department of the Interior requests public nominations for persons to serve on Oregon/Washington Bureau of Land Management (BLM) Resource Advisory Councils and the Steens Mountain Advisory Council. Citizens who serve on these groups provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas and management options for a specific National Landscape Conservation System site. The BLM will accept public nominations for 30 days after the publication of this notice.

DATES: Submit nomination packages on or before September 4, 2012.

ADDRESSES: BLM Oregon State Office; 333 Southwest 1st Avenue; Portland, Oregon 97204. Nomination forms are also available at the Burns, Lakeview, Prineville, Spokane, and Vale District Offices.

FOR FURTHER INFORMATION CONTACT: Matt Christenson, BLM Oregon State Office, 333 Southwest 1st Avenue; Portland, Oregon 97204, or P. O. Box 2965, Portland, Oregon 97208; 503–808–6035 or *m1christ@blm.gov.*

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Section 309 of the Federal Land Policy and Management Act (FLPMA) directs the Secretary to establish citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, council membership must be balanced and representative of the various interests concerned with the management of public lands. The rules governing advisory committees are found at 43 CFR subpart 1784.

Regional Resource Advisory Councils (RAC) seek nominations in three categories:

Category One—Holders of Federal grazing permits, representatives of organizations associated with energy and mineral development, timber industry, developed outdoor recreation, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations; archaeological and historic organizations, dispersed recreation activities, and wild horse and burro organizations; and

Category Three—Representatives of State, county, or local elected office; representatives and employees of a State agency responsible for management of natural resources; representatives of Indian tribes within or adjacent to the area for which the council is organized; representatives of academia who are employed in natural sciences; and the public-at-large.

The Steens Mountain Advisory Council seeks a member of the Burns Paiute Tribe and a person with expertise and interest in wild horse management on Steens Mountain. Individuals may nominate themselves or others. Nominees must be residents of the State or region in which the council has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographical area of the council. Nominees should demonstrate a commitment to collaborative resource decision-making. The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees, or councils. All nominations must include: (1) Letters of reference from the stakeholder interest area to be represented; (2) A completed background information nomination form; and (3) Other information that addresses the nominee's qualifications. If you have already submitted your nomination materials for 2012 you will not need to resubmit. The BLM Oregon State Office will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each council. Nominations should be sent to: Matt Christenson, Oregon State Office, BLM, 333 SW. First Avenue, Portland, Oregon 97204, 503–808–6035.

Certification Statement: I hereby certify that the BLM advisory committees are necessary and in the public interest in connection with the Secretary's responsibilities to manage the lands, resources, and facilities administered by the BLM.

Jody L. Weil,

Acting Associate State Director, Oregon/Washington.

[FR Doc. 2012–18896 Filed 8–1–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–WRD–10963; 2380–N203–NWZ]

Proposed Information Collection; Comment Request; Cape Lookout National Park Visitor and Community Survey

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the Information Collection (IC) described below. This collection will be used to survey two subsets of visitor groups and local community members about the values they place on cultural and natural resources of at Cape Lookout National Park (CALO). To comply with the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC.

DATES: To ensure that your comments on this IC are considered, we must receive them on or before October 1, 2012.

ADDRESSES: Please send your comments to Phadrea Ponds, Information Collections Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *phadrea_ponds@nps.gov* (email). Please reference Information Collection 1024–NEW: CALO SURVEY in the subject line.

FOR FURTHER INFORMATION CONTACT: Eva DiDonato at *eva_didonato@nps.gov* (email); or by mail at 1201 Oakridge Drive, Fort Collins, CO 80525.

I. Abstract

The National Park Service (NPS) will conduct a survey of Cape Lookout National Park visitors and a random sample of the general public in the local communities surrounding the park. The collection will be used to understand the social values visitors and residents of the local community place on cultural and natural resources of the park. The information from this collection will provide NPS managers and planners with scientifically sound data about visitors that can be used to prepare resource management planning documents.

Lessons learned from this study may be applied to mapping social values to support natural and cultural resources planning for units across the NPS system.

II. Data

OMB Control Number: None. This is a new collection.

Title: Cape Lookout National Park Visitor and Community Survey.

Type of Request: New.

Affected Public: General Public; Park Visitors and Local Residents.

Respondent Obligation: Voluntary.

Frequency of Collection: One-time.

Estimated Number of Responses: 7,722.

Estimated Annual Burden Hours: 961. We estimate the public reporting burden will average 17 minutes per response. This includes the time for reviewing instructions and completing the survey.

	Estimated number of responses	Annual burden hours
Visitor Survey	762	318
Community Survey	6,960	580

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'': None.

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 and current expiration date.

III. Request for Comments

We invite comments concerning this ICR on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that

your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 27, 2012.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2012–18848 Filed 8–1–12; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–10777; 2200–1100–665]

Notice of Intent To Repatriate Cultural Items: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the cultural affiliation of the cultural items listed in a Notice of Intent to Repatriate (NIR) published in the **Federal Register** (73 FR 58619–58620, October 7, 2008), which itself corrected an earlier NIR published in the **Federal Register** (72 FR 41522–41524, July 30, 2007). After publication of the notices cited above and prior to any transfer of control of the cultural items, the Delaware Tribe of Indians, Oklahoma regained recognition as an Indian entity eligible for the special programs and services provided by the United States to Indians because of their status as Indians (74 FR 40218–40219, August 11, 2009). Consequently, the Delaware Tribe of Indians, Oklahoma is an Indian tribe under NAGPRA (25 U.S.C. 3001(7)). Based on the restoration of Federal recognition, officials of the Peabody Museum of Archaeology and Ethnology have determined that there is a relationship of shared group identity that can be reasonably traced between the Delaware people (from Middle Woodland through Historic period) and the Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; and the Stockbridge Munsee Community, Wisconsin.

In the **Federal Register** (73 FR 58619–58620, October 7, 2008), paragraph five, sentence two is corrected by substituting the following sentence:

Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; and the Stockbridge Munsee Community, Wisconsin.

In the **Federal Register** (73 FR 58619–58620, October 7, 2008), paragraph six is corrected by substituting the following paragraph:

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, before September 4, 2012. Repatriation of the unassociated funerary objects to the Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; and the Stockbridge Munsee Community, Wisconsin, may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Cherokee Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; and the Stockbridge Munsee Community, Wisconsin, that this notice has been published.

Dated: July 5, 2012.

Mariah Soriano,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–18949 Filed 8–1–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–10774; 2200–1100–665]

Notice of Intent to Repatriate Cultural Items: Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Maxwell Museum of Anthropology, in consultation with the Pueblo of Santa Ana, New Mexico, has determined that a collection of cultural items from the Paa-ko Pueblo site meets the definition of unassociated funerary objects. Repatriation to the Pueblo of Santa Ana may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the unaffiliated funerary objects may contact the Maxwell Museum.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the Maxwell Museum of Anthropology at the address below by September 4, 2012.

ADDRESSES: David Phillips, Curator of Archaeology, Maxwell Museum of Anthropology, MSC01 1050, University of New Mexico, Albuquerque, NM 87131, telephone (505) 277–9229.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 2005, of the intent to repatriate cultural items in possession of the Maxwell Museum of Anthropology, University of New Mexico, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1949, the University of New Mexico (UNM) conducted an archaeological field school at the Paa-ko Pueblo site (LA 162), a village occupied in late prehistoric and early historical times. Catalogue No. 2006.30.1 comprises three bowl fragments found

with a burial probably exposed during the 1949 field school. Catalogue No. 2010.44.1 is a bowl from a looted burial. The bowl was surrendered to the Maxwell Museum of Anthropology. The location of the human remains from these burials is unknown.

The Pueblo of Santa Ana, New Mexico, claims ties of direct descent from villagers who resided at the Paa-ko Pueblo site and is seeking repatriation of funerary objects from the site. After repatriation, the funerary objects will be reburied at the Paa-ko site. Repatriation and reburial of the unassociated funerary objects described in this notice will be coordinated with repatriation and reburial of human remains from this site, which will be described in a separate Notice of Inventory Completion.

Determination Made by the Maxwell Museum of Anthropology

The Collections and Research Committee of the Maxwell Museum of Anthropology has determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the four unassociated funerary objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and Pueblo of Santa Ana, New Mexico.

Additional Representations and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact David Phillips, Curator of Archaeology, Maxwell Museum of Anthropology, MSC01 1050, University of New Mexico, Albuquerque, NM 87131, telephone (505) 277–9229, before September 4, 2012. Repatriation of the unassociated funerary objects to the Pueblo of Santa Ana, New Mexico, may proceed after that date if no additional claimants come forward.

The Maxwell Museum is responsible for notifying the Pueblo of Santa Ana, New Mexico, that this notice has been published.

Dated: July 5, 2012.

Mariah Soriano,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–18927 Filed 8–1–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–10772; 2200–1100–665]

Notice of Inventory Completion: San Diego Museum of Man, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The San Diego Museum of Man has completed an inventory of human remains in consultation with the appropriate Indian tribe, and has determined that there is a cultural affiliation between the human remains and a present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the San Diego Museum of Man. Repatriation of the human remains to the Indian tribe stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the San Diego Museum of Man at the address below by September 4, 2012.

ADDRESSES: Philip Hoog, San Diego Museum of Man, 1350 El Prado, Balboa Park, San Diego, CA 92101, telephone (619) 239–2001, ext. 43.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the San Diego Museum of Man. The human remains were removed from the Paa-ko Pueblo site in Bernalillo County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the San Diego Museum of Man professional staff in consultation with representatives of the Pueblo of Santa Ana, New Mexico.

History and Description of the Remains

From 1935 to 1937, human remains representing, at minimum, 209 individuals were removed from the Paa-ko Pueblo site (LA 162) in Bernalillo County, NM. The Paa-ko skeletal collection was acquired through field excavations under the direction of Edgar L. Hewett along with the Museum of New Mexico and the University of New Mexico, working in cooperation with the Federal Works Progress Administration. The Paa-ko skeletal collection was sent to Spencer Rogers, the Scientific Director of the San Diego Museum of Man, in 1950. Dr. Rogers moved a portion of these remains to San Diego State College for research. Another portion of the Paa-ko skeletal collection was housed at the University of Southern California. When Dr. Rogers retired from San Diego State College in 1971, both collections were returned to the San Diego Museum of Man. No known individuals were identified. No associated funerary objects are present.

Of the 209 individuals in the Paa-ko collection, 117 are sub-adults and 92 are adults. In the total collection, 191 sets of remains are of prehistoric origin and 18 sets of remains are of historic origin. The Paa-ko site is believed to have had two periods of occupation, from approximately A.D. 1300 to 1425 and then again from approximately A.D. 1525 to 1626 or later, the latter period coinciding with the arrival of the Spanish in this region. Documented evidence, material culture, and ethnographical accounts show that the inhabitants of the Paa-ko Pueblo site (LA 162), during both periods of its occupation, were members of the early Tamayame people, ancestors to the current Native American people of the Pueblo of Santa Ana.

Oral tradition of the modern Tamayame, or people of the Pueblo of Santa Ana, ethnographical accounts, and documented archaeological evidence reasonably suggest a line of continued shared group identity between the early archaic peoples of the Southwest, the later Anasazi (or Ancestral Puebloan or Hisatsinom), the Keres people and their branch of early Tamayame (people of Tamaya, a.k.a. Santa Ana) people, and the modern Native American inhabitants of the Pueblo of Santa Ana.

Determinations Made by the San Diego Museum of Man

Officials of the San Diego Museum of Man have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 209 individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Pueblo of Santa Ana, New Mexico.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Philip Hoog, San Diego Museum of Man, 1350 El Prado, Balboa Park, San Diego, CA 92101, telephone (619) 239–2001, ext. 43 before September 4, 2012. Repatriation of the human remains to the Pueblo of Santa Ana, New Mexico, may proceed after that date if no additional claimants come forward.

The San Diego Museum of Man is responsible for notifying the Pueblo of Santa Ana, New Mexico that this notice has been published.

Dated: July 5, 2012.

Mariah Soriano,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–18938 Filed 8–1–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–10824; 2200–1100–665]

Notice of Inventory Completion: Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Maxwell Museum of Anthropology has completed an inventory of human remains in consultation with the appropriate Indian tribe, and has determined that there is a cultural affiliation between the human remains and a present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Maxwell Museum. Repatriation of the human remains to the Indian tribe stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Maxwell Museum of Anthropology at the address below by September 4, 2012.

ADDRESSES: Heather Edgar, Maxwell Museum of Anthropology, MSC01 1050, University of New Mexico, Albuquerque, NM 87131, telephone (505) 277–4415.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Maxwell Museum of Anthropology, University of New Mexico. The human remains were removed from the Paa-ko Pueblo site in Bernalillo County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Maxwell Museum of Anthropology and San Diego Museum of Man professional staff in consultation with representatives of the Pueblo of Santa Ana, New Mexico.

History and Description of the Cultural Items

From 1935 to 1937, human remains representing, at minimum, three individuals were removed from the Paa-ko Pueblo site (LA 162) in Bernalillo County, NM. The Paa-ko skeletal collection was acquired through field excavations under the direction of Edgar L. Hewett along with the Museum of New Mexico and the University of New Mexico, working in cooperation with the Federal Works Progress Administration. These human remains are in the possession of the San Diego Museum of Man but are under the control of the Maxwell Museum of Anthropology, University of New Mexico. No known individuals were identified. No associated funerary objects are present.

In 1949, human remains representing, at minimum, two individuals were removed by the University of New Mexico (UNM) during an archaeological field school at the Paa-ko Pueblo site (LA 162) in Bernalillo County, NM. No known individuals were identified. No associated funerary objects are present.

The Paa-ko site is believed to have had two periods of occupation, from approximately A.D. 1300 to 1425 and then again from approximately A.D. 1525 to 1626 or later, the latter period coinciding with the arrival of the Spanish in this region. Documented evidence, material culture, and ethnographical accounts show that the inhabitants of the Paa-ko Pueblo site, during both periods of its occupation, were members of the early Tamayame people, ancestors to the current Native American people of the Pueblo of Santa Ana. Oral tradition of the modern Tamayame, or people of the Pueblo of Santa Ana, ethnographical accounts, and documented archaeological evidence reasonably suggest a line of continued shared group identity between the early archaic peoples of the Southwest, the later Anasazi (or Ancestral Puebloan or Hisatsinom), the Keres people and their branch of early Tamayame (people of Tamaya, a.k.a. Santa Ana) people, and the modern Native American inhabitants of the Pueblo of Santa Ana.

Determinations Made by the Maxwell Museum of Anthropology, University of New Mexico

Officials of the Maxwell Museum of Anthropology, University of New Mexico have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of five individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Pueblo of Santa Ana, New Mexico.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Heather Edgar, Maxwell Museum of Anthropology, MSC01 1050, University of New Mexico, Albuquerque, NM 87131, telephone (505) 277–4415 before September 4, 2012. Repatriation of the human remains to the Pueblo of Santa Ana, New Mexico, may proceed after that date if no additional claimants come forward.

The Maxwell Museum of Anthropology, University of New Mexico, is responsible for notifying the Pueblo of Santa Ana, New Mexico that this notice has been published.

Dated: July 11, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–18931 Filed 8–1–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–10823; 2200–1100–665]

Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Thomas Burke Memorial Washington State Museum (Burke Museum) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Burke Museum. Disposition of the human remains and the associated funerary object to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Burke Museum at the address below by September 4, 2012.

ADDRESSES: Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195–3010, telephone (206) 685–3849.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary object in the possession of the Burke Museum. The human remains and associated funerary object were removed from an unknown location, most likely in the state of Washington.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Burke Museum professional staff in consultation with representatives of the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho; Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Cowlitz Indian Tribe, Washington; Jamestown S'Klallam Tribe of Washington; Kalispel Indian Community of the Kalispel Reservation, Washington; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lummi Tribe of the Lummi Reservation, Washington; Makah Indian Tribe of the Makah Indian Reservation, Washington; Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nez Perce Tribe, Idaho (previously listed as Nez Perce Tribe of Idaho); Nooksack Indian Tribe of Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Samish Indian Tribe, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Snoqualmie Tribe, Washington; Spokane Tribe of the Spokane Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; Suquamish Indian Tribe of the Port Madison Reservation, Washington; Swinomish Indians of the Swinomish Reservation, Washington; and the Wanapum Band of Priest Rapids, a non-Federally recognized Indian group. The following tribes with aboriginal territory in the state of Washington were also invited to participate but were not involved in consultations: the Confederated Tribes of the Chehalis Reservation, Washington; Hoh Indian Tribe of the Hoh Indian Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Quileute Tribe of the Quileute Reservation, Washington; Quinault Tribe of the Quinault Reservation, Washington; Sauk-Suiattle Indian Tribe of Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and the Upper Skagit Indian Tribe of Washington.

History and Description of the Remains

At unknown dates, human remains representing, at minimum, 27 individuals were removed from unknown sites throughout the state of Washington. There is limited or no provenience information for the human remains. Based on the fact that they were disassociated from any acquisition documentation, they were assigned ''found in collection'' accession numbers in 1973 and 1995. These human remains were crosschecked against the documentation for human remains known to have been missing, but did not match documentation for any specific collection. These human remains and the associated funerary object are most likely to have been removed from sites within the state of Washington. No known individuals were identified. The one associated funerary object is a composite artifact bag containing non-human mammal bones, shells, a rock, and two twigs.

Determinations Made by the Burke Museum

Officials of the Burke Museum have determined that:

- Based on cranial morphology, dental traits, taphonomy, and museum accession documentation, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains and the associated funerary object were removed is the aboriginal land of the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho; Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Chehalis Reservation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Cowlitz Indian Tribe, Washington; Hoh Indian Tribe of the Hoh Indian Reservation, Washington; Jamestown S'Klallam Tribe of Washington; Kalispel Indian Community of the Kalispel Reservation, Washington; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lummi Tribe of the Lummi Reservation, Washington; Makah Indian Tribe of the Makah Indian Reservation, Washington; Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Nez Perce

Tribe, Idaho (previously listed as Nez Perce of Idaho); Nooksack Indian Tribe of Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Quileute Tribe of the Quileute Reservation, Washington; Quinault Tribe of the Quinault Reservation, Washington; Samish Indian Tribe, Washington; Sauk-Suiattle Indian Tribe of Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Snoqualmie Tribe, Washington; Spokane Tribe of the Spokane Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; Suquamish Indian Tribe of the Port Madison Reservation, Washington; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and the Upper Skagit Indian Tribe of Washington (hereafter referred to as ''The Tribes'').

- Multiple lines of evidence, including treaties, Acts of Congress, and Executive Orders, indicate that the land from which the Native American human remains and the associated funerary object were removed is the aboriginal land of The Tribes.
- Other credible lines of evidence, indicate that the land from which the Native American human remains and the associated funerary object were removed is the aboriginal land of The Tribes; the Confederated Tribes of the Warm Springs Reservation of Oregon; and the Wanapum Band of Priest Rapids, a non-Federally recognized Indian group.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 27 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Lummi Tribe of the Lummi Reservation, Washington; Nez Perce Tribe, Idaho (previously listed as Nez Perce of Idaho); Samish Indian Tribe, Washington; Spokane Tribe of the Spokane Reservation, Washington; Stillaguamish Tribe of Washington; Suquamish Indian Tribe of the Port Madison Reservation, Washington; and the Wanapum Band of Priest Rapids, a non-Federally recognized Indian group (which together, comprise the Washington State Inter-Tribal Consortium).

The Washington State Inter-Tribal Consortium tribes have come together to claim the human remains and the associated funerary object jointly. The Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho; Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Warm Springs Reservation of Oregon; Jamestown S'Klallam Tribe of Washington; Kalispel Indian Community of the Kalispel Reservation, Washington; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Nooksack Indian Tribe of Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; and the Squaxin Island Tribe of the Squaxin Island Reservation, Washington, have stated their support for repatriation to the Washington State Inter-Tribal Consortium tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98115, telephone (206) 685–3849, before September 4, 2012. Disposition of the human remains to the Washington State Inter-Tribal Consortium tribes may proceed after that date if no additional requestors come forward.

The Burke Museum is responsible for notifying The Tribes; the Confederated Tribes of the Warm Springs Reservation of Oregon; and the Wanapum Band of Priest Rapids, a non-Federally recognized Indian group that this notice has been published.

Dated: July 11, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–18924 Filed 8–1–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–10797: 2200–1100–665]

Notice of Inventory Completion: Department of the Interior, Bureau of Indian Affairs, Washington, DC, and Logan Museum of Anthropology, Beloit College, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Indian Affairs, and Logan Museum of Anthropology, Beloit College, have completed an inventory of human remains, in consultation with the appropriate Indian tribe, and have determined that there is a cultural affiliation between the human remains and a present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the U.S. Department of the Interior, Bureau of Indian Affairs. Repatriation of the human remains to the Indian tribe stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the U.S. Department of the Interior, Bureau of Indian Affairs at the address below by September 4, 2012.

ADDRESSES: Anna Pardo, Museum Program Manager/NAGPRA Coordinator, U.S. Department of the Interior, Indian Affairs, 12220 Sunrise Valley Drive, room 6084, Reston, VA 20191, telephone (703) 390–6343.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and in the physical custody of the Logan Museum of Anthropology, Beloit College, Beloit, WI. The human remains were removed from an unknown location on the Fort Berthold Reservation, McLean County, ND.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Logan Museum of Anthropology professional staff in consultation with representatives of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

History and Description of the Remains

Sometime in 1925, human remains representing, at minimum, one individual were removed from a site on the Fort Berthold Reservation in McLean County, ND, by Eric C. Jacobsen. No details are available on the precise site location or collecting methods. It is unknown whether the remains came to the Logan Museum through Alfred Bowers, who conducted archaeological work in association with the museum in the 1920s and 1930s, or if they arrived directly from Jacobsen or through some other party. The remains are labeled as ''Arikara Indian. Reservation Grave. Jacobsen Collection.'' Cranial morphology is consistent with Arikara patterns. No known individuals were identified. No associated funerary objects are present.

At an unknown date prior to 1979, human remains representing, at minimum, one individual were removed from the Fort Berthold Reservation in McLean County, ND, by an unknown collector. No details are available on the precise site location or collecting methods. The remains are labeled ''Mandan Indian (Modern), Ft. Berthold Reservation.'' Cranial morphology is consistent with Mandan patterns. The pattern of dental wear suggests the remains date to the 19th century, and the weathering and light color of the remains suggests they were collected from an exposed context. No known individuals were identified. No associated funerary objects are present.

The human remains are determined to be Native American on the basis of physical characteristics and provenience within the Fort Berthold Reservation. Cultural affiliation is based on provenience, catalog records, and morphology. Both the Arikaras (Sahnish) and Mandans are part of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Determinations Made by the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and the Logan Museum of Anthropology, Beloit College, Beloit, WI

Officials of the Bureau of Indian Affairs and the Logan Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Anna Pardo, Museum Program Manager/NAGPRA Coordinator, U.S. Department of the Interior, Indian Affairs, 12220 Sunrise Valley Drive, room 6084, Reston, VA 20191, telephone (703) 390–6343, before September 4, 2012. Repatriation of the human remains to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, may proceed after that date if no additional claimants come forward.

The Bureau of Indian Affairs is responsible for notifying the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, that this notice has been published.

Dated: July 9, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–18956 Filed 8–1–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–10796; 2200–1100–665]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and the Logan Museum of Anthropology, Beloit College, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Indian Affairs, and the Logan Museum of Anthropology, Beloit College, have completed an inventory of human remains, in consultation with the appropriate Indian tribes, and have determined that there is a cultural affiliation between the human remains and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the U.S. Department of the Interior, Bureau of Indian Affairs. Repatriation of the human remains to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the U.S. Department of the Interior, Bureau of Indian Affairs at the address below by September 4, 2012.

ADDRESSES: Anna Pardo, Museum Program Manager/NAGPRA Coordinator, U.S. Department of the Interior, Indian Affairs, 12220 Sunrise Valley Drive, Room 6084, Reston, VA 20191, telephone (703) 390–6343.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and in the physical custody of the Logan Museum of Anthropology, Beloit College, Beloit, WI. The human remains were removed from the Old Kenel townsite, on the Standing Rock Indian Reservation, in Corson County, SD.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Logan Museum of Anthropology professional staff in consultation with representatives of the Standing Rock Sioux Tribe of North & South Dakota and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

History and Description of the Remains

At an unknown date prior to 1979, human remains representing, at minimum, one individual were removed by an unknown collector from the Old Kenel townsite on the Standing Rock Indian Reservation in Corson County, SD. No details are available on the precise site location or collecting methods. The Old Kenel townsite was a historic community of the Standing Rock Sioux Tribe, which was flooded after construction of Oahe Dam. This townsite was located on the site of a prehistoric Indian village that dates to the period of the Extended Middle

Missouri variant of the Plains Village pattern. The human remains could be associated with either the historic or prehistoric settlement. The remains had been catalogued as Arikara, but there is no apparent basis for this designation. No known individuals were identified. No associated funerary objects are present.

The human remains are determined to be Native American on the basis of the red pigment applied to the remains. If the remains are from the Extended Middle Missouri variant, they are culturally affiliated to Mandan descendants, the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota. If the remains are Arikara, as the likely erroneous catalogue and ledger records state, they are culturally affiliated with the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota. If the remains are associated with the historic Lakota Sioux community of Old Kenel, they are culturally affiliated with the Standing Rock Sioux Tribe of North & South Dakota, on whose reservation the site is located. Because the human remains could be associated with either the historic or prehistoric settlement, cultural affiliation is determined to be to both of the tribes.

Determinations Made by the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and the Logan Museum of Anthropology, Beloit College, Beloit, WI

Officials of the Bureau of Indian Affairs and the Logan Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Standing Rock Sioux Tribe of North & South Dakota and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Anna Pardo, Museum Program Manager/NAGPRA Coordinator, U.S. Department of the Interior, Indian Affairs, 12220 Sunrise Valley Drive, Room 6084, Reston, VA 20191, telephone (703) 390–6343, before September 4, 2012. Repatriation of the human remains to the Standing Rock Sioux Tribe of North & South Dakota and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, may proceed after that date if no additional claimants come forward.

The Bureau of Indian Affairs is responsible for notifying the Standing Rock Sioux Tribe of North & South Dakota and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, that this notice has been published.

Dated: July 9, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–18953 Filed 8–1–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–10776; 2200–1100–665]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains and associated funerary objects were removed from Burlington, Gloucester, and Mercer Counties, NJ, and Chester County, PA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the cultural affiliation of the human remains and associated funerary objects listed in a Notice of Inventory Completion (NIC) published in the **Federal Register** (73 FR 58625–58626, October 7, 2008), which itself corrected an earlier NIC published in the **Federal Register** (72 FR 41524–41525, July 30, 2007). After publication of the notices cited above and prior to any transfer of control of the human remains and associated funerary objects, the Delaware Tribe of Indians, Oklahoma, regained Federal recognition as an Indian entity eligible for the special programs and services provided by the United States to Indians because of their status as Indians (74 FR 40218–40219, August 11, 2009). Consequently, the Delaware Tribe of Indians, Oklahoma is an Indian tribe under NAGPRA (25 U.S.C. 3001 (7)). Based on the restoration of Federal recognition, officials of the Peabody Museum of Archaeology and Ethnology have determined that there is a relationship of shared group identity that can be reasonably traced between the Delaware people (from Middle Woodland through Historic period) and the Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; and the Stockbridge Munsee Community, Wisconsin.

In the **Federal Register** (73 FR 58625–58626, October 7, 2008), paragraph five, sentence three is corrected by substituting the following sentence:

Lastly, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; and the Stockbridge Munsee Community, Wisconsin.

In the **Federal Register** (73 FR 58625–58626, October 7, 2008), paragraph six is corrected by substituting the following paragraph:

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, before September 4, 2012. Repatriation of the human remains and associated funerary objects to the Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; and the Stockbridge Munsee Community, Wisconsin, may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Cherokee Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; and the Stockbridge Munsee Community, Wisconsin, that this notice has been published.

Dated: July 5, 2012.

Mariah Soriano,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–18947 Filed 8–1–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection; General Provisions

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to seek the Office of Management and Budget (OMB) approval to continue the collection of information for our General provisions. This information collection activity was previously approved by OMB and assigned clearance number 1029–0094.

DATES: Comments on the proposed information collection must be received by October 1, 2012, to be assured of consideration.

ADDRESSES: Comments may be mailed to Adrienne Alsop, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203—SIB, Washington, DC 20240. Comments may also be submitted electronically to *aalsop@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request additional information about this collection of information, contact Adrienne Alsop, at (202) 208–2818 or by email listed previously.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies an information collection that OSM will be submitting to OMB for approval, the collection contained in 30 CFR part 700—General (1029–0094). OSM will seek a 3-year term of approval for this information collection activity. We 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.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection requests to OMB.

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.

Title: 30 CFR Part 700—General.

OMB Control Number: 1029–0094.

Summary: This Part establishes procedures and requirements for terminating jurisdiction of surface coal mining and reclamation operations, petitions for rulemaking, and citizen suits filed under the Surface Mining Control and Reclamation Act of 1977.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State and tribal regulatory authorities, private citizens and citizen groups, and surface coal mining companies.

Total Annual Responses: 3.

Total Annual Burden Hours: 65.

Dated: July 23, 2012.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2012–18810 Filed 8–1–12; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on July 27, 2012, a proposed Amendment to Consent Decree was lodged with the United States District Court for the Northern District of Ohio in *United States* v. *Lorain County Metropolitan Park District, et al.,* Civil Action No. 1:08-cv-03026.

Under a consent decree previously entered by the district court in this action under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9606 and 9607, the former General Motors Corporation, now known as Motors Liquidation Company (''GM''), was one of several Settling Defendants responsible for implementing a remedial action to address releases and threatened releases of hazardous substances at and from the Ford Road Industrial Landfill Site (the ''Site'') in Elyria, Ohio. Pursuant to financial assurance requirements of the consent decree, GM obtained a performance bond from Westchester Fire Insurance Company (''Westchester''). After filing for bankruptcy in 2009, GM stopped participating in implementation of the remedial action at the Site.

Under the proposed Amendment to Consent Decree, Westchester will become a party to the consent decree and become responsible for financing implementation of the remedial action at the Site, up to a $589,322 limit that corresponds to the outstanding amount of the original performance bond issued by Westchester. Westchester's obligations will include: (1) Reimbursing 50 percent of the response costs incurred by the other Settling Defendants between June 1, 2009, when GM stopped participating in implementation of the consent decree, and the effective date of the Amendment to Consent Decree; (2) monthly reimbursement of 50 percent of the ongoing remedial costs incurred by the other Settling Defendants after the effective date of the Amendment to Consent Decree; (3) acceleration of remaining payments (up to the $589,322 limit) in accordance with instructions to be provided by EPA, in the event that EPA takes over implementation of any Work, pursuant to provisions of the previously entered consent decree. In addition, to guarantee performance of its obligations under the proposed Amendment to Consent Decree, Westchester will establish a trust for the benefit of EPA, and maintain a trust balance that is equal to its outstanding liability relating to the Site.

The Department of Justice will receive comments relating to the Amendment to Consent Decree for a period of thirty (30) days from the date of this publication. 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. The comments should refer to *United States* v. *Lorain County*

Metropolitan Park District, et. al., DJ # 90–11–3–09102.

During the public comment period, the Amendment to Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Amendment to Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–5271. In requesting a copy of the Amendment to Consent Decree from the Consent Decree Library, please enclose a check in the amount of $8.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–18837 Filed 8–1–12; 8:45 am]

BILLING CODE 4410–15–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 July 16, 2012 through July 20, 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
81,626	ATI Wah Chang, Allegheny Technologies, Inc.	Albany, OR	June 17, 2012.
81,626A	Kelly Services, LBCC Career Center, CADD Connections, etc., ATI Wah Chang, Allegheny Technologies.	Albany, OR	May 16, 2011.
81,678	JMC Steel Group (Wheatland Sharon Pipe Warehouse)	Sharon, PA	November 14, 2011.
81,682	The Taylor Desk Company, The Taylor Chair Company	Lynwood, CA	June 4, 2011.
81,682A	The Taylor Chair Company	Bedford, OH	June 4, 2011.
81,704	RG Steel Warren LLC, Formerly Known as Severstal Steel, RG Steel LLC.	Warren, OH	December 2, 2011.
81,704A	Computer Science Corporation (CSC), Working at RG Steel Warren Formerly Known as Severstal Steel, RG Steel LLC.	Warren, OH	June 4, 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
81,700	Pyrotek, Inc., On-Site Leased Workers from Labor Ready	Wenatchee, WA	June 7, 2011.
81,707	Northern Trust Company, S. Canal Street Facility, Teksystems, Quadratic, Solstice, Forbes, etc..	Chicago, IL	June 12, 2011.
81,708	Reliance Mediaworks Imaging Services, a Subsidiary of Reliance Mediaworks.	Burbank, CA	June 12, 2011.
81,728	Tellabs, Inc., Signature Building Maintenance and Facilities Services.	Petaluma, CA	June 14, 2011.
81,729	Crawford and Company, ICT Storage & DR Administration Branch, ICT Mainframe Systems Branch, etc..	Tucker, GA	June 14, 2011.
81,729A	Crawford and Company, ICT Storage & DR Administration Branch, ICT Messaging Administration Branch.	Lake Zurich, IL	June 14, 2011.
81,729B	Crawford and Company, ICT Production Control Branch and ICT Desktop Support Branch.	Atlanta, GA	June 14, 2011.
81,729C	Crawford and Company, ICT Production Control Branch and ICT Desktop Support Branch.	Sunrise, FL	June 14, 2011.
81,732	JCIM, US–LLC	Kendallville, IN	June 15, 2011.
81,736	A. Jaffe, Inc., Remote Workers and Teleworkers Reporting to 7 West 45th Street, Suite 1403.	New York, NY	May 31, 2011.
81,752	WestPoint Home, LLC, Bed Products Division, Manpower, Inc.	Chipley, FL	July 3, 2011.
81,753	WestPoint Home LLC, Administration/Engineering Office	Valley, AL	May 21, 2012.
81,754	WestPoint Home LLC, Clemson Centre	Clemson, SC	June 26, 2012.
81,759	WestPoint Home LLC, Corporate Sales Office, Arkansas, Illinois, Georgia, Minnesota, etc..	New York, NY	June 26, 2012.
81,767	Cognizant Technology Solutions	Beaverton, OR	June 29, 2011.
81,771	Ross Sand Casting Industries, Inc.	Winchester, IN	July 3, 2011.
81,772	WellPoint, Inc., Sr. Business Div. Claims Dept., UI Wages WellPoint Companies, etc..	Indianapolis, IN	July 2, 2011.
81,772A	WellPoint, Inc., Senior Operations Claims Representatives and Membership Specialists.	Newbury Park, CA	July 2, 2011.
81,774	Ecolab, Accounts Payable Department, Adecco Staffing	Eagan, MN	July 3, 2011.
81,777	American Greetings Corporation, Supply Chain Division	Brooklyn, OH	July 5, 2011.
81,795	American Furniture Manufacturing, Inc., Cut and Sew Operations	Ecru, MS	October 1, 2011.
81,796	Adams Globalization, Transperfect Translations, IDTP Department	Austin, TX	July 9, 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 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
81,386	W. Scott & Company, The Staffing Center	St. Joseph, MO	

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 in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

TA–W No.	Subject firm	Location	Impact date
81,742	ConAgra Foods, Inc	Omaha, NE	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
81,675	PPP Careers, Inc., Navistar Truck Development & Technology Center, Truck Division, etc.	Fort Wayne, IN	
81,750	Crawford and Company, ICT Production Control Branch	Tucker, GA	

I hereby certify that the aforementioned determinations were issued during the period of July 16, 2012 through July 20, 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: July 25, 2012.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2012–18834 Filed 8–1–12; 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 August 13, 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 August 13, 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 25th day of July 2012.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[14 TAA petitions instituted between 7/16/12 and 7/20/12]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
81803	Arthritis Foundation (State/One-Stop)	Pittsburgh, PA	07/16/12	07/13/12
81804	Earth Grains/Sara Lee/Bimbo Baking (Workers)	Knoxville, TN	07/16/12	07/13/12
81805	Texas/New Mexico Newspapers Partnership (TNMNP) (Workers).	El Paso, TX	07/16/12	06/30/12
81806	Gates Corporation (Company)	Jefferson, NC	07/17/12	07/16/12
81807	CoreLogic (Workers)	Westlake, TX	07/18/12	07/17/12
81808	Ferrara Candy Company, Inc. (Company)	Chattanooga, TN	07/18/12	07/17/12
81809	Sathers Trucking, Inc. (Company)	Chattanooga, TN	07/18/12	07/17/12
81810	ACE Group/ACE USA/ACE American Insurance Company (State/One-Stop).	Chatsworth, CA	07/18/12	07/17/12
81811	Esselte (Company)	Morristown, TN	07/18/12	07/17/12
81812	Hewlett Packard (Company)	Boise, ID	07/19/12	07/13/12
81813	Crimzon Rose International (Workers)	West Warwick, RI	07/19/12	07/18/12
81814	Abound Solar (Workers)	Ft. Collins, CO	07/19/12	07/18/12
81815	Hartford Financial Services Group, Inc. (State/One-Stop)	Hartford, CT	07/19/12	07/11/12
81816	Powertex (State/One-Stop)	Rouses Point, NY	07/20/12	07/19/12

[FR Doc. 2012–18835 Filed 8–1–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,145; TA–W–81,145A]

Sunoco, Inc., R&M, Refining Division, Marcus Hook, PA; Sunoco, Inc., 10 Industrial Hwy., MS4 Building G, Lester, PA; Notice of Negative Determination on Reconsideration

On April 30, 2012, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Sunoco, Inc., R&M, Refining Division, Marcus Hook, Pennsylvania (TA–W–81,145), and Sunoco, Inc., Lester, Pennsylvania (TA–W–81,145A). The workers are engaged in employment related to the production of refined petroleum products. The Department's Notice was published in the **Federal Register** on May 17, 2012 (77 FR 29362).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination based on the findings that there was no increase in imports of refined petroleum products by Sunoco, Inc. or its customer, nor was there a shift in production to a foreign country or acquisition of production from a foreign country by the workers' firm. In addition, U.S. aggregate imports of like or directly competitive articles did not increase during the relevant period.

The request for reconsideration alleged that the worker separations at the subject facilities are related to increased imports of articles like or directly competitive with the refined petroleum products produced by the subject firm, and that, while the initial investigation revealed that U.S. aggregate imports of refined petroleum products decreased during the relevant period, the Department did not compare domestic production to U.S. imports of like or directly competitive articles.

Information obtained during the reconsideration investigation confirmed that there was no increase in imports by Sunoco, Inc., or its customer, nor was there a shift in production to a foreign country or acquisition of production from a foreign country by the workers' firm. In addition, additional research conducted during the reconsideration investigation revealed that U.S. aggregate imports of like or directly competitive articles did not increase relative to domestic production during the relevant period.

With respect to Section 222(a)(2)(A)(ii) of the Act, the investigation revealed no increased imports during the relevant period by the subject firm or its customers of articles like or directly competitive with those produced by the subject facilities, and no increased aggregate U.S. imports of articles like or directly competitive with refined petroleum products.

With respect to Section 222(a)(2)(B) of the Act, the investigation revealed that the workers' firm did not shift the production of refined petroleum products, or a like or directly competitive article, to a foreign county or acquire the production of refined petroleum products, or a like or directly competitive article, from a foreign county.

Conclusion

After careful review, I determine that the requirements of Section 222 of the Act, 19 U.S.C. 2272, have not been met and, therefore, deny the petition for group eligibility of Sunoco, Inc., R&M, Refining Division, Marcus Hook, Pennsylvania (TA–W–81,145), and Sunoco, Inc., Lester, Pennsylvania (TA–W–81,145A), to apply for adjustment assistance, in accordance with Section 223 of the Act, 19 U.S.C. 2273.

Signed in Washington, DC, on this 23rd day of July 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–18836 Filed 8–1–12; 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: Request for nomination of members to serve on the Maritime Advisory Committee for Occupational Safety and Health.

SUMMARY: OSHA invites interested persons to submit nominations for membership on the Maritime Advisory Committee for Occupational Safety and Health.

DATES: You must submit nominations for MACOSH membership (Postmarked, Sent, Transmitted, or Received) by September 17, 2012.

ADDRESSES: You may submit nominations and supporting materials by one of the following methods:

Electronically: You may submit nominations, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting nominations;

Facsimile: If your nomination and supporting materials, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648;

Regular mail, express mail, hand delivery, and messenger or courier service: You may submit nominations and supporting materials to the OSHA Docket Office, Docket No. OSHA–2012–0003, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (express mail, hand (courier) delivery, and messenger service) are accepted during the Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

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 post submissions in response to this **Federal Register** notice, including personal information provided, without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

Docket: To read or download submissions in response to this **Federal Register** notice, go to Docket No. OSHA–2012–0003 at *http://www.regulations.gov.* All documents in the docket are available in the *http://www.regulations.gov* index; however, some documents (e.g., copyrighted material) are not publicly available to read or download through that Web page. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: For press inquiries: Mr. 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.francis2@dol.gov.*

For general information about MACOSH: Ms. 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.*

For 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: *www.osha.gov.*

SUPPLEMENTARY INFORMATION: The Assistant Secretary of Labor for Occupational Safety and Health invites interested persons to submit nominations for membership on MACOSH.

Background. The Secretary of Labor and OSHA plan to recharter MACOSH for two years when the current charter expires on January 25, 2013. MACOSH is a Federal Advisory Committee established under the authority of the Occupational Safety and Health Act (OSH Act) (29 U.S.C. 651 *et seq.*), the Federal Advisory Committee Act (FACA) 5 U.S.C. App. 2, and regulations issued pursuant to those statutes (29 CFR part 1912, 41 CFR part 102–3). The Committee advises the Secretary of Labor on matters relating to occupational safety and health programs, enforcement, new initiatives, and standards for the maritime industries of the United States, which include longshoring, marine terminals, and shipyard employment. OSHA invites persons interested in serving on MACOSH to submit their names for consideration for Committee membership.

MACOSH reports to the Secretary of Labor through OSHA, and functions solely as an advisory body. MACOSH provides recommendations and advice to the Department of Labor and OSHA on various policy issues pertaining to safe and healthful employment in the maritime industries. The Secretary of Labor consults with MACOSH on various subjects, including: Ways to increase the effectiveness of safety and health standards that apply to the maritime industries, injury and illness prevention, the use of stakeholder partnerships to improve training and outreach initiatives, and ways to increase the national dialogue on occupational safety and health. In addition, MACOSH provides advice on enforcement initiatives that will improve the working conditions and the safety and health of workers in the maritime industries. The Committee meets approximately 3–4 times per year. Committee members serve without compensation, but OSHA provides travel and per diem expenses.

MACOSH Membership: MACOSH consists of not more than 15 members appointed by the Secretary of Labor. The Agency seeks committed MACOSH members who have a strong interest in the safety and health of workers in the maritime industries. The U.S. Department of Labor is committed to equal opportunity in the workplace. The Secretary of Labor will appoint members to create a broad-based, balanced and diverse committee reflecting the shipyard and longshoring industries, and representing affected interests such as employers, employees, safety and health professional organizations, government organizations with interests or activities related to the maritime industry, academia, and the public.

Nominations of new members or resubmissions of former or current members will be accepted in all categories of membership. Interested persons may nominate themselves or submit the name of another person whom they believe to be interested in, and qualified to serve on, MACOSH. Nominations also may be submitted by organizations from one of the categories listed above.

Submission requirements: Nominations must include the following information:

(1) Nominee's contact information and current employment or position;

(2) Nominee's resume or curriculum vitae, including prior membership on

MACOSH and other relevant organizations and associations;

(3) Maritime industry interest (e.g., employer, employee, public, state safety and health agency, academia) that the nominee is qualified to represent;

(4) A summary of the background, experience, and qualifications that addresses the nominee's suitability for membership; and

(5) A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in MACOSH meetings, and has no conflicts of interest that would preclude membership on MACOSH.

OSHA will conduct a basic background check of candidates before their appointment to MACOSH. The background check will involve accessing publicly available, internet-based sources.

Member selection. The Secretary of Labor will select MACOSH members on the basis of their experience, knowledge, and competence in the field of occupational safety and health, particularly in the maritime industries. Information received through this nomination process, and other relevant sources of information, will assist the Secretary of Labor in appointing members to MACOSH. In selecting MACOSH members, the Secretary of Labor will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals. OSHA will publish a list of MACOSH members in the **Federal Register**.

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 29 U.S.C. 655(b)(1) and 656(b), 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 July 30, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–18878 Filed 8–1–12; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0055]

Interim Staff Guidance on Changes to the Generic Aging Lessons Learned (GALL) Report Revision 2 AMP XI.M41, ''Buried and Underground Piping and Tanks''

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing the final License Renewal Interim Staff Guidance (LR–ISG), LR–ISG–2011–03, ''Changes to GALL Report Revision 2 Aging Management Program (AMP) XI.M41, 'Buried and Underground Piping and Tanks'.'' This LR–ISG provides changes to the recommendations in GALL Report Revision 2 AMP XI.M41 based on the staff's review of several license renewal applications' buried and underground piping and tanks AMPs and stakeholder input. The LR–ISG revises NRC staff recommended AMPs in NUREG–1801, Revision 2, ''Generic Aging Lessons Learned (GALL) Report,'' and the NRC staff's aging management review procedure and acceptance criteria contained in NUREG–1800, Revision 2, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants'' (SRP–LR). The NRC published Revision 2 of the SRP–LR and GALL Report in December 2010, and they are available in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession Nos. ML103490041 and ML103490036, respectively.

ADDRESSES: Please refer to Docket ID NRC–2012–0055 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0055. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The LR–ISG–2011–03 is available under ADAMS Accession No. ML12138A296.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Interim Staff Guidance Web Site:* LR–ISG documents are also available online under the ''License Renewal'' heading at *http://www.nrc.gov/reading-rm/doc-collections/#int.*

FOR FURTHER INFORMATION CONTACT: Mr. William Holston, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8573, or email: *William.Holston@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background Information

The NRC issues LR–ISG to communicate insights and lessons learned and to address emergent issues not covered in license renewal guidance documents. In this way, the NRC staff and stakeholders may use the guidance in an LR–ISG document until it is incorporated into a formal license renewal guidance document revision. The NRC staff issues LR–ISG in accordance with the LR–ISG Process, Revision 2 (ADAMS Accession No. ML100920158), for which a notice of availability was published in the **Federal Register** on June 22, 2010 (75 FR 35510).

The NRC staff developed LR–ISG–2011–03 to (a) Include inspection recommendations for plants that will not utilize a cathodic protection system in the period of extended operation, (b) remove the recommendation to volumetrically inspect underground piping to detect internal corrosion since other AMPs such as XI.M 38 manage the aging of internal surfaces of buried and underground piping and tanks, (c) base further increased inspection sample sizes on an analysis of extent of cause and extent of condition when adverse conditions are detected in the initial and subsequent doubled sample size rather than continuing to double the sample size, (d) add a recommendation that where damage to the coating is significant and the damage was caused

by non-conforming backfill, an extent of condition evaluation should be conducted to ensure that the as-left condition of backfill in the vicinity of observed damage will not lead to further degradation, (e) add specific acceptance criteria for cathodic protection surveys, (f) add the specific preventive and mitigative actions utilized by the AMP in the Final Safety Analysis Report Supplement description of the program as contained in the SRP–LR, (g) make miscellaneous and editorial changes, and (h) correct an internal conflict between AMP XI.M41 and AMP XI.M36, ''External Surfaces Monitoring of Mechanical Components.''

On March 9, 2012, (77 FR 14446) the NRC requested public comments on draft LR–ISG–2011–03 (ADAMS Accession No. ML11244A058). By letter dated March 27, 2012, (ADAMS Accession No. ML12089A021), the Nuclear Energy Institute (NEI) requested a 14-day extension to the comment period. The NRC staff granted the NEI's requested as noticed on April 11, 2012 (77 FR 21813) and given that the comment period had closed on April 9, 2012, the comment period was reopened until April 20, 2012.

The NRC received external comments from Mr. Jon Cavello on April 1, 2012 (ADAMS Accession No. ML12094A367), Mears Group on April 9, 2012 (ADAMS Accession No. ML12103A207), Det Norske Veritas (USA) Inc. on April 13, 2012 (ADAMS Accession No. ML12108A049), and NEI on April 20, 2012 (ADAMS Accession No. ML12114A214). No other external comments were submitted. The NRC considered these comments in developing the final LR–ISG. Detailed responses to the comments can be found in Appendix G of the final LR–ISG.

The final LR–ISG–2011–03 is approved for NRC staff and stakeholder use and will be incorporated into NRC's next formal license renewal guidance document revision.

Backfitting and Issue Finality

Issuance of this final LR–ISG does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' of 10 CFR. As discussed in the ''Backfitting Discussion'' section of final LR–ISG–2011–03, the LR–ISG is directed to holders of operating licenses or combined licenses who are currently in the license renewal process. The LR–ISG is not directed to holders of operating licenses or combined licenses until they apply for license renewal. The LR–ISG is also not directed to licensees who already hold renewed operating or combined licenses.

Dated at Rockville, Maryland, this 26th day of July, 2012.

For the Nuclear Regulatory Commission.

Melanie A. Galloway,

Deputy Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–18862 Filed 8–1–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0180]

Proposed Revision 0 to Standard Review Plan Section 19.5: Adequacy of Design Features and Functional Capabilities Identified and Described for Withstanding Aircraft Impacts

AGENCY: Nuclear Regulatory Commission.

ACTION: Solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on a proposed revision to its Standard Review Plan (SRP), NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.'' The NRC seeks comments on a new section of the SRP: Section 19.5: ''Adequacy of Design Features and Functional Capabilities Identified and Described for Withstanding Aircraft Impacts,'' (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12138A468), under Title 10 of the Code of Federal Regulations (10 CFR) part 52. The current SRP does not contain guidance on Aircraft Impact Assessment.

DATES: Comments must be filed no later than 30 days from the date of publication of this notice in the **Federal Register**. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0180. You may submit comments by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0180. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

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

FOR FURTHER INFORMATION CONTACT: Amy E. Cubbage, Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–2875 or email at *amy.cubbage@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC seeks public comment on a proposed new section of the Section 19.5: ''Adequacy of Design Features and Functional Capabilities Identified and Described for Withstanding Aircraft Impacts,'' (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12138A468). This section has been developed to assist NRC staff with the review of applications for certain construction permits, operating licenses, design approvals, design certifications, manufacturing licenses, license amendments, and combined licenses and to inform new reactor applicants and other affected entities of proposed SRP guidance. Following NRC staff evaluation of public comments, the NRC intends to incorporate the final approved guidance into the next revision of NUREG–0800.

The SRP is guidance for the NRC staff. The SRP is not a substitute for the NRC's regulations, and compliance with the SRP is not required. Accordingly, issuance of the SRP does not constitute ''backfitting'' as defined in 10 CFR 50.109(a)(1) of the Backfit Rule and is not otherwise inconsistent with the applicable issue finality provisions in 10 CFR part 52.

Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0180 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is

publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0180.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0180 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 25th day of July 2012.

Amy E. Cubbage,

Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2012–18864 Filed 8–1–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67520; File No. SR–BATS–2012–031]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Program Related to Trading Pauses Due to Extraordinary Market Volatility

July 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to extend a pilot program previously approved by the Commission related to Rule 11.18, entitled ''Trading Halts Due to Extraordinary Market Volatility.''

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's rule related to individual stock circuit breakers, which is contained in Rule 11.18(d) and Interpretation and Policy .05 to Rule 11.18. The rule, explained in further detail below, is currently operating as a pilot program set to expire on July 31, 2012. The Exchange proposes to extend the pilot program to February 4, 2013.

On June 10, 2010, the Commission approved on a pilot basis changes to BATS Rule 11.18 to provide for uniform market-wide trading pause standards for individual securities in the S&P 500® Index that experience rapid price movement.[3] Later, the Exchange and other markets proposed extension of the trading pause standards on a pilot basis to individual securities in the Russell 1000® Index and specified Exchange Traded Products, which changes the Commission approved on September 10, 2010.[4] More recently, the Exchange proposed expansion of the pilot program to apply to all NMS stocks.[5] This expansion was approved on June 23, 2011.[6] The pilot program relating to trading pause standards has been extended four times since its inception.[7]

The Exchange believes the benefits to market participants from the individual stock trading pause rule should be continued on a pilot basis.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the

[3] Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–BATS–2010–014).

[4] Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–BATS–2010–018).

[5] Securities Exchange Act Release No. 64435 (May 6, 2011), 76 FR 27684 (May 12, 2011) (SR–BATS–2011–016).

[6] 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).

[7] Securities Exchange Act Release No. 63497 (December 9, 2010), 75 FR 78315 (December 15, 2010) (SR–BATS–2010–037); Securities Exchange Act Release No. 64207 (April 6, 2011), 76 FR 20424 (April 12, 2011) (SR–BATS–2011–011); Securities Exchange Act Release No. 65081 (August 9, 2011), 76 FR 50798 (August 16, 2011) (SR–BATS–2011–027); Securities Exchange Act Release No. 66190 (January 19, 2012), 77 FR 3834 (January 25, 2012) (SR–BATS–2012–001).

requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[9] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed rule change is also consistent with Section 11A(a)(1) of the Act [10] in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. The Exchange believes that the pilot program is working well, that it has been infrequently invoked during the previous months, and that the extension of the pilot will allow the Exchange to further assess the effect of the pilot on the market until the implementation, on February 4, 2013, of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934 (the ''Limit Up-Limit Down Plan'').[11]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BATS–2012–031 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BATS–2012–031. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2012–031 and should be submitted on or before August 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18838 Filed 8–1–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

[11] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67516; File No. SR–BATS–2012–029]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 20.6, Entitled ''Obvious Error''

July 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 16, 2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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 Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 20.6, entitled ''Obvious Error'', to modify the calculation of the Theoretical Price used in connection with Obvious Error[5] rulings and to clarify the Obvious Error transactions for which the Exchange can either adjust the execution price of the transaction or nullify the transaction.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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 this filing is to amend Rule 20.6, which is applicable to the Exchange's equity options platform (''BATS Options''), to modify the calculation of the Theoretical Price used in connection with Obvious Error rulings, as described below. Under current Rule 20.6, the Exchange defines the Theoretical Price, if the series is traded on at least one other options exchange, as the mid-point of the National Best Bid and Offer (''NBBO'') just prior to the transaction in question. The Exchange proposes to define the Theoretical Price for purposes of Rule 20.6 as the last National Best Bid (''NBB'') price with respect to an erroneous sell transaction and the last National Best Offer (''NBO'') price with respect to an erroneous buy transaction, just prior to the transaction. The proposed methodology is used by several other options exchanges.[6]

The proposed rule change would also amend Rule 20.6(e) to delete the requirement that each party to a transaction be an Options Member,[7] in order to permit the Exchange to adjust the execution price. It is implicit that all transactions that occur on BATS Options must be executed between Options Members so deleting this explicit requirement will have no impact on the ultimate functionality of the Rule. Furthermore, the proposed rule change would amend Rule 20.6(e) to clarify that if at least one party to the Obvious Error transaction is for the account of or on behalf of a party other than a Market Maker, then the trade will be nullified unless the parties otherwise agree to an adjustment price for the transaction within thirty (30) minutes of being notified by the Exchange of the Obvious Error. Making a distinction between the parties to an Obvious Error transaction when the Exchange takes action to either adjust the execution price or nullify the trade is proper in that if a transaction involves a Market Maker on both sides, these parties are better able to understand the risk of an adjustment to the execution price than if one or both sides of the transaction is for the account of a non-Market Maker. The Exchange believes that the proposal to amend Rule 20.6(e) is consistent with existing rules of the Exchange's competitors.[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[9] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[10] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. Specifically, the definition of Theoretical Price, as proposed, is consistent with the Act due to the fact that it provides a specific and objective definition for use in determining whether a particular transaction was or was not an Obvious Error. Further, the proposal will define the Theoretical Price for purposes of Obvious Error determinations in a manner that is consistent with the majority of the other options exchanges. The proposal will also make a distinction that transactions on behalf of a party other than a Market Maker will be nullified rather than adjusted, eliminating the risk that the transaction execution price will be adjusted under those circumstances where a party to the transaction may not fully appreciate the risks associated with such action.

The proposal is consistent with Section 6(b)(8) of the Act,[11] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal also promotes transparency in that it (i) aligns the definition of Theoretical Price with that used by most other options exchanges, reducing the potential for confusion by Exchange members; (ii) puts Market Maker only transactions in a separate category from transactions that are on the behalf of non-Market Makers, thereby protecting non-Market makers from execution price adjustment where nullification of the transaction is more appropriate; and (iii) puts procedural safeguards around

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] As defined in Exchange Rule 20.6(b).

[6] *See* NYSE Arca Options Rule 6.87(a)(2)(A); *see also* NYSE Amex Options Rule 975NY(a)(2)(A); CBOE Rule 6.25(a)(1)(i); NASDAQ OMX PHLX Rule 1092(b)(i); ISE Rule 720(a)(3).

[7] As defined in Exchange Rule 16.1(a)(38).

[8] *See* NYSE Arca Options Rule 6.87(a)(3)(A) and (B); *see also* NYSE Amex Options Rule 975NY(a)(3)(A) and (B); CBOE Rule 6.25(a)(1); NASDAQ OMX PHLX Rule 1092(e)(ii); ISE Rule 720(b)(2)(ii).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(8).

transactions that are on behalf of non-Market Makers, thereby protecting non-Market makers from execution price adjustment where nullification of the transaction is more appropriate.

The proposed rule change to Rule 20.6(e) is also consistent with Section 11A(a)(1) of the Act [12] in that it seeks to assure fair competition among brokers and dealers and exchange markets by handling obvious error reviews in a manner consistent with the Exchange's competitors.[13] As described above, all aspects of the proposal will serve to align the Exchange's Obvious Error procedures with those of other options exchanges.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6)(iii) thereunder.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2012–029 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–BATS–2012–029. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–BATS–2012–029, and should be submitted on or before August 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18822 Filed 8–1–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78k–1(a)(1).

[13] *See supra* notes 5 and 7.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67521; File No. SR–BYX–2012–016]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Program Related to Clearly Erroneous Execution Reviews

July 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2012, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to extend a pilot program related to Rule 11.17, entitled ''Clearly Erroneous Executions.''

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

current rule applicable to Clearly Erroneous Executions, Rule 11.17. The rule, explained in further detail below, is currently operating as a pilot program set to expire on July 31, 2012.[3] The Exchange proposes to extend the pilot program to February 4, 2013.

On October 4, 2010, the Exchange filed an immediately effective filing to adopt various rule changes to bring BYX Rules up to date with the changes that had been made to the rules of BATS Exchange, Inc., the Exchange's affiliate, while BYX's Form 1 Application to register as a national security exchange was pending approval. Such changes included changes to the Exchange's Rule 11.17, on a pilot basis, to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[4] The Exchange also adopted additional changes to Rule 11.17 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.17.[5] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should be approved to continue on a Pilot basis through February 4, 2013, the implementation date of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934 (the ''Limit Up-Limit Down Plan'').[6]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[8] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BYX–2012–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BYX–2012–016. This file number should be included on the subject line if email is used. To help the

[3] Securities Exchange Act Release No. 66187 (January 19, 2012), 77 FR 3824 (January 25, 2012) (SR–BYX–2012–002).

[4] Securities Exchange Act Release No. 63097 (October 13, 2010), 75 FR 64767 (October 20, 2010) (SR–BYX–2010–002).

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BYX–2012–016 and should be submitted on or before August 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18839 Filed 8–1–12; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67522; File No. SR–BYX–2012–015]

Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Program Related to Trading Pauses Due to Extraordinary Market Volatility

July 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2012, BATS Y–Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to extend a pilot program related to Rule 11.18, entitled ''Trading Halts Due to Extraordinary Market Volatility.''

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's rule related to individual stock circuit breakers, which is contained in Rule 11.18(d) and Interpretation and Policy .05 to Rule 11.18. The rule, explained in further detail below, is currently operating as a pilot program set to expire on July 31, 2012. The Exchange proposes to extend the pilot program to February 4, 2013.

On October 4, 2010, the Exchange filed an immediately effective filing to adopt various rule changes to bring BYX Rules up to date with the changes that had been made to the rules of BATS Exchange, Inc., the Exchange's affiliate, while BYX's Form 1 Application to register as a national securities exchange was pending approval. Such changes included changes to the Exchange's Rule 11.18, on a pilot basis, to provide for uniform market-wide trading pause standards for individual securities in the S&P 500® Index, the Russell 1000® Index and specified Exchange Traded Products that experience rapid price movement.[3] More recently, the Exchange proposed expansion of the pilot program to apply to all NMS stocks.[4] This expansion was approved on June 23, 2011.[5] The pilot program relating to trading pause standards has been extended four times since its inception.[6]

The Exchange believes the benefits to market participants from the individual stock trading pause rule should be continued on a pilot basis.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[8] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed rule change is also consistent with Section 11A(a)(1) of the Act[9] in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. The Exchange believes that the pilot program is working well, that it has been infrequently invoked during

[3] Securities Exchange Act Release No. 63097 (October 13, 2010), 75 FR 64767 (October 20, 2010) (SR–BYX–2010–002).

[4] Securities Exchange Act Release No. 64433 (May 6, 2011), 76 FR 27680 (May 12, 2011) (SR–BYX–2011–011).

[5] 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).

[6] Securities Exchange Act Release No. 63513 (December 9, 2010), 75 FR 78784 (December 16, 2010) (SR–BYX–2010–007); Securities Exchange Act Release No. 64214 (April 6, 2011), 76 FR 20430 (April 12, 2011) (SR–BYX–2011–007); Securities Exchange Act Release No. 65082 (August 9, 2011), 76 FR 50800 (August 16, 2011) (SR–BYX–2011–018); Securities Exchange Act Release No. 66189 (January 19, 2012), 77 FR 3827 (January 25, 2012) (SR–BYX–2012–001).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

the previous months, and that the extension of the pilot will allow the Exchange to further assess the effect of the pilot on the market until the implementation, on February 4, 2013, of the Plan To Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934 (the ''Limit Up-Limit Down Plan'').[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BYX–2012–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BYX–2012–015. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BYX–2012–015 and should be submitted on or before August 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18841 Filed 8–1–12; 8:45 am]

BILLING CODE 8011–01–P

[10] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67518; File No. SR–NASDAQ–2012–089]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Post-Only Order Type on NOM

July 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 20, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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.

[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

NASDAQ proposes to add an additional feature to the Post-Only Order type on the NASDAQ Options Market (''NOM''), as described further below.

The text of the proposed rule change is available at nasdaq.cchwallstreet.com, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently adopted a new order type called Post-Only Order.[3] Thereafter, the Exchange amended the order type and delayed implementation until February 2012,[4] and again until March 2012.[5] It became available on March 5, 2012.

A Post-Only Order is an order that will not remove liquidity from the System and is to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another market. Currently, Post-Only Orders are evaluated at the time of entry with respect to locking or crossing other orders as follows: (i) if a Post-Only Order would lock or cross an order on the System, the order will be re-priced to $.01 below the current low offer (for bids) or above the current best bid (for offers) and displayed by the System at one minimum price increment below the current low offer (for bids) or above the current best bid (for offers); and (ii) if a Post-Only Order would not lock or cross an order on the System but would lock or cross the National Best Bid or Offer (''NBBO'') as reflected in the protected quotation of another market center, the order will be handled pursuant to Chapter VI, Section 7(b)(3)(C).[6] Post-Only Orders received prior to the opening cross or after market close will be rejected. Post-Only Orders may not have a time-in-force designation of Good Til Cancelled or Immediate or Cancel.

At this time, the Exchange proposes to permit firms to have their Post-Only Orders returned whenever the order would lock or cross the NBBO. Similarly, if the Post-Only Order would be placed on the book at a price other than its limit price, if the Participant so chooses, it will be returned. This includes situations where the Post-Only Order would lock or cross another order on the System, but also covers any situation where order is placed on the book at a price other than its limit price. The Exchange believes that this implementation will satisfy the needs of its Participants, because it will give them greater control over the circumstances in which their orders are executed. The Exchange will announce the implementation date to its membership by Options Trader Alert.

2. *Statutory Basis*

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. NASDAQ believes that permitting Participants to have Post-Only Orders returned is consistent with just and equitable principles of trade and protects investors and the public interest, because Participants, who have requested this feature, may prefer to submit the order to another options exchange, for fee or other reasons, rather than leave the order on NOM. Additionally, a Participant may expect the order to post at its limit price based on its view of the current state of the market. Due to its dynamic nature, however, the state of the market may change by the time the order is received by NOM, resulting in the order being posted at a price other than its limit price. In this case, the Participant would rather have the order returned so that it can reevaluate the market and make a new routing decision. In order to accommodate this request, NASDAQ is proposing the new feature for returning Post-Only Orders. The purpose of the Post-Only Order is to avoid removing liquidity and the resulting execution costs; with the proposed ability to have the order returned, Participants should have greater control over the execution and display of such order.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[11] normally does not become

[3] *See* Securities Exchange Act Release No. 65761 (November 16, 2011), 76 FR 72230 (November 22, 2011) (SR–NASDAQ–2011–152).

[4] *See* Securities Exchange Act Release No. 65929 (December 9, 2011), 76 FR 78057 (December 15, 2011) (SR–NASDAQ–2011–171).

[5] *See* Securities Exchange Act Release No. 66347 (February 7, 2012), 77 FR 7639 (February 13, 2012) (SR–NASDAQ–2012–023).

[6] An order will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. An order that is designated by the member as routable will be routed in compliance with applicable Trade-Through and Locked and Crossed Markets restrictions. An order that is designated by a member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[11] 17 CFR 240.19b–4(f)(6).

operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay, noting that doing so would immediately provide Participants with the option of having their Post-Only Orders returned under certain circumstances, as set forth in this proposal. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[13] Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2012–089 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–NASDAQ–2012–089. 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 a.m. and 3 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–NASDAQ–2012–089 and should be submitted on or before August 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18893 Filed 8–1–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67529; File No. SR–NYSE–2012–30]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the New York Stock Exchange LLC Price List To Establish Pricing for the Retail Liquidity Program

July 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 18, 2012, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, 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.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to establish pricing for the Retail Liquidity Program. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to establish pricing for the Retail Liquidity Program, which has been approved by the Commission to operate for one year as a pilot program.[3] The Exchange proposes to implement the fee changes on August 1, 2012. The Retail Liquidity Program is designed to attract additional retail order flow to the Exchange for NYSE-listed securities while also providing the potential for price improvement to such order flow.

Two new classes of market participants were created under the Retail Liquidity Program: (1) Retail Member Organizations (''RMOs''),[4] which are eligible to submit certain retail order flow (''Retail Orders'') [5] to

[3] *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR–NYSE–2011–55).

[4] ''RMO'' is defined in NYSE Rule 107C(a)(2) as a member organization (or a division thereof) that has been approved by the Exchange to submit Retail Orders.

[5] ''Retail Order'' is defined in NYSE Rule 107C(a)(3) as an agency order that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. A Retail Order is an Immediate or Cancel Order and must operate in accordance with NYSE Rule 107C(k). A Retail Order may be an odd lot, round lot or a partial round lot (''PRL'').

the Exchange, and (2) Retail Liquidity Providers (''RLPs''),[6] which are required to provide potential price improvement for Retail Orders in the form of non-displayed interest (''Retail Price Improvement Orders'' or ''RPIs'')[7] that is better than the best protected bid (''PBB'') or the best protected offer (''PBO'') (together, the ''PBBO'').[8] Member organizations other than RLPs are also permitted, but not required, to submit RPIs.

In proposing the Retail Liquidity Program, the Exchange stated that it would submit a separate proposal to amend its Price List in connection with the Retail Liquidity Program.[9] Accordingly, the Exchange proposes to adopt the following pricing:[10]

- RPIs of RLPs will be free if executed against Retail Orders. The Exchange notes that, as provided under NYSE Rule 107(C)(f)(3), the percentage requirement thereunder is not applicable in the first two calendar months that a member organization operates as an RLP. Instead, the percentage requirement takes effect on the first day of the third consecutive calendar month that the member organization operates as an RLP. The Exchange proposes that, during the first two calendar months that a member organization operates as an RLP, the RLP's RPIs will be free if executed against Retail Orders, regardless of the percentage of the trading day at which the RLP maintains an RPI that is priced better than the PBBO. Thereafter, this proposed rate would only be applicable if the RLP satisfies the percentage requirement of NYSE Rule 107(C)(f). An RLP that does not satisfy the percentage requirement of NYSE Rule 107(C)(f) would be charged the $0.0003 per share rate described below for non-RLP member organizations.[11]
- RPIs of non-RLP member organizations will be charged $0.0003 per share if executed against Retail Orders; provided, however, that RPIs of non-RLP member organizations that execute an average daily volume (''ADV'')[12] during the month of at least 500,000 shares of RPIs will be free if executed against Retail Orders.
- Retail Orders of RMOs will receive a credit of $0.0005 per share if executed against RPIs of RLPs and other member organizations. The Exchange notes that an RMO submitting a Retail Order could choose one of three ways for the Retail Order to interact with available contra-side interest. First, a Type 1-designated Retail Order could interact only with available contra-side RPIs. These Type 1-designated Retail Orders would not interact with other available contra-side interest in Exchange systems or route to other markets. Portions of a Type 1-designated Retail Order that are not executed would be cancelled. Second, a Type 2-designated Retail Order could interact first with available contra-side RPIs and any remaining portion would be executed as a non-routable Regulation NMS-compliant Immediate or Cancel Order, which would sweep the Exchange's Book without being routed to other markets, and any remaining portion would be cancelled. Finally, a Type 3-designated Retail Order could interact first with available contra-side RPIs and any remaining portion would be executed as a routable NYSE Immediate or Cancel Order, which would sweep the Exchange's Book and be routed to other markets, and any remaining portion would be cancelled. A Retail Order that executes against the Book will be charged according to the standard rate applicable to non-Retail Orders, which is currently $0.0023 per share (or $0.0022 per share if the RMO has satisfied the liquidity thresholds applicable to such rate, as described in the Price List). Also, the standard routing fee (i.e., $0.0030 per share) would apply to a Retail Order that is routed away from the Exchange and executed on another market.

The Exchange proposes that the pricing described herein be applicable, unless otherwise amended at a later date, for so long as the Retail Liquidity Program is in effect. Because the Retail Liquidity Program has been approved to operate as a one-year pilot program, the Exchange anticipates that it will periodically review this pricing to seek to ensure that it contributes to the goal of the Retail Liquidity Program, which is designed to attract additional retail order flow to the Exchange for NYSE-listed securities while also providing the potential for price improvement to such order flow.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[13] in general, and furthers the objectives of Section 6(b)(4) of the Act,[14] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would establish pricing designed to increase competition among execution venues, encourage additional liquidity and offer the potential for price improvement to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.[15]

The Exchange believes that the $0.0005 credit proposed herein for executions of RMOs against RPIs is reasonable, equitable and not unfairly discriminatory because it will create a financial incentive to bring additional

[6] ''RLP'' is defined in NYSE Rule 107C(a)(1) as a member organization that is approved by the Exchange to act as such and that is required to submit Retail Price Improvement in accordance with NYSE Rule 107C.

[7] ''RPI'' is defined in NYSE Rule 107C(a)(4) and consists of non-displayed interest in NYSE-listed securities that is priced better than the PBB or PBO, as such terms are defined in Regulation NMS Rule 600(b)(57), by at least $0.001 and that is identified as such. Exchange systems will monitor whether RPI buy or sell interest, adjusted by any offset and subject to the ceiling or floor price, is eligible to interact with incoming Retail Orders. An RPI remains non-displayed in its entirety (the buy or sell interest, the offset, and the ceiling or floor). An RLP may only enter an RPI for securities to which it is assigned as RLP. An RPI may be an odd lot, round lot or a PRL.

[8] The terms ''protected bid'' and ''protected offer'' have the same meaning as defined in Regulation NMS Rule 600(b)(57). The PBB is the best-priced protected bid and the PBO is the best-priced protected offer. Generally, the PBB and PBO and the national best bid (''NBB'') and national best offer (''NBO''), respectively, will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the PBB or PBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

[9] Securities Exchange Act Release No. 65672 (November 2, 2011), 76 FR 69788 (November 9, 2011) (SR–NYSE–2011–55).

[10] The Exchange notes that participation in the Retail Liquidity Program is optional and, accordingly, the pricing proposed herein would not apply to a member organization that does not choose to participate.

[11] The Exchange notes that the RPI executions of a member organization disqualified from acting as an RLP would thereafter be subject to the transaction pricing applicable to non-RLP member organizations.

[12] ADV calculations exclude early closing days.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] *See* Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's Web site). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

retail order flow to a public market. The Exchange also believes applying standard non-Retail Order rates to Retail Orders that execute against the Book or that are routed away from the Exchange and executed on another market is reasonable, equitable and not unfairly discriminatory because these are the rates that would apply to such orders, but for the Retail Order designation. The Exchange also believes that not charging RLPs that satisfy the percentage requirement of NYSE Rule 107(C)(f) for their executions of RPIs is reasonable, equitable and not unfairly discriminatory because it will incentivize member organizations to become RLPs and therefore could result in greater price improvement for Retail Orders. Similarly, the Exchange believes that not charging non-RLP member organizations that execute an ADV of at least 500,000 shares of RPIs during the month for their executions of RPIs is reasonable, equitable and not unfairly discriminatory because it will incentivize such non-RLPs to submit RPIs for interaction with Retail Orders. Conversely, the Exchange believes that charging RLPs and non-RLP member organizations that do not satisfy the percentage requirements of NYSE Rule 107(C)(f) and the 500,000 share ADV threshold, respectively, is reasonable, equitable and not unfairly discriminatory because it will incentivize RLPs and non-RLPs to submit RPIs and, therefore, contribute to robust amounts of RPI liquidity being available for interaction with the Retail Orders submitted by RMOs.

While the Exchange believes that markets and price discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. The pricing proposed herein, like the Retail Liquidity Program itself, is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market, and the pricing related thereto, would result in better prices for retail investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] thereunder, because it establishes a due, fee, or other charge imposed by NYSE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2012–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–30. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2012–30 and should be submitted on or before August 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18894 Filed 8–1–12; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67517; File No. SR–BX–2012–057]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Post-Only Order Type on BX Options

July 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2012, NASDAQ OMX BX, Inc. (''BX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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.

[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

A proposal for the BX Options market (''BX Options'') to add an additional feature to the Post-Only Order type.

The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/,* at BX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 III 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

A Post-Only Order is an order that will not remove liquidity from the System and is to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another market.[3] Currently, Post-Only Orders are evaluated at the time of entry with respect to locking or crossing other orders as follows: (i) If a Post-Only Order would lock or cross an order on the System, the order will be re-priced to $.01 below the current low offer (for bids) or above the current best bid (for offers) and displayed by the System at one minimum price increment below the current low offer (for bids) or above the current best bid (for offers); and (ii) if a Post-Only Order would not lock or cross an order on the System but would lock or cross the National Best Bid or Offer (''NBBO'') as reflected in the protected quotation of another market center, the order will be handled pursuant to Chapter VI, Section 7(b)(3)(C).[4] Post-Only Orders received prior to the opening cross or after market close will be rejected. Post-Only Orders may not have a time-in-force designation of Good Til Cancelled or Immediate or Cancel.

At this time, the Exchange proposes to permit firms to have their Post-Only Orders returned whenever the order would lock or cross the NBBO.[5] Similarly, if the Post-Only Order would be placed on the book at a price other than its limit price, if the Participant so chooses, it will be returned. This includes situations where the Post-Only Order would lock or cross another order on the System, but also covers any situation where order is placed on the book at a price other than its limit price. The Exchange believes that this implementation will satisfy the needs of its Participants, because it will give them greater control over the circumstances in which their orders are executed. The Exchange will announce the implementation date to its membership by Options Trader Alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. BX believes that permitting Participants to have Post-Only Orders returned is consistent with just and equitable principles of trade and protects investors and the public interest, because Participants, who have requested this feature, may prefer to submit the order to another options exchange, for fee or other reasons, rather than leave the order on BX Options. Additionally, a Participant may expect the order to post at its limit price based on its view of the current state of the market. Due to its dynamic nature, however, the state of the market may change by the time the order is received by BX Options, resulting in the order being placed on the book at a price other than its limit price. In this case, the Participant would rather have the order returned so that it can reevaluate the market and make a new routing decision. In order to accommodate this request, BX is proposing the new feature for returning Post-Only Orders. The purpose of the Post-Only Order is to avoid removing liquidity and the resulting execution costs; with the proposed ability to have the order returned, Participants should have greater control over the execution and display of such order.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[3] *See* BX Options Rules, Chapter VI, Section 1(e)(11). Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) (Approving the establishment of the BX Options market).

[4] An order will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. An order that is designated by the member as routable will be routed in compliance with applicable Trade-Through and Locked and Crossed Markets restrictions. An order that is designated by a member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions.

[5] If the Participant does not affirmatively elect the return feature, the default setting is that the Post-Only Order will not be returned by the new feature, but will instead be handled under the existing rule.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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–BX–2012–057 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–BX–2012–057. 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 a.m. and 3 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–BX–2012–057 and should be submitted on or before August 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18892 Filed 8–1–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67515; File No. SR–Phlx–2012–96]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update the Trading Floor Qualification Examination

July 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder[2] notice is hereby given that on July 13, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to revise its floor qualification examination. Specifically, the Exchange proposes to delete obsolete questions, revise outdated questions and add several new questions.

The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com,* at Phlx's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 improve the Exchange's program for qualification of members by updating its floor qualification examination. The Exchange has employed a written floor qualification examination, which is required for persons seeking to act as members on the trading floor,[3] for many years. The examination was last amended in late 2010.[4]

At this time, the Exchange proposes to update the exam in a variety of ways. The exam would continue to be comprised of 100 questions, randomly and electronically selected from a question bank of approximately 172 questions. The floor qualification examination is administered by the Exchange's membership department, and requires a passing score of 70 during a 75 minute testing period.

In terms of outdated questions, the Exchange proposes to delete about 19 obsolete or confusing questions, mostly pertaining to manual trading, which is less prevalent today. The Exchange proposes to modify approximately 38 questions to make various minor corrections and clarifications reflecting changes over time. Similarly, the Exchange proposes to add approximately 17 new questions generally covering Qualified Contingent Cross Orders, Complex Orders, Remote Specialists, and price improvement.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rules 620(a) and 901(c). *See also* Rule 1061 applicable to Floor Brokers.

[4] *See* Securities Exchange Act Release No. 63603 (December 22, 2010), 75 FR 82419 (December 30, 2010) (SR–Phlx–2010–180). *See also* Securities Exchange Act Release No. 33304 (December 9, 1993), 58 FR 65613 (December 15, 1993) (SR–Phlx–92–34).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

general to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with Section 6(c)(3)(B) of the Act,[7] which authorizes exchanges to prescribe standards of training, experience and competence for persons associated with exchange members, and gives exchanges the authority to bar a natural person from becoming a member or a person associated with a member, if the person does not meet the standards of training, experience and competence prescribed in the rules of the exchange. The Exchange believes that revising its floor member qualification examination should better test the knowledge of its floor members, and thereby enhance the Exchange's standards for training, experience and competence.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(1)[9] thereunder, the Exchange has designated this proposal as one that constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO, and therefore has become effective.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[7] 15 U.S.C. 78f(c)(3)(B).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–96 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–Phlx–2012–96. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–96 and should be submitted on or before August 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18821 Filed 8–1–12; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67523; File No. SR–BATS–2012–032]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Program Related to Clearly Erroneous Execution Reviews

July 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to extend a pilot program previously approved by the Commission related to Rule 11.17, entitled ''Clearly Erroneous Executions.''

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions, Rule 11.17. The rule, explained in further detail below, is currently operating as a pilot program set to expire on July 31, 2012.[3] The Exchange proposes to extend the pilot program to February 4, 2013.

On September 10, 2010, the Commission approved, on a pilot basis, changes to BATS Rule 11.17 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[4] The Exchange also adopted additional changes to Rule 11.17 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.17.[5] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should be approved to continue on a Pilot basis through February 4, 2013, the implementation date of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934 (the ''Limit Up-Limit Down Plan'').[6]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[8] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BATS–2012–032 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.

[3] Securities Exchange Act Release No. 66188 (January 19, 2012), 77 FR 3825 (January 25, 2012) (SR–BATS–2012–002).

[4] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–BATS–2010–016).

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File No. SR–BATS–2012–032. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2012–032 and should be submitted on or before August 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18842 Filed 8–1–12; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67525; File No. SR–NYSEMKT–2012–29]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE MKT Equities Price List To Change Certain Fees Relating to Trading Pursuant to Unlisted Trading Privileges of Securities Listed on the Nasdaq Stock Market LLC and Other Conforming Changes

July 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 20, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') 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 Exchange proposes to amend the NYSE MKT Equities Price List (''Price List'') to change certain fees relating to trading pursuant to unlisted trading privileges (''UTP'') of securities listed on the Nasdaq Stock Market LLC (''Nasdaq'') and to make other conforming changes. The Exchange proposes to make the rule change operative on August 1, 2012. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List to change certain fees relating to trading pursuant to UTP of securities listed on Nasdaq and to make other conforming changes.

For fees and credits applicable to market participants for transactions in Nasdaq securities traded pursuant to UTP, the Exchange proposes to provide a $0.0025 equity per share credit per transaction when adding liquidity, including displayed and non-displayed orders, when the share price is $1.00 or more; currently, the Exchange does not provide a credit. The Exchange proposes to change the $0.0003 equity per share credit for all other transactions (*i.e.,* when taking liquidity from the Exchange) with a per share price of $1.00 or more to a $0.0030 equity per share charge.[3] The Exchange proposes to increase the $0.0027 per share routing fee to $0.0030 when the share price is $1.00 or more. The Exchange proposes to increase the equity per share credit per transaction for displayed liquidity when adding liquidity in orders that originally display a minimum of 2,000 shares with a trading price of at least $5.00 per share, as long as the order is not cancelled in an amount that would reduce the original displayed amount below 2,000 shares, from $0.0020 to $0.0035. The Exchange does not propose to change any fees or credits applicable to market participants for transactions in Nasdaq securities traded pursuant to UTP when the share price is below $1.00.

For fees and credits applicable to Designated Market Makers (''DMMs'') for transactions in Nasdaq securities traded pursuant to UTP, the Exchange proposes to increase the equity per share credit per transaction when adding liquidity from $0.0020 to $0.0040 when the share price is $1.00 or more. The Exchange proposes to change the $0.0003 equity per share credit for all other transactions (i.e., when taking liquidity from the Exchange) with a per share price of $1.00 or more to a $0.0030 equity per share charge. The Exchange proposes to increase the $0.0027 per share routing fee to $0.0030 when the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange does not propose to change the current Price List for agency cross trades, non-electronic agency transactions between floor brokers in the crowd, or Discretionary e-Quotes and verbal agency interest by floor brokers.

share price is $1.00 or more. The Exchange proposes to eliminate the $0.0020 equity per share credit per transaction for the displayed portion of s-Quotes when adding liquidity in s-Quotes that display 2,000 shares or more at the time of execution with a trading price of at least $5.00 per share. The Exchange does not propose to change any fees or credits applicable to DMMs for transactions in Nasdaq securities traded pursuant to UTP when the share price is below $1.00.

For fees and credits applicable to Supplemental Liquidity Providers (''SLPs'') for transactions in Nasdaq securities traded pursuant to UTP, the Exchange proposes to increase the equity per share credit per transaction when adding liquidity, if the SLP meets quoting requirements pursuant to Rule 107B, from $0.0005 to $0.0030 when the share price is $1.00 or more. The Exchange proposes to add an equity per share credit per transaction when adding liquidity, if the SLP does not meet the quoting requirement pursuant to Rule 107B, to $0.0025 when the share price is $1.00 or more; currently, the Exchange does not provide a credit. Lastly, the Exchange proposes to increase the equity per share credit per transaction for displayed liquidity when adding liquidity in orders that originally display a minimum of 2,000 shares with a trading price of at least $5.00 per share, as long as the order is not cancelled in an amount that would reduce the original displayed amount below 2,000 shares, from $0.0020 to $0.0035. The Exchange does not propose to change any fees or credits applicable to SLPs for transactions in Nasdaq securities traded pursuant to UTP when the share price is below $1.00.

NYSE Amex LLC (''NYSE Amex'') recently changed the name of its equities market to NYSE MKT LLC.[4] Accordingly, the Exchange proposes to replace references to ''NYSE Amex'' with ''NYSE MKT'' to reflect the name change.

The Exchange proposes to make the rule change operative on August 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[5] of the Securities Exchange Act of 1934 (the ''Act''), in general, and Section 6(b)(4)[6] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that the proposed fee changes are equitably allocated and not unfairly discriminatory because all similarly situated market participants, DMMs, and SLPs will be subject to the same fee structure, and access to the Exchange's market is offered on fair and non-discriminatory terms.

With respect to the increased credits for providing liquidity, the Exchange believes that the credits will attract more volume to the Exchange by incentivizing market participants, DMMs and SLPs to submit orders that provide liquidity to the Exchange and thereby will result in a more competitive market in the trading of Nasdaq securities pursuant to UTP. The Exchange believes that offering a higher credit to DMMs and SLPs than market participants is consistent with an equitable allocation of fees because it allocates a higher credit to member organizations that contribute to price discovery by providing high volumes of liquidity. In addition, DMMs and SLPs have higher obligations, including quoting obligations; therefore, it is reasonable to pay them a higher credit. The Exchange further believes that the increases in the fees for DMMs, SLPs, and market participants for taking liquidity are appropriate in light of the increase in credits for providing liquidity.

The Exchange believes that raising the fee for routing to other markets for orders in Nasdaq securities with a share price of $1.00 or more to $0.0030 is reasonable because the fee is same as the fee for routing to other markets for orders in Exchange-listed securities with a per share price of $1.00 or more, and it will help to cover the costs associated with routing orders away from the Exchange.

With respect to the credit increase for market participants and SLPs that provide liquidity in 2,000 or more share orders for securities priced at $5.00 or more, as long as the order is not cancelled in an amount that would reduce the original displayed amount below 2,000 shares, the Exchange believes that the proposed credits are fair and reasonable given that the Exchange is increasing the general credits for market participants and SLPs for providing liquidity to an amount that is higher than the current block credits for providing liquidity. As such, the Exchange believes that is fair and reasonable to increase the credit for block orders to an amount that is higher than the proposed general credit for providing liquidity in order to encourage both market participants and SLPs to place block orders, which will promote liquidity on the Exchange. The Exchange believes that eliminating the credit for DMMs that provide liquidity in 2,000 or more share orders for securities priced at $5.00 or more, as long as the order is not cancelled in an amount that would reduce the original displayed amount below 2,000 shares, is fair and reasonable given that the proposed general credit for providing liquidity is greater than the current credit for block orders. The Exchange believes the fee changes will attract more displayed liquidity, lower transaction costs, and improve overall trading.

The Exchange also believes that it is reasonable not to change the fees or credits for transactions in Nasdaq securities with a share price below $1.00 because there are only a small number of issues that trade below $1.00 and these shares are thinly traded. In addition, the Exchange believes it is reasonable not to increase the credits for providing liquidity in Nasdaq securities with a share price below $1.00 because it could have the potential of being greater than the spread, creating an inappropriate incentive to trade.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges.

Finally, the Exchange also believes that replacing references to ''NYSE Amex'' with ''NYSE MKT'' is reasonable, equitable and not unfairly discriminatory because it would add clarity to the Exchange's Price List by correctly reflecting the current name.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[4] *See* Securities Exchange Act Release No. 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR–NYSEAmex–2012–32).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [7] of the Act and subparagraph (f)(2) of Rule 19b–4 [8] thereunder, because it establishes a due, fee, or other charge imposed by NYSE MKT.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2012–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2012–29. 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 a.m. and 3 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–NYSEMKT–2012–29 and should be submitted on or before August 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18843 Filed 8–1–12; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7967]

Culturally Significant Objects Imported for Exhibition Determinations: ''Shock of the News''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Shock of the News,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The National Gallery of Art, Washington, DC from on or about September 23, 2012, until on or about January 27, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: July 24, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–18941 Filed 8–1–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 7, 2012

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*).

The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2012–0108.

Date Filed: July 5, 2012.

Due Date for Answers, Conforming Applications, or Motion To Modify Scope: July 26, 2012.

Description: Application of Boutique Air, Inc. requesting authority to operate scheduled passenger service as a commuter air carrier.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2012–18909 Filed 8–1–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending June 30, 2012

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2012–0100.

Date Filed: June 28, 2012.

Parties: Members of the International Air Transport Association.

Subject: CSC/MailVote/003/2012 dated 5 June 2012 Expedited. Recommended Practice 1670. Intended effective date: 7 August 2012.

Docket Number: DOT–OST–2012–0103.

Date Filed: June 28, 2012.

Parties: Members of the International Air Transport Association.

Subject: CSC/34/Meet/004/2012 dated 24 April 2012 Expedited. Recommended Practice 1630. Intended effective date: 1 July 2012.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2012–18940 Filed 8–1–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

57th Meeting: RTCA Special Committee 186, Automatic Dependent Surveillance Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Meeting Notice of RTCA Special Committee 186, Automatic Dependent Surveillance Broadcast (ADS–B).

SUMMARY: The FAA is issuing this notice to advise the public of the 57th meeting of RTCA Special Committee 186, Automatic Dependent Surveillance Broadcast (ADS–B)

DATES: The meeting will be held August 23, 2012, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, MacIntosh-NBAA Room and Colson Board Room, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 186. The agenda will include the following:

August 23, 2012

- Chairman's Introductory Remarks
- Review of Meeting Agenda
- Review/Approval of the Fifty-Sixth Meeting Summary, RTCA Paper No. 142–12/SC186–321
- EUROCAE WG–51—Status & Activities
- FAA Surveillance and Broadcast Services (SBS) Program—Status
- Working Group Reports
  - WG–1—Operations and Implementation—no report
  - WG–2—TIS–B MASPS—no report
  - WG–3—1090 MHz MOPS—no report
  - WG–4—Application Technical Requirements—Status
    - Traffic Situation Awareness with Alerts (TSAA)
    - Flight-deck Interval Management (FIM)
  - WG–5—UAT MOPS—no report
  - WG–6—Combined ADS–B & ASA MASPS—no report
    - ATSSA MASPS published in June by RTCA as DO–338
- Date, Place and Time of Next Meeting
- New Business
- Other Business
  - Aircraft-level Flight Crew Alerting on ADS–B Equipment Failures
- Review Action Items/Work Programs
- Adjourn Plenary

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 27, 2012.

Kathy Hitt,

Management Analyst, Business Operations Branch, Federal Aviation Administration.

[FR Doc. 2012–18942 Filed 8–1–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

FMCSA Policy on Granting, Withholding, Suspending, Amending or Revoking Operating Authority Registration

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

ACTION: Notice of policy.

SUMMARY: FMCSA provides notice of the Agency's policy concerning review of applications for operating authority registration, and suspension, amendment or revocation of existing operating authority registration. Motor carriers, brokers and freight forwarders must demonstrate a willingness and ability to comply with applicable statutes and regulations in order to obtain and maintain operating authority registration. This notice outlines FMCSA's policy for evaluating motor carriers', brokers' and freight forwarders' willingness and ability to comply with these requirements.

DATES: This policy statement is effective August 2, 2012.

FOR FURTHER INFORMATION CONTACT: Sabrina E. Redd, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, 202–366–6240, *Sabrina.Redd@dot.gov.*

SUPPLEMENTARY INFORMATION

Background

The Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543) authorized the Interstate Commerce Commission (ICC) to issue operating authority registration to motor carriers, brokers, and freight forwarders subject to its jurisdiction and to suspend or revoke such registration for willful failure to comply with applicable statutes and regulations. The ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803) (ICCTA) abolished the ICC and transferred this authority to the Secretary of Transportation (Secretary). See 49 U.S.C. 13902 (establishing standards for issuing operating authority) and 49 U.S.C. 13905 (establishing standards and procedures for suspending and revoking operating authority). Additionally, ICCTA section 204 contains a savings clause which states that ''all orders * * * that have been issued * * * by the Interstate Commerce Commission * * * in the performance of any function that is transferred by this Act * * * shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked.'' The

policy outlined in this notice stems in part from ICC decisions and orders that remain in effect, and it clarifies current FMCSA practice.

Under 49 CFR 1.73, the Secretary has delegated to the FMCSA Administrator the authority to, among other things, develop and implement rules to carry out Federal transportation policy; exercise administrative procedure powers necessary to implement and enforce applicable transportation laws and regulations; register motor carriers, brokers and freight forwarders to provide interstate transportation and establish standards required to obtain and maintain registration; and establish minimum safety standards governing the operation and equipment of motor carriers operating in interstate commerce.

A motor carrier, broker and freight forwarder may provide transportation or service subject to FMCSA jurisdiction only if it is registered by FMCSA. 49 U.S.C. 13901. FMCSA grants registration in accordance with the requirements and procedures in 49 U.S.C. 13902. Motor carriers, brokers and freight forwarders must demonstrate that they are willing and able to comply with the applicable statutory and regulatory requirements. Specifically, they must demonstrate willingness and ability to comply with applicable regulations imposed by FMCSA; the duties of employers and employees established by FMCSA pursuant to 49 U.S.C. 31135; the safety fitness requirements established by FMCSA pursuant to 49 U.S.C. 31144; the accessibility requirements established by FMCSA for transportation provided by an over-the-road bus; and minimum financial responsibilities established by FMCSA pursuant to 49 U.S.C. 13906 and 31138.

FMCSA withholds registration if it determines that the carrier, broker or freight forwarder does not meet, or is unable to meet, any of these requirements. 49 U.S.C. 13902(a)(4). Additionally, if registration is granted, and subsequent conduct by the registrant demonstrates an unwillingness or inability to remain compliant, FMCSA may suspend, amend or revoke the registration. 49 U.S.C. 13905(d).

This notice describes the policy and procedure FMCSA uses to determine whether a motor carrier, broker or freight forwarder is willing and able to comply with applicable requirements, and it identifies circumstances that can result in withholding, revocation, suspension or amendment of registration.

Policy

FMCSA withholds operating authority registration from any applicant that cannot demonstrate it is willing or able to comply with applicable statutory and regulatory requirements. Once granted, FMCSA exercises its authority to revoke, amend or suspend operating authority registration in cases where a motor carrier, broker or freight forwarder engaged in conduct demonstrating willful disregard for applicable requirements. Inadvertent, isolated, or sporadic violations of applicable requirements generally will not result in revocation, suspension or amendment.

In determining whether to withhold, suspend, amend or revoke operating authority registration, FMCSA evaluates, among other things, the following factors to determine whether a motor carrier, freight forwarder or broker is willing and able to comply with applicable statutory and regulatory requirements:

(1) The nature and extent of existing or past violations;

(2) the degree to which existing or past violations will affect, or have affected, the safety of operations, taking into account any crashes, deaths, or injuries associated with the violations;

(3) whether existing or past regulatory or statutory violations are the result a willful failure to comply with applicable requirements;

(4) the existence and nature of pending and closed enforcement actions;

(5) whether adequate safety management controls exist to ensure acceptable compliance with applicable requirements; and

(6) the existence of corrective action, if any.

FMCSA evaluates all available information concerning a motor carrier's, broker's, freight forwarder's or applicant's current status and past conduct to determine whether the person is willing and able to comply with statutory and regulatory requirements. One factor is not necessarily more significant than another, and the person's conduct and history are not considered in isolation. Certain conduct, however, will likely be sufficiently egregious to warrant withholding, suspension, amendment or revocation.

FMCSA will not grant operating authority registration to an applicant that fails to demonstrate willingness and ability to comply with applicable statutory and regulatory requirements. Applicants that intentionally furnish false or misleading information during the application and vetting process will not be granted operating authority registration. FMCSA views this conduct as demonstrating an inability or unwillingness to comply.

Applicants that fail to disclose all required information during the application and vetting process will not be granted operating authority registration until the required information is supplied. FMCSA withholds operating authority registration by rejecting applications that are incomplete, because FMCSA cannot determine that an applicant is willing or able to comply until the applicant has supplied all required information.

FMCSA does not grant operating authority registration to motor carriers that create a new identity or affiliate relationship to avoid a previous suspension or revocation of registration, a statutory or regulatory requirement, an FMCSA order or a history of past violations. FMCSA withholds operating authority registration by rejecting these individual's applications. The practice of ''reincarnating'' to avoid regulatory requirements and evade enforcement impairs FMCSA's ability to carry out its safety mission and creates an unacceptable safety risk for the motoring public. Moreover, this conduct demonstrates an inability and unwillingness to comply with applicable statutory and regulatory requirements.

Persons who have had their operating authority registration suspended or revoked, or who have operated without operating authority registration, within the six years prior to their application reasonably incur additional scrutiny and an increased burden to establish their willingness and ability to comply with applicable statutes and regulations. This scrutiny and burden also apply to persons who submit an application for operating authority registration and begin interstate operations before their application is approved. Persons who have been the subject of more than one final Unfit safety fitness determination or imminent hazard out-of-service order within the preceding six years, or who have operated during this period following issuance of a final Unfit safety fitness determination and an order to cease operations, face particularly close scrutiny. These individuals have already demonstrated a propensity to disregard applicable requirements and Agency orders. Accordingly, FMCSA will not grant operating authority registration under such circumstances absent evidence demonstrating that the regulated entity has corrected preexisting violations and clearly

exhibited a willingness and ability to comply with regulatory requirements in the future.

FMCSA uses a six-year compliance history to make determinations under 49 U.S.C. 13902 and 13905. Accordingly, FMCSA evaluates a person's willingness and ability to comply with applicable statutory and regulatory requirements based on, among other things, their compliance record, if any, and the factors identified above for the six-year period before the date of their application or the date of any conduct prompting review of their registration status. The six-year period is consistent with FMCSA's penalty assessment policies regarding ''history of prior offenses'' under 49 U.S.C. 521(b)(2)(D) and a ''pattern of violations'' warranting assessment of maximum civil penalties under section 222 of the Motor Carrier Safety Improvement Act (Pub. L. 106–159, 49 U.S.C. 521 note). See 69 FR 77828 (Dec. 28, 2004) and 74 FR 14184 (Mar. 30, 2009).

FMCSA considers all available information to analyze the factors identified above. Information bearing on the nature and extent of past violations is often contained in FMCSA records, State law enforcement records, State regulatory agency records, or State or Federal judicial records. Relevant information may also exist in a regulated entity's records. Information concerning the extent of a person's cooperation with FMCSA is also relevant to evaluate whether their conduct represents willful disregard of applicable requirements. FMCSA therefore considers a person's willingness to cooperate with FMCSA and State enforcement personnel during the application review process, compliance reviews, investigations, inspections, or audits, including timeliness in responding to requests for information or other regulatory directions.

Relevant information might also be available in complaints that private individuals file with FMCSA. While FMCSA lacks authority to resolve disputes between individuals and regulated entities, these complaints may be relevant in assessing whether a pattern of regulatory noncompliance exists. The totality of such information may show an unwillingness or inability to comply with statutory or regulatory requirements.

FMCSA will also consider a person's attempts to correct past violations. Relevant evidence might include, among other things, documentation of vehicle repairs or modifications, including installation of collision avoidance, automatic on-board recorders, speed limiters, stability control or other safety equipment, training and education programs instituted by the entity, changed policies, responses to FMCSA communications showing corrective action and other similar corrective action plans. The timeliness of corrective action is also relevant. FMCSA will not, however, accept a regulated entity's mere assertion that it intends to be compliant in the future as evidence of efforts to rectify past violations. In order to demonstrate an adequate effort to correct past violations, the available information must show that the regulated entity took corrective action to address the problem and comply with applicable statutes and regulations.

Finally, FMCSA will also consider the existence of any mitigating circumstances surrounding the regulated entity's conduct. Mitigating circumstances are facts that, while not exonerating, tend to explain why the violation occurred and that may tend to lessen a person's culpability for the violation. A mitigating fact would not necessarily relieve a person of the civil penalty liability, but it may be relevant in determining whether the conduct should preclude operating authority registration, given the other factors and circumstances described above. Proof of mitigating circumstances is evaluated in light of all the available information concerning a carrier's history.

FMCSA informs applicants of the Agency's decision to reject its application and withhold operating authority registration in writing. The rejection notice informs the applicant of the factual and legal basis for the rejection. Any person whose application is rejected may appeal the rejection to FMCSA. Under 49 CFR 365.111, the appeal must be filed with FMCSA within 10 days of the date of the letter of rejection. Information on where to submit an appeal is provided in the notice.

FMCSA suspends, amends or revokes operating authority registration in accordance with the procedures in 49 U.S.C. 13905. FMCSA initiates the proceeding by issuing an order to the motor carrier, broker or freight forwarder directing the registered entity to correct compliance deficiencies and show good cause, within 30 days of service of the order, why its registration should not be suspended, amended or revoked. The order provides the registered entity with notice of the alleged violation, explains how to respond to the order, and informs the registered entity that failure to respond and demonstrate corrective action or other good cause will result in suspension, amendment or revocation.

The Agency Official who issued the order reviews the registered entity's response. In reviewing the response, the Agency Official considers, among other things, the registered entity's proof of corrective action and supporting documentation, and the factors outlined above to evaluate whether the registration should be suspended, amended or revoked. After reviewing the response, the Agency Official issues a written decision and takes one of three actions. First, he or she may enter an order suspending, amending or revoking the entity's registration if the registered entity failed to take appropriate corrective action or show good cause why its registration should not be suspended, amended or revoked. Second, the Agency Official may enter an additional order directing the registered entity to come into compliance if the Agency Official determines the evidence of corrective action is deficient, but can be cured. Third, the Agency Official may determine that suspension, amendment or revocation are not appropriate and enter an order terminating the proceeding.

Issued on: July 17, 2012.

Anne S. Ferro,

Administrator.

[FR Doc. 2012–18935 Filed 8–1–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0164]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from 19 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 September 4, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0164 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 19 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

Kevin M. Brown

Mr. Brown, 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. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown 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 Colorado.

Alvin J. Chandler

Mr. Chandler, 54, 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. Chandler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Chandler 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 Virginia.

Vernon V. Cromartie

Mr. Cromartie, 60, has had ITDM since approximately 1 year ago. 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. Cromartie understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cromartie 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 New Jersey.

Eric C. Fuller

Mr. Fuller, 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. Fuller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fuller 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 Arizona.

Kevin M. Klevecz

Mr. Klevecz, 32, has had ITDM since 2000. 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. Klevecz understands diabetes management and monitoring, has stable control of his diabetes using

insulin, and is able to drive a CMV safely. Mr. Klevecz 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 Virginia.

Matthew R. Lanciault

Mr. Lanciault, 33, has had ITDM since 1990. 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. Lanciault understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lanciault meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable proliferative diabetic retinopathy. He holds an operator's license from New Hampshire.

Steven L. Leslie

Mr. Leslie, 42, 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. Leslie understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Leslie 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 Michigan.

Anthony J. Lesmeister

Mr. Lesmeister, 29, has had ITDM since 1990. 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. Lesmeister understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lesmeister 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 North Dakota.

Lawrence C. Mace

Mr. Mace, 64, 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. Mace understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mace 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 Pennsylvania.

Del A. Meath

Mr. Meath, 33, 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. Meath understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Meath 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.

David D. Nelson

Mr. Nelson, 48, 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. Nelson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Nelson 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 license from North Dakota.

Benny D. Puck

Mr. Puck, 53, 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. Puck understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Puck 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.

Bob F. Rice

Mr. Rice, 56, has had ITDM since approximately 1990. 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. Rice understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rice 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 Washington.

Thomas P. Ropiak

Mr. Ropiak, 60, 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. Ropiak understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ropiak 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 Wisconsin.

Larry L. Smith

Mr. Smith, 69, 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. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith 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 operator's license from Indiana.

William G. Smith

Mr. Smith, 65, 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. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith 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 Arkansas.

Larry D. Way

Mr. Way, 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. Way understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Way 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 Ohio.

Paul E. Williams, Jr.

Mr. Williams, 22, 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. Williams understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Williams 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 Georgia.

Quintin E. Williams

Mr. Williams, 52, 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. Williams understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Williams 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 North Carolina.

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: July 25, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–18937 Filed 8–1–12; 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–1998–4334; FMCSA–2006–24015; FMCSA–2008–0106; FMCSA–2008–0174; FMCSA–2010–0082]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 48 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective August 18, 2012. Comments must be received on or before September 4, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. FMCSA–1998–4334; FMCSA–2006–24015; FMCSA–2008–0106; FMCSA–2008–0174; FMCSA–2010–0082, 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 or Courier:* 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 number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

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 renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 48 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 48 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Catarino Aispuro (OR)
Gary R. Andersen (NE)
Edwin A. Betz (IN)
Donald L. Carman (OH)
Christopher R. Cone (GA)
Walter O. Connelly (WA)
Stephen B. Copeland (GA)
Armando P. D'Angeli (PA)
Donald R. Davis (FL)
Louis A. DiPasqua, Jr. (NY)
Henry L. Donivan (WV)
Randy J. Doran (OR)
Robert E. Dukes (MS)
Roger D. Elders (MI)
James F. Epperson (IN)
Lucious J. Erwin (TX)
Riche Ford (CO)
Kelly L. Foster (UT)
Kevin K. Friedel (NY)
Donald W. Garner (AL)
Paul W. Goebel, Jr. (NY)
Ronnie L. Hanback (AL)
Steven G. Harter (OR)
Michael C. Hensley (OH)
George F. Hernandez, Jr. (AZ)
Scott A. Hillman (PA)
Jesse P. Jamison (TN)
Ronnie M. Jones (ID)
Andrew C. Kelly (WV)
Jason W. King (MT)
James T. Leek (WA)
Billy J. Lewis (LA)
Larry McCoy, Sr. (OH)
Robert W. McMillian, Sr. (MA)
Richard A. Peterson (OR)
Chad M. Quarles (AL)
Carroll G. Quisenberry (KY)
Daniel S. Rebstad (FL)
Ryan J. Reimann (WI)
Jacob H. Riggle (OK)
Brandon J. See (IA)
Ricky L. Shepler (PA)
LeTroy D. Sims (SC)
John L. Stone (PA)
Nils S. Thornberg (OR)
Daniel W. Toppings (WV)
Christopher R. Whitson (NC)
Aaron E. Wright (MI)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements 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 provides 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 and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption

will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded 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(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 48 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66227; 64 FR 16520; 71 FR 14567; 71 FR 30228; 73 FR 28187; 73 FR 35195; 73 FR 35196; 73 FR 35197; 73 FR 35198; 73 FR 35199; 73 FR 35200; 73 FR 35201; 73 FR 38497; 73 FR 38498; 73 FR 38499; 73 FR 48273; 73 FR 48275; 75 FR 25919; 75 FR 39729; 75 FR 44051). Each of these 48 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by September 4, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 48 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: July 26, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–18908 Filed 8–1–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Announcing the Twentieth Public Meeting of the Crash Injury Research and Engineering Network (CIREN)

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting Announcement.

SUMMARY: This notice announces the Twentieth Public Meeting of members of the Crash Injury Research and Engineering Network. CIREN is a collaborative effort to conduct research on crashes and injuries at six Level I Trauma Centers across the United States linked by a computer network. The current CIREN model utilizes two types of centers, medical and engineering. Medical centers are based at Level I Trauma Centers that admit large numbers of people injured in motor vehicle crashes. These teams are led by trauma surgeons and emergency physicians and also include a crash investigator and project coordinator. Engineering centers are based at academic engineering laboratories that have experience in motor vehicle crash and human injury research. Engineering teams partner with trauma centers to enroll crash victims into the CIREN program. Engineering teams are led by mechanical engineers, typically trained in the area of impact biomechanics. Engineering teams also include trauma/emergency physicians, a crash investigator, and a project coordinator. Either type of team typically includes additional physicians and/or engineers, epidemiologists, nurses, and other researchers. The CIREN process combines prospective data collection with professional multidisciplinary analysis of medical and engineering evidence to determine injury causation in every crash investigation conducted. Researchers can review data and share expertise, which may lead to a better understanding of crash injury mechanisms and the design of safer vehicles.

The six centers will give presentations on current research based on CIREN data. Topics include thoraco-lumbar fractures in frontal crashes, risk of pelvic fractures in motor vehicle collisions, trauma system adoption of Advanced Automatic Collision Notification (AACN) Systems, lower extremity injury patterns sustained in frontal crashes, evaluation of brain lesion location sustained in motor vehicle crashes, and major vascular injuries.

The final agenda will be posted to the CIREN Web site that can be accessed by going to the NHTSA homepage *http://www.nhtsa.dot.gov/*, click on Vehicle Safety Research on the right side of the top toolbar, and then click on Crash Injury Research and Engineering Network (CIREN) in the box on the left. The agenda will be posted one week prior to the meeting.

DATE AND TIME: The meeting is scheduled from 9 a.m. to 4 p.m. on Wednesday, September 5, 2012.

ADDRESSES: The meeting will be held at: Department of Transportation Headquarters, Oklahoma Room, 1200 New Jersey Avenue SE., Washington, DC 20590.

TO REGISTER FOR THIS EVENT: It is essential that you pre-register to expedite the security process for entry to the meeting facility. Please send your name, affiliation, phone number, and email address to *Rodney.Rudd@dot.gov* by Thursday, August 30, 2012, in order to have your name added to the pre-registration list. Everyone must have a

government-issued photo identification to be admitted to the facility.

FOR GENERAL INFORMATION: Rodney Rudd (202) 366–5932, Mark Scarboro (202) 366–5078 or Cathy McCullough (202) 366–4734.

SUPPLEMENTARY INFORMATION: NHTSA has held CIREN public meetings on a regular basis since 2000, including quarterly meetings and annual conferences. This is the twentieth such meeting. Presentations from these meetings are available through the NHTSA Web site. NHTSA plans to continue holding CIREN meetings on a regular basis to disseminate CIREN information to interested parties. Individual CIREN cases collected since 1998 may be viewed from the NHTSA/CIREN Web site at the address provided above. Should it be necessary to cancel the meeting due to inclement weather or to any other emergencies, a decision to cancel will be made as soon as possible and posted immediately on CIREN's Web site as indicated above. If you do not have access to the Web site, you may call or email the contacts listed in this announcement and leave your telephone number or email address. You will be contacted only if the meeting is postponed or canceled.

Issued on: July 26, 2012.

John Maddox,

Associate Administrator for Vehicle Safety Research.

[FR Doc. 2012–18944 Filed 8–1–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2012–0094]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on two information collections that we will be submitting to the Office of Management and Budget (OMB) for renewal. The information collections relate to the pipeline integrity management requirements for gas transmission pipeline operators and the response plan requirements for operators of onshore oil pipelines. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published in the **Federal Register** on May 9, 2012, (77 FR 27279) under Docket No. PHMSA–2012–0094. No comments were received. The purpose of this notice is to allow the public an additional 30 days to submit comments to OMB on the information collection described below.

DATES: Interested persons are invited to submit comments on or before September 4, 2012.

ADDRESSES: Comments may be submitted in the following ways:

E–Gov Web Site: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number, PHMSA–2012–0094, at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477) or visit *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2012–0094.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

FOR FURTHER INFORMATION CONTACT: Angela Dow by telephone at 202–366–1246, by fax at 202–366–4566, or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies two information collection requests that PHMSA will be submitting to OMB for renewal. The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection. PHMSA will request a three-year term of approval for each information collection activity. PHMSA requests comments on the following information collections:

1. Title: Pipeline Integrity Management in High Consequence Areas Gas Transmission Pipeline Operators.

OMB Control Number: 2137–0610.

Current Expiration Date: 9/30/2012.

Type of Request: Renewal with revision.

Abstract: 49 CFR 192.947 requires operators of gas transmission pipelines located in or near high consequence areas to maintain a written integrity management program and records showing compliance with 49 CFR part 192, subpart O. Operators must also submit documentation relative to their integrity management program to PHMSA as applicable.

Affected Public: Operators of gas transmission pipelines located in or near high consequence areas.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 733.

Total Annual Burden Hours: 1,018,807.

Frequency of Collection: On occasion.

2. Title: Response Plans for Onshore Oil Pipelines.

OMB Control Number: 2137–0589.

Current Expiration Date: 9/30/2012.

Type of Request: Renewal.

Abstract: 49 CFR part 194 requires an operator of an onshore oil pipeline facility to prepare and submit an oil spill response plan to PHMSA for review and approval.

Affected Public: Operators of onshore oil pipeline facilities.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 367.

Total Annual Burden Hours: 50,186.

Frequency of Collection: On occasion.

Comments are invited on:

(a) The need for the proposed collection of information 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, 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on July 30, 2012.

John A. Gale,

Director, Office of Standards and Rulemaking.

[FR Doc. 2012–18861 Filed 8–1–12; 8:45 am]

BILLING CODE 4910–60–P

FEDERAL REGISTER

Vol. 77 Thursday,

No. 149 August 2, 2012

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revising the Special Rule for the Utah Prairie Dog; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2011–0030: FXES11130900000C6–123–FF09E30000: 92220–1113–0000–C6]

RIN 1018–AW02

Endangered and Threatened Wildlife and Plants; Revising the Special Rule for the Utah Prairie Dog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Under the Endangered Species Act of 1973, as amended (ESA), we, the U.S. Fish and Wildlife Service (Service/USFWS), revise our special regulations for the conservation of the Utah prairie dog. We are revising our special regulations to provide limits to the allowable take, including limits to where permitted take can occur—agricultural lands, properties within 0.8 kilometers (km) (0.5 miles (mi)) of conservation lands, and areas where Utah prairie dogs cause serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites; the amount of take that can be permitted; methods of take that can be permitted; and seasonal limitations on direct lethal take. We are also allowing entities other than the Utah Division of Wildlife Resources to permit take. We are also issuing new incidental take exemptions for otherwise legal activities associated with standard agricultural practices. All other provisions of the special rule not relating to these amendments remain unchanged.

DATES: The effective date of this rule is September 4, 2012.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov,* Docket No. FWS–R6–ES–2011–0030. Comments and materials received, as well as supporting documentation used in the preparation of this rule, are available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, 2369 West Orton Circle, West Valley City, UT 84119; telephone 801–975–3330; facsimile 801–975–3331. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Larry Crist, Field Supervisor, Utah Ecological Services Field Office, 2369 West Orton Circle, Suite 50, West Valley City, UT 84119 (telephone 801–975–3330; facsimile 801–975–3331). Individuals who are hearing-impaired or speech-impaired may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

Under the ESA, we revise our previous special rule for the conservation of the Utah prairie dog in the Code of Federal Regulations (CFR) at 50 CFR 17.40(g). The previous special rule, administered by the Utah Division of Wildlife Resources (UDWR), was established in 1984, and amended in 1991. Since that time, we have evaluated the take authorized by this rule and the methods used to implement it.

We considered the available information and public and peer review comments, and we revise the established exemptions to prohibited take. We are revising the regulations for where take is allowed to occur, who may permit take, the amount of take that may be permitted, and methods of take that may be permitted. We include a take exemption for areas where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural and human burial sites. We also provide an exemption for incidental take for otherwise legal activities associated with standard agricultural practices.

This amendment is largely consistent with past and current practices and permitting as administered by the UDWR and Utah Code (R657–19–6, R657–19–7) under the 1984 special rule, as amended in 1991 (hereafter referred to as ''the previous special rules''). Utah prairie dog populations have remained stable to increasing throughout implementation of these special rules, as implemented under the UDWR permit system.

Summary of the Major Provisions of the Regulatory Action

Table 1 describes the previous 1984 special rules, as amended in 1991, and this final rule.

TABLE 1—COMPARISON OF THE PREVIOUS SPECIAL RULE AND PRACTICE (1991) AND THIS FINAL RULE

	Previous rule and practice (1991)	Final rule (2012) *
Who Can Allow Take	UDWR	UDWR, or other entities with the Service's written approval. Add that no permit is needed where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites. Written approval from the Service is sufficient in these circumstances.
Where Direct Take Is Allowed	Existing Special Rule—private lands Utah Code—agricultural lands	Retain agricultural lands. Add properties where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites. Add properties within 0.8 km (0.5 mi) of conservation lands.
Amount of Rangewide Direct Take Allowed.	6,000 animals annually	The upper annual permitted take limit of 6,000 animals annually is removed. The upper permitted take limit may not exceed 10 percent of the estimated rangewide population annually; and, on agricultural lands, may not exceed 7 percent of the estimated annual rangewide population annually. Take in areas where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites does not contribute to the take allowance.
Site-specific Limits on Amount of Direct Take.	No restrictions specified	Add limits for agricultural lands and properties within 0.8 km (0.5 mi) of conservation lands.

TABLE 1—COMPARISON OF THE PREVIOUS SPECIAL RULE AND PRACTICE (1991) AND THIS FINAL RULE—Continued

	Previous rule and practice (1991)	Final rule (2012) *
		Add that there are no limits on the amount of direct take where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites.
Timing of Allowed Direct Take	June 1 to December 31	June 15 to December 31 seasonal limits on agricultural lands and properties neighboring conservation lands.
		Add that there is no timing restriction where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites, except that translocations will be conducted before lethal measures of control are allowed.
Methods Allowed to Implement Direct Take.	Existing Special Rule—no restrictions specified.	Add restrictions on methods of allowed take on agricultural lands and properties within 0.8 km (0.5 mi) of conservation lands to conform to Utah Code.
	Utah Code—limited to firearms and trapping, and chemical toxicants specifically prohibited.	Add that no restrictions on methods to implement direct take are applied to areas where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites, except that translocations will be conducted before lethal measures of control are allowed.
Service Ability to Further Restrict Direct Take.	The Service may immediately prohibit or restrict such taking as appropriate for the conservation of the species.	Unchanged.
Incidental Take for Agricultural Activities.	Not authorized	Provide an exemption for incidental take for otherwise legal activities associated with standard agricultural practices.

Special Rules Under ESA Section 4(d)

A 4(d) special rule functions by prescribing those regulations that are necessary and advisable to conserve a threatened species. We have elected to extend all prohibitions under section 9 of the ESA (16 U.S.C. 1531 *et seq.*) to threatened species through a ''blanket 4(d) rule'' unless otherwise specified in a separate 4(d) rule (see 50 CFR 17.31). Section 9 prohibitions make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, shoot, wound, kill, trap, capture, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as endangered, without written authorization. It also is illegal under section 9(a)(1) of the ESA to possess, sell, deliver, carry, transport, or ship any such wildlife that is taken illegally.

We have the option of creating tailored 4(d) regulations rather than using the blanket 4(d) rule. In those cases, the species-specific 4(d) regulation replaces the blanket regulation. Because the blanket rule effectively extends all available prohibitions to threatened species, separate 4(d) rules could be viewed as ''exempting,'' ''allowing,'' or ''permitting'' acts that would otherwise be prohibited under the blanket rule. As a result, there may be some prohibitions that apply to other threatened species that do not apply to the threatened species at issue. In the interest of providing a clear rule with simple language, we will be using ''exempt'' and ''allow'' in order to convey that this Utah prairie dog 4(d) rule will not prohibit certain actions. It is important to note that this use of language is for clarity only. The 4(d) rule will still function by prescribing the regulations necessary and advisable to conserve the Utah prairie dog.

Background

Previous Federal Actions

The Utah prairie dog (*Cynomys parvidens*) was listed as an endangered species on June 4, 1973 (38 FR 14678), pursuant to the Endangered Species Conservation Act of 1969. On January 4, 1974, this listing was incorporated into the ESA of 1973, as amended (39 FR 1158; see page 1175).

On May 29, 1984, the Service reclassified the Utah prairie dog from endangered to threatened (49 FR 22330) and developed a special rule under section 4(d) of the ESA, applying the prohibitions for threatened animals (50 CFR 17.31) to the Utah prairie dog except: allowing regulated take of up to 5,000 animals annually on private lands in Iron County, Utah. On June 14, 1991, we amended the special rule to allow regulated take of up to 6,000 animals annually on private lands throughout the species' range (56 FR 27438).

On February 3, 2003, we received a petition to reclassify the Utah prairie dog from threatened to endangered (Forest Guardians 2003, entire). The petition was based in part on threats to the species associated with the previous 4(d) special rules (Forest Guardians 2003, pp. 104–108). On February 21, 2007 (72 FR 7843), we found that the petition did not provide substantial scientific or commercial information indicating that reclassification may be warranted. This decision was challenged by WildEarth Guardians in litigation (described below).

On February 4, 2005, we received a petition under the Administrative Procedure Act (APA) requesting that we issue a rule to restrict the translocation of Utah prairie dogs and to terminate the special 4(d) rule allowing regulated take of Utah prairie dogs (Forest Guardians 2005, entire). On April 6, 2005, we acknowledged receipt of this petition. On February 23, 2009, we issued a final decision in which we denied the petitioned action (USFWS 2009, entire). However, this response acknowledged that we had initiated a process to amend the special 4(d) rule and that we anticipated that a proposed amended special 4(d) rule would be published in the **Federal Register** for public comment (USFWS 2009, p. 1). This decision also was challenged by WildEarth Guardians.

On September 28, 2010, United States District Court for the District of Columbia vacated and remanded our

February 21, 2007 (72 FR 7843), not-substantial petition finding back to us for further consideration (*WildEarth Guardians* v. *Salazar,* Case 1:08-cv-01596–CKK (D.D.C.), 2010). In the same order, the court upheld our February 23, 2009, decision on the APA petition. This ruling noted that although the level of take allowed in the 1991 special rule may not be biologically sound, some permitted take is advantageous to the Utah prairie dogs' recovery. The court specifically noted that controlled take can stimulate population growth, reduce high-density populations prone to decimation by plague, and, consequently, curb the species' boom-and-bust population cycle. The court declined to weigh in on the precise level of take that should be permitted, concluding that this is a matter squarely within the Service's technical and scientific expertise.

On June 2, 2011 (76 FR 31906), we announced a proposed rule to revise our 4(d) special regulations for the conservation of the Utah prairie dog. Our proposed rule included limits to the allowable take, and new incidental take exemptions for otherwise legal activities associated with standard agricultural practices. We sought comments from the public and other agencies regarding the scope and implementation of the special rule. We also sought independent peer review of the science in the proposed rule to ensure that our final rule is based on scientifically sound data, assumptions, and analyses. We requested public and peer review comments be received or postmarked on or before August 1, 2011.

On June 21, 2011 (76 FR 36053), we announced our revised 90-day finding on a petition to reclassify the Utah prairie dog from threatened to endangered under the ESA. As we concluded in our 90-day finding published on February 21, 2007, we found that the February 3, 2003, petition did not present substantial information indicating that reclassifying the Utah prairie dog from threatened to endangered may be warranted. Therefore, we did not initiate a status review in response to the February 3, 2003, petition.

On April 26, 2012 (77 FR 24195), we notified the public that we were making changes to our proposed rule of June 2, 2011, to revise the 4(d) special rule for the Utah prairie dog. These changes included allowing take where Utah prairie dogs cause serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites, allowing entities other than the UDWR to permit take, and changes to the seasonal and numeric limits for take. We reopened the comment period for 30 days, ending May 29, 2012, and we considered and incorporated as appropriate all comments for this final rule.

Species Information

Prairie dogs belong to the Sciuridae family of rodents, which also includes squirrels, chipmunks, and marmots. There are five species of prairie dogs, all of which are native to North America, and all of which have non-overlapping geographic ranges (Hoogland 2003, p. 232). The Utah prairie dog is the smallest species of prairie dog, with individuals that are typically 250 to 400 millimeters (mm) (10 to 16 inches (in.)) long (Hoogland 1995, p. 8)). Weight varies from 300 to 900 grams (g) (0.66 to 2.0 pounds (lb)) in the spring and 500 to 1,500 g (1.1 to 3.3 lb) in the late summer and early fall (Hoogland 1995, p. 8). Utah prairie dogs range in color from cinnamon to clay. The Utah prairie dog is distinguished from other prairie dog species by a relatively short (30 to 70 mm (1.2 to 2.8 in.)) white- or gray-tipped tail (Pizzimenti and Collier 1975, p. 1; Hoogland 2003, p. 232) and a black ''eyebrow'' above each eye. They are closely related to the white-tailed prairie dog (Hoogland 1995, p. 8).

Life History

Utah prairie dogs are hibernators and spend 4 to 6 months underground each year during the harsh winter months, although they are seen above ground during mild weather (Hoogland 1995, pp. 18–19). Adult males cease surface activity during August and September, and females follow suit several weeks later. Juvenile prairie dogs remain above ground 1 to 2 months longer than adults and usually go into hibernation by late November. Emergence from hibernation usually occurs in late February or early March (Hoogland 2003, p. 235).

Mating begins 2 to 5 days after the females emerge from hibernation, and can continue through early April (Hoogland 2003, p. 236). Female Utah prairie dogs come into estrus (period of greatest female reproductive responsiveness, usually coinciding with ovulation) and are sexually receptive for several hours for only 1 day during the breeding season (Hoogland 2003, p. 235). However, on average 97 percent of adult female Utah prairie dogs are in breeding condition each year and successfully produce a litter (Mackley 1988, pp. 1, 9).

The young are born after a 28- to 30-day gestation period, in April or May (Hoogland 2003, p. 236). Litters range in size from 1 to 7 pups; mean observed litter size after emergence of juveniles from their burrows ranges from 3.64 pups to 5.5 pups (Pizzmenti and Collier 1975, p. 2; Elmore *et al.* 1976, p. 6; Wright-Smith 1978, p. 10; Mackley 1988, pp. 8–9; Hoogland 2001, p. 923). Young prairie dogs depend almost entirely on nursing while in their burrow (Hoogland 2003, p. 236). The young emerge above ground by approximately mid-June, and by that time they are no longer dependent on their mother and primarily forage on their own (Hoogland 2003, p. 236). Because of the relatively large litter sizes, the observed summer population numbers of prairie dogs are much greater than the number of animals seen above ground in the spring.

Prairie dog pups attain adult size by October and reach sexual maturity at the age of 1 year (Wright-Smith 1978, p. 9). Less than 50 percent of Utah prairie dogs survive to breeding age (Hoogland 2001, p. 919). Male Utah prairie dogs frequently cannibalize juveniles, which may eliminate 20 percent of the litter (Hoogland 2003, p. 238). After the first year, female survivorship is higher than male survivorship, though still low for both sexes. Only about 20 percent of females and less than 10 percent of males survive to age 4 (Hoogland 2001, Figures 1 and 2, pp. 919–920). Utah prairie dogs rarely live beyond 5 years of age (Hoogland 2001, p. 919). The sex ratio of juveniles at birth is 1:1, but the adult sex ratio is skewed toward females, with adult female:adult male sex ratios varying from 1.8:1 (Mackley 1988, pp. 1, 6–7) to 2:1 (Wright-Smith 1978, p. 8).

Natal dispersal (movement of first-year animals away from their area of birth) and breeding dispersal (movement of a sexually mature individual away from the areas where it copulated) are comprised mostly of male prairie dogs. Thus, individual male prairie dogs have a high mortality rate through predation. Young male Utah prairie dogs disperse in the late summer, with average dispersal events of 0.56 kilometers (km) (0.35 mile (mi)) and long distance dispersal events of up to 1.7 km (1.1 mi) (Mackley 1988, p. 10). Most dispersers move to adjacent territories (Hoogland 2003, p. 239).

Utah prairie dogs are organized into social groups called clans, consisting of an adult male, several adult females, and their offspring (Wright-Smith 1978, p. 38; Hoogland 2001, p. 918). Clans maintain geographic territorial boundaries, which only the young regularly cross, although all animals use common feeding grounds. Prairie dog colonies may contain one or several clans. Colonies are groups of animals with associated mounds, burrows, and

food resources that are within calling distance. These units are genetically similar and vulnerable to local catastrophes including epizootic disease outbreaks.

Major predators include coyotes (*Canis latrans*), badgers (*Taxidea taxis*), long-tailed weasels (*Mustela frenata*), various raptor species (*Buteo* spp., *Aquila chrysaetos*), and snakes (*Crotalus* spp., *Pituophus* spp.) (Hoogland 2001, p. 922). In established colonies, predators probably do not exert a controlling influence on numbers of prairie dogs (Collier and Spillett 1972, p. 36).

Utah prairie dog populations are susceptible to sylvatic plague (*Yersinia pestis*), a bacterium introduced to the North American continent in 1899 (Cully 1993, p. 38). Plague occurs in prairie dog colonies as enzootic and epizootic events. Enzootic plague is an infection that is persistent in the population over time and causes a low rate of mortality. Epizootic plague occurs when the disease spreads from enzootic hosts to more susceptible animals, resulting in a rapidly spreading die-off cycle (Barnes 1993, pp. 28–32; Cully and Williams 2001, pp. 898–899; Gage and Kosoy 2005, p. 506). During epizootic plague events, large numbers of animals can die within a few days (Lechleitner *et al.* 1962, entire; Cully 1993, p. 39). Plague results in local extirpations, reduced colony sizes, increased variation in local population sizes, and increased distances between colonies (Cully and Williams 2001, p. 895).

There is a limited understanding of the variables that determine when sylvatic plague will impact prairie dog populations. Enzootic plague may be influenced by factors including genetics, prairie dog immunity and physiologic state, and interactions with other bacteria (Gage and Kosoy 2005, p. 509). The factors that result in epizootic plague outbreaks are still being researched, but may include host density, flea density, and climatic conditions (Cully 1989, p. 49; Parmenter *et al.* 1999, pp. 818–820; Cully and Williams 2001, pp. 899–901; Enscore *et al.* 2002, p. 192; Stapp *et al.* 2004, pp. 236–237; Gage and Kosoy 2005, pp. 509, 513; Ray and Collinge 2005, pp. 204, 206–208; Stenseth *et al.* 2006, entire; Snäll *et al.* 2008, pp. 244–246; Biggins *et al.* 2010, pp. 21–24).

Habitat Requirements and Food Habits

Utah prairie dogs occur in semiarid shrub-steppe and grassland habitats (McDonald 1993, p. 4; Roberts *et al.* 2000, p. 2; Bonzo and Day 2003, p. 1). Within these habitats, they prefer swale-type formations where moist herbaceous vegetation is available (Collier 1975, p. 43; Crocker-Bedford and Spillett 1981, p. 24). Plentiful high-quality food found in swales enables prairie dogs to attain a large body mass, thus enhancing survival and increasing litter sizes and juvenile growth rates (Hoogland 2001, p. 923).

Soil characteristics are an important factor in the location of Utah prairie dog colonies (Collier 1975, p. 53). A well-drained area is necessary for home burrows. The soil should be deep enough to allow burrowing to depths sufficient to provide protection from predators and insulation from environmental and temperature extremes. Prairie dogs must be able to inhabit a burrow system 1 meter (m) (3.3 feet (ft)) underground without becoming wet.

Prairie dogs are predominantly herbivores, though they also eat insects (Crocker-Bedford and Spillett 1981, p. 8; Hoogland 2003, p. 238). Grasses are the staple of their annual diet (Crocker-Bedford and Spillett 1981, p. 8; Hasenyager 1984, p. 27), but other plants are selected during different times of the year. Utah prairie dogs only select shrubs when they are in flower, and then only eat the flowers (Crocker-Bedford and Spillet 1981, p. 8). Forbs are consumed in the spring. Forbs also may be crucial for the survival of prairie dogs during drought (Collier 1975, p. 48).

Utah prairie dogs prefer areas with deep, productive soils. These are the same areas preferred by agricultural producers. Agricultural tilling practices create unusually deep, soft soils optimum for burrowing; irrigation increases vegetation productivity; and plantings of favored moist forb species (such as alfalfa) likely make these areas more productive than they were historically (Collier 1975, pp. 42–43). Additionally, Utah prairie dogs grow faster and attain larger body weights (Crocker-Bedford and Spillett 1981, p. 1), and thus have higher overwinter survival, in alfalfa crops versus native habitats (Crocker-Bedford and Spillett 1981, p. 16). Reproduction and weaning of young also may be more successful in agricultural areas that provide abundant forage resources that are otherwise unavailable in drier native habitats (Crocker-Bedford and Spillett 1981, p. 17). Similarly, colonies in agricultural areas expand more rapidly than those in native habitats (Crocker-Bedford and Spillett 1981, p. 16). Finally, predator mortality is generally low for Utah prairie dogs in agricultural fields (see Life History) because farmers control badgers and coyotes in these areas (Crocker-Bedford and Spillett 1981, p. 17). Overall, Utah prairie dog densities are approximately twice as high at sites associated with agriculture compared to sites not associated with agriculture (Crocker-Bedford and Spillett 1981, pp. 16, 23, 26). While we believe that the valley bottoms have probably always supported more prairie dogs than surrounding drier sites, it is likely that the high densities and abundances occurring in these areas are unnaturally augmented by today's agricultural practices (Collier 1975, pp. 43, 53; Crocker-Bedford and Spillett 1981, pp. 15–17, 22).

Distribution and Abundance

The Utah prairie dog is the westernmost member of the genus *Cynomys.* Historically, the species' distribution extended much farther north than it does today (Collier 1975, pp. 15–17; Pizzimenti and Collier 1975, p. 1). Utah prairie dog populations declined dramatically when control programs to eradicate the species were initiated in the 1920s. The actual numeric population reduction is not known, because historical population figures were not scientifically derived (Collier and Spillett 1973, pp. 83–84). However, poisoning is estimated to have removed prairie dogs from approximately 8,094 hectares (ha) (20,000 acres (ac)) of their range prior to 1963 (Collier and Spillett 1972, pp. 33–35). Other factors that resulted in the historical decline of Utah prairie dogs were drought, habitat alteration from conversion of lands to agricultural crops, unregulated shooting, and disease (Collier and Spillett 1972, pp. 32–35).

The species' range is now limited to the southwestern quarter of Utah in Iron, Beaver, Washington, Garfield, Wayne, Piute, Sevier, and Kane Counties (USFWS 2012, p. 1.3–3). The Utah prairie dog has the most restricted range of the four prairie dog species in the United States.

The best available information concerning Utah prairie dog habitat and population trends comes from survey and mapping efforts conducted by the UDWR annually since 1976. These surveys (hereafter referred to as ''counts'' or ''spring counts'') count adult Utah prairie dogs on all known and accessible colonies annually, in April and May, after the adults have emerged, but before the young are above ground in June (see Life History). Some non-Federal lands with active Utah prairie dog colonies are not surveyed due to lack of access. However, we believe that over 90 percent of prairie dog colonies are known and annually surveyed (Brown 2010, pers. comm.).

Therefore, actual rangewide prairie dog numbers may be somewhat higher than reported, though probably not substantially higher.

Utah prairie dog surveys are completed in the spring (''spring counts'') by visually scanning each colony area and counting the numbers of prairie dogs observed. Biologists spend approximately 8 to 10 weeks with 3 to 5 people per week surveying prairie dog colonies in the field each year in accordance with our survey protocol (USFWS 2012, Appendix H). Only 40 to 60 percent of Utah prairie dogs are above ground at any one time (USFWS 2012, p. 1.3–4). Therefore, spring counts represent approximately 50 percent of the adult population. Total rangewide population estimates are larger than the estimated adult population because they include reproduction and juveniles. Based on the male to female ratio, number of breeding females, average litter size, and observed spring count versus total spring population (see the Life History section) (Wright-Smith 1978, p. 8; Mackley 1988, pp. 1, 6–9; Hoogland 2001, pp. 919–920; 923), the total population estimate (adults and juveniles) can be calculated from spring counts as follows: [(2 × spring adult count) × 0.67 (proportion of adult females) × 0.97 (proportion of breeding females) × 4 (average number of young per breeding female)] plus (2 × spring adult count). Thus, the total population estimate (adults and juveniles) is about 7.2 × the spring count. Hereafter whenever we refer to ''total rangewide population estimate'' or ''total population estimate'' we mean the calculated Utah prairie dog population based on the occurrence of both adult and juvenile animals.

It should be noted that spring count surveys and total population estimates are not censuses. Rather, they are designed to monitor population trends over time. Based on the spring counts, the rangewide population trends for the Utah prairie dog are stable to increasing over the last 30 years (see Application of the Utah Prairie Dog Special Rule Through the Present, below).

In addition to population trend information, the UDWR surveys provide information on the amount of mapped and occupied habitat across the species' range. We define mapped habitat as all areas within the species' range that were identified and delineated as being occupied by Utah prairie dogs in any year since 1972. These areas may or may not be occupied by prairie dogs in any given year. The database of all mapped habitat is maintained by the UDWR and updated annually. Occupied habitats are defined as areas that support Utah prairie dogs (*i.e.,* where prairie dogs are seen or heard or where active burrows or other signs are found).

The UDWR has mapped 24,142 ha (59,656 ac) of habitat rangewide (UDWR 2010a, entire). The Utah prairie dog occurs in three geographically identifiable areas within southwestern Utah, which are identified as recovery units in our Final Revised Recovery Plan (USFWS 2012, pp. 1.3–3, 3.2–1), including: (1) Awapa Plateau; (2) Paunsaugunt, and (3) West Desert. The Awapa Plateau recovery unit encompasses portions of Piute, Garfield, Wayne, and Sevier Counties. The Paunsaugunt recovery unit is primarily in western Garfield County, with small areas in Iron and Kane Counties. The West Desert recovery unit is primarily in Iron County, but extends into southern Beaver County and northern Washington County. Table 2 provides information on each recovery unit, including average percentage of the total rangewide population and average percentage of prairie dogs occurring on non-Federal land (averages for 2000 to 2009). Additional information on each recovery unit's distribution, abundance, and trends can be found in our Final Revised Recovery Plan (USFWS 2012, section 1.3.2).

TABLE 2—POPULATION AND OCCUPANCY DATA FOR EACH RECOVERY UNIT

Recovery unit	Average percentage of rangewide population	Average percentage of prairie dogs occurring on non-federal land
Awapa Plateau	8.9	47.6
Paunsaugunt	16.9	71.0
West Desert	74.2	85.1

Note: Averages calculated from 2000 to 2009. Source: UDWR 2009, 2010b.

Summary of Comments and Recommendations

In our proposed rule published on June 2, 2011 (76 FR 31906), we requested that all interested parties submit written comments on the proposal by August 1, 2011. Similarly, in our revision to the proposed rule on April 26, 2012 (77 FR 24915), we requested that all interested parties submit written comments on the proposal by May 29, 2012. We contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We did not receive any requests for a public hearing. During the public comment period on the June 2, 2011, proposed rule, we received a total of 10 comment letters. Following the end of that public comment period, we also received a comment letter from the State of Utah. During the public comment period on our April 26, 2012, revision to the proposed rule, we received a total of 11 comment letters.

All substantive information provided during the comment periods (and including the State of Utah's comment letter) was either incorporated directly into this final determination or is addressed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from six knowledgeable individuals with scientific expertise that included familiarity with prairie dog ecology, population modeling, and lethal control of prairie dogs. We received comments from four of the peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the Utah prairie dog. In general, the peer reviewers agreed with the value of having a special rule for Utah prairie dogs. They raised some concern regarding our use of the available prairie dog population models and our interpretation of available data. However, the peer reviewers did not provide specific information on how they would improve the final rule based on the available information. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* One peer reviewer stated that we should specify that the mean litter size is really the mean observed litter size after emergence of juveniles from their burrows.

Our Response: We updated the Life History section of the rule accordingly.

(2) *Comment:* One peer reviewer recommended that we add the definition for ''colony'' to the rule.

Our Response: We added descriptions of Utah prairie dog clans and colonies in the Life History section of the rule.

(3) *Comment:* The peer reviewers stated their support for various facets of the rule, including agreement that we used most of the pertinent literature, agreement with our conclusion that landowner and community support is important for species recovery, and appreciation that the rule recognizes the role of the State in managing the Utah prairie dog.

Our Response: We retained the discussions relevant to these points in our final rule.

(4) *Comment:* One peer reviewer stated that the data presented in Figure 1 demonstrates weak support for what is called a fluctuating harvest-rate model.

Our Response: We agree with the peer reviewer and did not intend to imply that Figure 1 (*i.e.,* the permitting process under the previous 1984 and 1991 special rules) showed a fluctuating harvest-rate model. To the contrary, the previous special rules essentially used a potentially fixed rate harvest-model in which 6,000 animals could be taken annually regardless of the Utah prairie dog spring count data. We clarified the rule accordingly (see *Limiting the Amount and Distribution of Direct Take That Can Be Permitted*).

(5) *Comment:* One peer reviewer questioned our observation (based on 25 years of data) that colony extinction has not increased under our previous special rules. This peer reviewer said that an assessment of metapopulation dynamics of this species is necessary, including when colonies go extinct from control, disease, or natural predation, and how often and how quickly are they recolonized.

Our Response: While metapopulation dynamics are important to long-term conservation of a species, we do not believe this type of an assessment is needed for analyzing the effects of our special rule. We believe our 25 years of prairie dog population information and take levels under the previous special rules—this is what actually happened on the ground, including the resulting stable to increasing rangewide prairie dog populations—provides a robust dataset on which we can predict future effects associated with this special rule. In addition, we are not aware of any colonies that have been extirpated due to implementation of our special rules.

(6) *Comment:* One peer reviewer concluded that a visual inspection of the line graph presented in Figure 1 suggests that high levels of actual take under the existing special rules are correlated with declines in population abundance in following years. Therefore, the peer reviewer inferred that the data suggest that existing levels of take may be having a larger impact on Utah prairie dog population abundance than acknowledged in the proposed rule revision. Thus, the peer reviewer concluded that our 10 percent take limit is likely not viable long term.

Our Response: Based on this comment, we ran a regression analysis (a statistical technique for the investigation of relationships between variables) on the available data. There was not a significant relationship between rangewide reported take under the 1984 and 1991 special rules and the total rangewide spring counts the following year (Brown 2012). This information combined with 25 years of stable to increasing population trends indicate that these levels of take are not negatively impacting the rangewide Utah prairie dog population.

(7) *Comment:* One peer reviewer was concerned that our 10 percent take limit is higher than actual take that has been reported under the prior special rules.

Our Response: Although our allowable take of up to 10 percent is higher than actual take, available modeling on other prairie dog species (Reeve and Vosburgh 2006, p. 123; Colorado Division of Wildlife (CDOW) 2007, p. 135) shows that fluctuating harvest rates of 20 to 25 percent of the population are sustainable, and our 10 percent take limit is much less than these rates. In addition, it is likely that actual harvest will always be much less than permitted harvest, as our experience over the past 25 years shows, and we added this information to Table 3. The special rule allows us to modify or discontinue take in the future should we experience population effects that are inconsistent with Utah prairie dog conservation.

(8) *Comment:* One peer reviewer recommended that we consider a spatial analysis of prairie dog demographics and the associated impacts of take in different parts of the species' range. This reviewer questioned the potential long-term impacts across the species' range of a spatially clustered take of comparatively higher intensity in one portion of the range, compared to a more uniform and widespread distribution of removal.

Our Response: We added a requirement to the rule that take will be spatially distributed across the three Recovery Units, based on the distribution of the annual total rangewide count within each Recovery Unit (see *Limiting the Amount and Distribution of Direct Take That Can Be Permitted,* ''Agricultural Lands,'' below).

(9) *Comment:* A couple of peer reviewers stated that smaller populations are more susceptible to localized extinction and that colony size should be considered when permitting take.

Our Response: We agree that smaller populations are more susceptible to localized extinction. As described in our rule, available modeling on the impacts of shooting to prairie dogs was completed on other prairie dog species, not Utah prairie dogs. However, because this represents the best available information, we reviewed the literature to determine relative impacts based on colony size. Populations of Gunnison's prairie dogs, even in the presence of enzootic plague, showed strong population growth rates with no risk of extinction as long as their initial population sizes were greater than or equal to 50 animals (CDOW 2007, p. 128). Accordingly, our final rule states that a minimum spring count of 7 animals (total population estimate of 50 animals) in each colony is required for the issuance of any permits under this rule. In addition, we added a provision to the rule that directs permitting biologists to consider colony size when issuing permits (see *Limiting the Amount and Distribution of Direct Take That Can Be Permitted*). Because we have stable to increasing rangewide Utah prairie dog populations under the previous rules, it is reasonable to assume that restricting permits to even larger colony sizes under this final rule will result in continued positive population trends.

(10) *Comment:* One peer reviewer and a couple of commenters stated that the available literature does not have an accurate assessment of plague risk related to colony density. They stated that there is not sufficient evidence to support our conclusion that taking Utah prairie dogs will lower plague risk by maintaining lower densities. Another peer reviewer recommended that we consider plague as a factor when evaluating the sustainability of a given level of take.

Our Response: We agree that colony density and plague are not always directly related. We revised the rule to include additional literature regarding plague dynamics in prairie dog populations, particularly noting that there are a variety of factors that play a role in the occurrence and extent of enzootic and epizootic plague events. Thus, we are not able to conclude that reducing prairie dog population densities will always result in the reduction of plague occurrence or significance. Plague is considered a factor when evaluating a given level of take to the extent that annual take is based on a percentage of the estimated annual population of prairie dogs. Fluctuations in prairie dog populations due to plague outbreaks could affect the total amount of authorized take in a given year.

(11) *Comment:* One peer reviewer recommended that we consider how competition for resources (*e.g.,* how reduced competition can promote higher reproductive success and survivorship) and plague (*e.g.,*

controlling density can reduce the impact of plague) can be balanced to achieve optimal demographic robustness for long-term conservation of Utah prairie dogs.

Our Response: This special 4(d) rule is not intended to evaluate all conservation aspects for the Utah prairie dog. Under the revised Utah prairie dog Recovery Plan, we consider all demographic and metapopulation dynamics in our efforts to recover the species. The special 4(d) rule does consider how implementation of some level of prairie dog control can positively affect populations by reducing competition for resources and reducing the potential for plague outbreaks in some scenarios (see *Limiting Where Take is Allowed,* ''Conservation Benefits of Allowing Take on Specific Lands,'' below).

(12) *Comment:* One peer reviewer requested that we provide some information regarding the time and effort expended to conduct annual spring count surveys.

Our Response: The UDWR estimates that surveys require 8 to 10 weeks, with 3 to 5 biologists annually. We added this information to the rule.

(13) *Comment:* A couple of peer reviewers recommended we use mean litter size of 3.88 juveniles instead of the 4 juveniles used in our population estimate calculation in the ''Distribution and Abundance'' section of the rule. Mean litter size of 3.88 juveniles is supported by the literature.

Our Response: Based on the available literature, we conclude that the use of 4 juveniles is appropriate in our population estimate calculation. We included additional citations in the rule that show litter sizes varying from 1 to 8 pups, with means varying from 3.64 to 5.5.

(14) *Comment:* One peer reviewer questioned whether maintaining prairie dogs at baseline populations on private lands adjacent to conservation lands would be sufficient to maintain a functioning metapopulation across the boundary between private land and conservation property land.

Our Response: The selection and establishment of conservation lands takes into consideration spatial distribution, colony size, colony persistence, and connectivity between habitats. We make our decisions on the contribution of these lands to recovery for the Utah prairie dog including the assumption that the nearby properties (within 0.8 km (0.5 mile) of the conservation land) would be maintained at baseline prairie dog populations. Therefore, the conservation lands themselves are initially assessed for their ability to contribute to Utah prairie dog metapopulation dynamics and recovery. We added information to the rule that explains how conservation lands are selected.

(15) *Comment:* A couple of peer reviewers recommended that we more closely analyze the applicability of available population models to the Utah prairie dog, in particular a model used by the CDOW (now Colorado Parks and Wildlife) (2007). One peer reviewer gave an example—there is clearly some level of interaction between prairie dogs and agricultural activity in Colorado as there is in Utah, which means that the results of the analysis in CDOW (2007) may have a greater degree of relevance than what is stated in the proposed rule revision.

Our Response: We evaluated the available prairie dog population models in both our proposed and final rules (see *Limiting the Amount and Distribution of Direct Take That Can Be Permitted;* Reeve and Vosburgh 2006, entire; CDOW 2007, entire). We considered these models in light of expected differences between habitats and behaviors of the various prairie dog species; we do not believe that the models are strictly applicable to Utah prairie dogs. In addition, we considered these models in conjunction with our own data showing 25 years of stable to increasing rangewide Utah prairie dog populations with implementation of similar special rules that have allowed take on agricultural lands. We reevaluated these models for this final rule and made a couple of changes to the rule, including an increased minimum colony size (spring count = 7 animals) for permitting, and a change in the dates when shooting is allowed (June 15 to December 31). We agree with the peer reviewer that there are likely some similarities between prairie dogs and agricultural activity in Colorado and Utah. However, implementation of this rule is largely for colonies occurring on agricultural lands, whereas the available models include a broad range of habitat types for prairie dog species in other States.

(16) *Comment:* Two peer reviewers expressed concern that the proposed rule had a percent take per colony higher than previously experienced, and questioned if this amount of within-colony take would be viable for the long term. Two peer reviewers supported our requirement that within-colony take would be limited to one-half of a colony's estimated annual production (approximately 36 percent of estimated total population). One peer reviewer recommended we consider that the impact of percent within-colony take will vary based on colony size, and another peer reviewer recommended the most important factor in population stability is seasonal restrictions on shooting.

Our Response: The UDWR has used this same within-colony take limit under the previous special rules, and, as described in the rule, the affected colonies remain viable. Based on the peer review comments, we further evaluated the possible correlation of actual take and declines in population abundance at a sample of colonies that have had numerous take permits under our previous special rules. Although we only had small sample sizes, our regression analysis of the available data showed that there is no correlation between actual take in 1 year and spring counts the following year at specific colonies (Brown 2012); the permitted take in these situations was determined by UDWR using one-half of a colony's estimated annual production. However, we agree that the overall impact of within-colony take may vary based on colony size. We added a condition to the rule that colony size will be taken into consideration by the permitting biologist when evaluating the permittee's property and determining appropriate take levels. No take can be authorized if the spring count at a colony is less than 7 (population estimate = 50). In addition, the rule provides seasonal restrictions on take.

(17) *Comment:* One peer reviewer was concerned that development of the take limits was based on evaluation of information and modeling of other prairie dog species, not Utah prairie dogs.

Our Response: We acknowledge in the rule that literature from species other than Utah prairie dogs was used in support of the rule revision. However, this is the best available information and is appropriate to review because of the similarity in activities; the models addressed recreational shooting of prairie dogs, and we evaluated controlled lethal take. In addition, we are able to compare the results of these models with over 25 years of data specific to the Utah prairie dog under the previous special rules.

(18) *Comment:* One peer reviewer recommended including gas cartridges, anticoagulants, and explosive devices as prohibited take methods.

Our Response: We revised the document to prohibit the use of gas cartridges, anticoagulants, and explosive devices to control prairie dogs on agricultural lands and properties within 0.8 km (0.5 mi) of conservation lands. These techniques were not employed by UDWR under the previous rule and are

explicitly prohibited by this rule because they do not allow control agents to target a specific number of prairie dogs or track actual take.

(19) *Comment:* One peer reviewer recommended that we require any shot prairie dogs be disposed of by burying them outside of the colony boundary.

Our Response: We evaluated the potential effects to the environment of lead in the draft and final environmental assessments. We determined that the use of lead shot for prairie dog control would not have significant effects to the environment based largely on the limited area in which 4(d) permits and lethal take are authorized. Therefore, we did not require measures such as disposing of shot prairie dogs in a specific manner.

Comments From States

(20) *Comment:* The State of Utah and several commenters expressed support for the revised rule and recommended its final adoption and implementation. They concluded that the rule is vital to our continued success of working with private landowners and the recovery of the Utah prairie dogs, and that cooperative efforts between landowners and wildlife agencies offer the best hope for recovery of the species.

Our Response: We agree that the rule is necessary and advisable to address continued conflicts between landowners and Utah prairie dogs by providing for ecologically based population control that also alleviates some of the impacts that prairie dogs can cause to agricultural operations, the safety of operation such as airports, and the sanctity of significant human cultural and human burial sites.

(21) *Comment:* The State of Utah found that one section of the proposed rule said 7 percent of 10 percent is the take limit for agricultural lands. This equals 0.7 percent of overall rangewide population and conflicts with the 7 percent estimate elsewhere.

Our Response: We fixed this sentence to reflect that 7 percent of the rangewide population can be authorized for take on agricultural lands.

(22) *Comment:* The State of Utah said that the terms ''annual rangewide population'' and ''estimated population'' were not always clearly defined in the proposed rule. The commenter recommended that we clarify throughout the rule that the estimated population is number of animals occurring in late spring and summer when both adults and juveniles are present above ground.

Our Response: We revised the text to ensure clarity in the use of terms associated with spring counts (adult prairie dogs) versus estimated population sizes (adults and juveniles).

(23) *Comment:* The State of Utah recommended that the rule should allow for entities other than the UDWR to issue permits for control of Utah prairie dogs.

Our Response: We revised the special rule to allow for other entities to evaluate and permit properties for take, if those entities are approved in writing by our agency.

(24) *Comment:* The State of Utah was concerned that the inclusion of two maximum annual take limits—6,000 animals and 10 percent of the estimated rangewide population—may be confusing to some readers.

Our Response: We removed the upper limit of 6,000 animals from the final rule. The maximum allowable total annual permitted take will be no more than 10 percent of the estimated rangewide population.

(25) *Comment:* The State of Utah suggested that the cumulative annual take be 10 percent of the rangewide population regardless of the source (*i.e.,* agricultural lands or conservation lands).

Our Response: We retained a 7 percent take on agricultural lands and the remaining take (totaling 10 percent) to lands within 0.8 km (0.5 mi) of Utah prairie dog conservation lands. We determined the 7 percent take limit on agricultural lands based on evaluating the permitted and actual levels under the previous rules (56 FR 27438, June 14, 1991; 49 FR 22330, May 29, 1984).

(26) *Comment:* The State of Utah asked for clarification whether all agricultural lands within 0.5 mile of a conservation property automatically fall into the Properties Near Conservation Lands take category.

Our Response: We added a statement to the rule (see *Limiting Where Take is Allowed*) clarifying that all private properties within 0.8 km (0.5 mi) automatically fall into the Properties Near Conservation Lands take category.

(27) *Comment:* The State of Utah and a couple of commenters recommended expanding the rule to include take authorization for areas such as cemeteries, schools, athletic facilities, golf course, airports, and ballparks.

Our Response: We modified the rule to allow control on areas where prairie dogs are creating serious human safety hazards or disturbing the sanctity of significant human cultural or human burial sites. Lethal take in all cases is only a last resort and is only allowable after all practicable measures to resolve the conflict are implemented. We agree with the commenters that the species benefits when the public supports recovery efforts and prairie dog conflicts are reduced in some public gathering areas. However, excluding all areas where there are impacts to recreation only rather than serious health and safety concerns is not consistent with recovery of the Utah prairie dog.

Comments From Elected Officials

(28) *Comment:* One commenter thought that fence specifications should be provided on a case-by-case basis instead of relying on a one-size-fits-all fence.

Our Response: We agree that fencing specifications will not be the same for each situation. Our final rule does not preclude site-specific prairie-dog-proof fence designs. For example, the most recent fence designs at the Parowan Airport and Paragonah Cemetery are different because of site-specific needs.

(29) *Comment:* One commenter requested that the seasonal sex and weight limits of translocated prairie dogs be removed for sites under this special rule given the severity of impacts to human safety or disruption to cultural or burial sites.

Our Response: We have revised the final rule to remove the seasonal sex and weight limits for translocations from fenced sites. Any prairie dogs not removed from these areas would be allowed to be lethally removed following the translocation effort; therefore, the sex and weight of the animals is not meaningful.

(30) *Comment:* One commenter wanted to know what criteria we would use to determine the areas where prairie dogs create safety hazards or disturb the sanctity of significant human cultural or human burial sites under this rule.

Our Response: Because there are likely to be differing circumstances resulting in the need for take at certain sites, the criteria will be determined largely on a site-specific basis. However, the rule is clear in stating that take will only be allowed in areas where a credible, serious public safety hazard or harm to significant human cultural or human burial sites can be clearly demonstrated. We certainly agree that prairie dogs are a concern at the Parowan Airport and Paragonah Cemetery, and we have already helped to meet the needs of fencing at these locations.

(31) *Comment:* One commenter asked what we would do if the number of prairie dogs within a fenced area is ''more than small''—will lethal take still be allowed? The rule states that ''these sites are relatively small areas, would be fenced, and prairie dogs would be removed by translocation prior to the permitting of lethal take. Thus we

expect that the numbers of Utah prairie dogs lethally removed would be small.''

Our Response: The intent of this discussion in the rule is to identify in part why we believe these areas are not important for the conservation of the Utah prairie dog. We can expect that properly maintained fencing will keep out the majority of prairie dogs. Thus, lethal take will be allowed as long as the conditions of the rule are followed. If numerous prairie dogs are breaching the fence, we would inspect the fence to determine why the breaches are occurring, at which time some fence maintenance may be required in order for lethal take to be allowed to continue.

(32) *Comment:* One commenter supported giving local government entities, such as counties, management authority under this rule.

Our Response: The ability for entities other than UDWR to permit take was added in this final rule.

(33) *Comment:* One commenter said that we should not limit within-colony take on agricultural lands. If an entire colony is not translocated, then the remaining animals will continue causing damage, and it is inevitable the numbers will continue to increase.

Our Response: It is not the intent of this rule to extirpate colonies that occur on agricultural lands. The intent of this special rule is to support the conservation of the Utah prairie dog by managing unnaturally high populations that occur in areas such as agricultural lands. We conclude in this rule that our ability to manage these populations will assist with recovery efforts for the Utah prairie dog.

(34) *Comment:* A couple of commenters, including one elected official, were concerned that two fences have already been constructed at the Paragonah Cemetery in accordance with Service specifications, and now they are being asked to build a third fence, 6 feet deep. The uncertainty in adequate fence specifications erodes trust between the government and local communities.

Our Response: The Service was not asked to review and approve the prior fences at the cemetery, one of which is above ground, and the other which is 18 inches below ground. Regardless, the existing fence is ineffective at keeping prairie dogs out of the cemetery. The Service and State of Utah have offered to fund and construct a new fence at the cemetery that will be a more effective prairie dog barrier. Under this rule, after the fence is constructed, the City of Paragonah will be given a permit to lethally take any prairie dogs that breach the fence at any time during the year, following an initial translocation effort. We agree that prairie dogs should not be in the cemetery. We also agree that there should be a standard for fence specifications, recognizing site-specific differences. As such, we have worked with the Utah Prairie Dog Recovery Implementation Team to develop prairie dog-proof fencing specifications.

Public Comments

(35) *Comment:* One commenter questioned the science and intentions behind the ''4(d) program.'' This commenter believes that this action is simply political and is being done because of the ''big money in agribusiness.'' The commenter does not believe that killing prairie dogs is advantageous to the species. The commenter also stated that this action requires an environmental impact statement.

Our Response: Under section 4(d) of the ESA, we are required to issue protective regulations deemed necessary and advisable to provide for the conservation of listed threatened species. This 4(d) rule is based on the best available science and is a regulatory tool to assist in species conservation. This rule is intended to relieve prairie dog population pressures in overcrowded portions of the range as well as alleviate some impacts to agricultural operations, properties within 0.8 km (0.5 mi) of prairie dog conservation lands, and areas where human safety or the sanctity of significant human cultural or human burial sites is a concern. We evaluated the effects of our action in accordance with the National Environmental Policy Act by completing an environmental assessment. We solicited public comments on our environmental assessment (77 FR 24915, April 26, 2012). Based on the comments we received, we completed a finding of no significant impact. Therefore, we will not develop an environmental impact statement on our action, and do not believe an environmental impact statement is required.

(36) *Comment:* One commenter stated that we are wasting time and money working on Utah prairie dog issues because the animals occur everywhere, including central and eastern Utah. Specifically, this commenter stated that our range data are inaccurate because Utah prairie dogs occur in Emery and Carbon Counties.

Our Response: As described in the rule, the distribution of the Utah prairie dog is limited to the southwestern quarter of Utah in Iron, Beaver, Washington, Garfield, Wayne, Piute, Sevier, and Kane Counties. The species that occurs in Carbon and Emery Counties, and other portions of central and eastern Utah, is the white-tailed prairie dog (*Cynomys leucurus*). The Gunnison's prairie dog (*Cynomys gunnisoni*) occurs in the southeastern portion of the State. The best available scientific and commercial information indicates that the Utah prairie dog meets the definition of a threatened species under the ESA.

(37) *Comment:* One commenter stated that climate change may become a real threat to Utah prairie dogs based on work that is being done on black-tailed and Gunnison's prairie dogs in similarly arid grasslands.

Our Response: We agree that climate change may impact Utah prairie dogs. Our Utah Prairie Dog Final Revised Recovery Plan (USFWS 2012, pp. 1.7–15) discusses climate change. In addition, our use of an annual limit based on a percentage of the total estimated annual Utah prairie dog population takes into account changes in prairie dog numbers across the species' range due to climate change or other factors.

(38) *Comment:* One commenter stated that it is very important that prairie dogs on agricultural lands and lands adjacent to conservation areas are allowed to be taken.

Our Response: We agree with this comment. The ability to take prairie dogs in these areas is included in the rule (see *Limiting Where Take is Allowed*).

(39) *Comment:* One commenter stated that maintaining healthy predator populations on grazing land is important to controlling Utah prairie dogs in areas where they are not wanted. Predators can naturally and effectively control prairie dog populations so that there is no need for human control.

Our Response: We agree that predators can naturally control Utah prairie dog populations, and this is described in the rule (see ''Life History'' and ''Habitat Requirements and Food Habits''). However, we do not have the ability to manage predators on the properties to which this rule applies; private agricultural lands are managed systems that usually include predator removal.

(40) *Comment:* One commenter recommended that we revise our timing of permitted take to be June 1 in the West Desert recovery unit and July 1 on the Awapa Plateau and Paunsaugunt recovery units.

Our Response: We reviewed the available literature and discussed these dates with the Utah Prairie Dog Recovery Team members. We concluded that the date of permitted take should be changed to June 15, particularly to

accommodate higher elevations where prairie dog pups often emerge from their dens later as compared to lower elevations, and we changed the date in this final rule.

(41) *Comment:* A few commenters expressed concern that allowing take of up to 6,000 prairie dogs annually is too large of a number because the annual count of prairie dogs does not reach these levels. They were concerned that the take was too high given other aspects of the species' status, including declines in Utah prairie dog populations over the last century, small colony sizes, poor habitat conditions, overgrazing, habitat fragmentation, and plague. One commenter stated that Utah prairie dog populations have declined dramatically in the last 100 years, and thus the level of take provided in the rule is too great.

Our Response: This rule limits the amount of annual take to a maximum of 10 percent of the rangewide population. The upper limit of 6,000 animals is not included in the final rule. Based on the best available science and models, we believe this take limit is consistent with recovery goals for the species. The Utah prairie dog rangewide population trend is stable to increasing over the last 30 years.

(42) *Comment:* One commenter stated that Utah prairie dog recovery efforts have not been successful over the last 25 years. This commenter also stated that our primary goal should be to expand Utah prairie dog populations. This commenter urged us to implement more strategic solutions that work with landowners to implement more strategic solutions to compensate for lost income and encourage support for Utah prairie dog recovery, instead of implementing outdated lethal control methods.

Our Response: This rule emphasizes control of Utah prairie dog in certain locations that we have determined are not essential to the recovery of the Utah prairie dog. However, our recovery effort is a multi-phased approach to species' conservation on a landscape scale. Our new Utah Prairie Dog Final Revised Recovery Plan describes many of the ongoing and newer strategic conservation solutions on public and private lands, including conservation banks, Utah prairie dog Habitat Credit Exchange (a market-based form of mitigation banking), safe harbor program, Utah prairie dog Recovery Implementation Program, habitat conservation planning, translocations, plague management, and habitat conservation plans (HCPs) (USFWS 2012, section 1.9). We believe that the sum of all of these efforts, including allowing control on lands as identified under this rule, will cumulatively work to expand and protect populations and recover the Utah prairie dog.

(43) *Comment:* One commenter agreed that agricultural lands tend to support high numbers of prairie dogs. However, this commenter stated that prairie dog populations do not increase to the same high levels on grazing land. Therefore, the justification that we use for control cannot be applied to both situations.

Our Response: We agree that in many cases prairie dog populations do not increase on grazing lands to the same degree as they do on agricultural lands, particularly if those are public rangelands without improvements. However, under this rule, we more specifically define agricultural lands on which control can be considered; see *Limiting Where Take is Allowed.* Many of the pasturelands that fall under this category are improved landscapes, which likely result in increased prairie dog populations. In addition, to ensure that we only consider control under proper conditions, the rule requires that we verify the land is being physically or economically impacted by prairie dogs.

(44) *Comment:* One commenter requested information on how we estimate rangewide prairie dog populations. This commenter suggested that pups should not be included in the estimate because many do not survive their first year.

Our Response: The equation for estimating Utah prairie dog population size is included in the ''Distribution and Abundance'' section of the rule. The total population estimate includes juveniles. The commenter is correct in stating that many pups do not survive their first year, so for recovery purposes we rely heavily on spring counts (adults only) to determine population trends. We included the calculation for total population estimate (adults and juveniles) in the rule because it helps the reader to understand that the rule allows control on agricultural lands during the summer months when impacts from prairie dogs can increase dramatically due to the high numbers of animals on the landscape.

(45) *Comment:* A few commenters stated that the rule should be expanded to allow all private property owners to remove prairie dogs from their lands because of the high degree of economic and physical impacts (*i.e.,* prairie dog mounds), as well as human safety issues, associated with the presence of prairie dogs. For example, many people cannot find a buyer for their property if it has prairie dogs on it or adjoins a lot with prairie dogs. Many people are forced to purchase and install prairie dog fencing to keep prairie dogs off their lot. There also is a shifting tax burden placed on every resident in the county because people who have prairie dogs on their property have successfully petitioned the State to have the value of their property reduced.

Our Response: We acknowledge prairie dogs can have economic and physical impacts. These impacts contributed to the listing of the species, because prairie dogs were controlled heavily by humans prior to listing. Many private properties are likely to be developed, particularly in the urban areas. Development of private lands results in the permanent loss of prairie dog habitats and populations. Therefore, we believe that retaining the prohibition for take on private lands except where allowed by this rule is necessary and advisable for the conservation of the species. The mechanism to authorize take on private lands that are not included in this rule is the ESA section 10(a)(1)(B) process and implementation of HCPs.

(46) *Comment:* One commenter stated that it is absurd to consider prairie dogs as endangered or threatened because their total estimated population is about 34,000 animals on Federal land. A couple of commenters also were concerned that we only count numbers of prairie dogs on Federal lands toward recovery.

Our Reponse: Rangewide (public and private lands) prairie dog spring counts were as high as 7,527 animals in 1989 (summer population estimate = 54,194) and a low spring count of 1,866 animals in 1976 (summer population estimate = 13,435). The average spring count on all lands for the past 34 years is 4,187 animals (summer population estimate = 30,150). The species is listed as threatened primarily based on threats from development and plague. Plague affects the species rangewide. Development affects the species largely on non-Federal lands through residential and commercial development. Over 70 percent of the Utah prairie dog population occurs on non-Federal lands that will likely be developed in the foreseeable future. To recover the Utah prairie dog, we need both robust population numbers and protection from the threats, in the form of permanent habitat protection. In this regard, private lands are counted toward recovery when they are permanently protected through acquisitions or conservation easements.

(47) *Comment:* One commenter asked why the Federal government cannot move the prairie dogs to Federal land and manage them there, allowing homeowners to rid their properties of these animals.

Our Response: The Utah prairie dog recovery effort includes a 2-tiered approach of establishing and managing prairie dogs on Federal lands and protecting existing colonies on private lands where willing landowners agree to conservation easements or fee title purchases. Because most of the Utah prairie dog population exists on private lands, recovery will be achieved in substantially less time if we are able to protect some of the most important colonies in these areas.

(48) *Comment:* One commenter recommended that prairie dogs be thinned via relocation where they are in conflict with landowners.

Our Response: The special rule allows and encourages live-trapping and translocation of prairie dogs from the lands where take is authorized (see *Limiting Methods Allowed to Implement Direct Take*).

(49) *Comment:* One commenter stated that our proposed revisions to the special rule are flawed because they require ''all practicable measures'' to be taken to remove and keep prairie dogs out of airports and cemeteries. A couple of commenters did not believe that fencing is practical because the fence would need to be several feet subterranean, a few feet high aboveground, and of a material that cannot be chewed through; open gates would need to be monitored; and the fencing is expensive. One commenter said that acceptable fence specification should be made clear to everyone. A couple of commenters expressed concern about who would pay for fencing and the maintenance of that fence.

Our Response: We agree that no fence is likely to be completely impermeable to prairie dogs, and our rule acknowledges this issue. We have worked with the Utah Prairie Dog Recovery Implementation Team to develop fencing specifications that meet some of the commenters' concerns—fencing 6 feet below ground and 3 feet above ground with prairie-dog proof materials. Long-term monitoring and maintenance of any fence is necessary for that fence to maintain its functionality, regardless of the intended purpose of that fence, *e.g.,* prairie dogs or livestock. We, and the State of Utah, have provided funding and equipment to complete prairie-dog proof barriers at the Parowan Airport and Paragonah Cemetery. We will continue to assist with funding as it is available to meet both community and recovery needs for this species; however, we also anticipate that local communities and private entities also may fund fencing projects.

(50) *Comment:* One commenter agreed with the idea of controlling animals that intrude into areas such as cemeteries and airports, and that these prairie dogs should either be killed or translocated to Federal lands.

Our Response: The final rule allows for both lethal take and translocation of prairie dogs from areas where prairie dogs create human safety hazards (*e.g.,* airports) or disturb the sanctity of significant human cultural or human burial sites.

(51) *Comment:* One commenter stated that they would like to be able to trap and translocate prairie dogs in public areas where the safety of visitors is being compromised, such as in public parking areas, public event seating areas, livestock corrals, and non-irrigated pastureland. One related comment from elected officials said that the requirement of a fence should not be a precedent for all private property owners. The commenters stated that fencing areas is not always feasible.

Our Response: We added language to the final rule to allow filling of burrows and translocations of animals from areas where Utah prairie dogs create human safety hazards or disturb the sanctity of significant human cultural or human burial sites, but where fencing of these areas is not practicable. However, a prairie-dog proof fence must first be constructed before we would authorize lethal take in these areas under this final rule.

(52) *Comment:* One commenter was concerned that the shortened timeframe for direct take (changing the start date for take from June 1 to June 15) would be problematic.

Our Response: The purpose of this special rule is to provide for the long-term conservation of the Utah prairie dog. Therefore, the specifications of the special rule are based on the biological needs of the species. Additionally, we consider the 15-day change to be a relatively minor alteration to the rule.

(53) *Comment:* One commenter expressed concern that the take allowance for human safety, cultural, and burial sites would be unnecessarily constrained to ''only areas where a credible, serious public safety hazard or harm to significant human cultural or human burial sites could be clearly demonstrated.''

Our Response: We do not believe that this constraint is impractical or burdensome. The ability to control prairie dogs in these situations is certainly important to local communities, and as such we believe it also is beneficial for Utah prairie dog recovery efforts. However, we intend that the rule is only applied in site-specific situations where there is a credible concern.

(54) *Comment:* One commenter questioned the constitutionality of this 4(d) rule and Federal regulation of the Utah prairie dog, based on the Commerce Clause.

Our Response: We believe this 4(d) rule is constitutional. The courts have issued several rulings on the constitutionality of the ESA under the Commerce Clause. The final environmental assessment evaluates the effects of this final rule to the human environment, including socioeconomics.

Application of the Utah Prairie Dog Special Rule Through the Present

As explained above in the Special Rules Under ESA Section 4(d) section, under section 4(d) of the ESA, the Secretary of the Interior may extend to a threatened species those protections provided to an endangered species as deemed necessary and advisable to provide for the conservation of the species. When the Utah prairie dog was reclassified from endangered to threatened status in 1984, we issued a special rule applying all of the ESA's prohibitions to the Utah prairie dog except for take occurring in specific delineated portions of the Cedar and Parowan Valleys in Iron County, Utah, when permitted by the UDWR and in accordance with the laws of the State of Utah, provided that such take did not exceed 5,000 animals annually and that such take was confined to the period from June 1 to December 31 (49 FR 22330, May 29, 1984). The rule required quarterly reporting by UDWR and allowed us to immediately prohibit or restrict such taking as appropriate for the conservation of the species if we received substantive evidence that the allowed take was having an effect that was inconsistent with the conservation of the Utah prairie dog (49 FR 22330, May 29, 1984).

In 1991, we amended the special rule (56 FR 27438, June 14, 1991), expanding the authorized taking area to include all private land within the species' range, and raised the maximum allowable take to 6,000 animals annually (50 CFR 17.40(g)). The rule required UDWR to maintain records on permitted take and make them available to the Service upon request (50 CFR 17.40(g)). Under this rule, we retained the ability to immediately prohibit or restrict such take as appropriate for the conservation of the species if we received substantive evidence that the permitted take was having an effect that was inconsistent with the conservation of the species (50 CFR 17.40(g)).

Both rules (49 FR 22330, May 29, 1984; 56 FR 27438, June 14, 1991) were intended to relieve Utah prairie dog population pressures in overcrowded portions of the range that could not otherwise be relieved. The rules indicated that agricultural practices were making the habitat more productive than it was historically, thus allowing the prairie dog population to achieve unnaturally high densities. We concluded that the resulting overpopulation pressures increased the risk of sylvatic plague (*Yersinia pestis*) outbreaks (see ''Habitat Requirements and Food Habits,'' above; 49 FR 22333, May 29, 1984; 56 FR 27439–27440, June 14, 1991). We also concluded that removing individuals during summer when populations were highest would reduce competition in overpopulated areas and result in increased overwinter survival among remaining animals (49 FR 22334, May 29, 1984; 56 FR 27439–27441, June 14, 1991).

Finally, these rules were necessary and advisable to address the growing conflicts between landowners and prairie dogs by providing for ecologically based population control that also alleviated some of the impacts to agricultural operations (49 FR 22330, May 29, 1984; 56 FR 27438, June 14, 1991). The rules expressed concern that without control actions, these factors could have a substantially negative effect on populations and reverse the recovery progress made since listing (49 FR 22330, May 29, 1984; 56 FR 27440, June 14, 1991). The 1991 rule referenced data that demonstrated that Utah prairie dog population levels in areas with controlled take increased 88 percent during the first 4 years (1985–1989) of implementation of the special rule (56 FR 27438, June 14, 1991).

In practice, and under Utah State Code (R657–19–6, R657–19–7), the UDWR permitted taking only by shooting or trapping on agricultural lands where prairie dogs are causing damage and limits the number of animals taken on an individual colony to no more than half of a colony's estimated productivity for that year. Over time, UDWR has permitted fewer than 6,000 animals every year for the last 25 years. Annual permitted take amounts averaged 5.7 percent of the total rangewide population estimate (range equals 1.8 to 13.0 percent); actual take averaged 2.6 percent of the total rangewide estimated population (range equals 0.9 to 5.3 percent). Table 3 provides detailed information on permitted and reported take as a percent of the total rangewide population from 1985 to 2010 (UDWR 2010b, 2011, entire; Day 2012, pers. comm.). Reported take was always well below permitted take, averaging 48 percent of permitted take across 25 years. As previously described, UDWR could have permitted take of up to 6,000 prairie dogs annually under the 1991 special rule, regardless of the spring count data.

Figure 1 illustrates annual rangewide population estimates from 1985 to 2010 with a population trend line. Throughout implementation of the previous special rules (49 FR 22330, May 29, 1984; 56 FR 27438, June 14, 1991; 50 CFR 17.40(g)), both the rangewide population estimates and numbers of prairie dogs in individual colonies subject to control remain stable to increasing (Figure 1; Day 2010, pers. comm.).

TABLE 3—AMOUNT OF UTAH PRAIRIE DOG TAKE PERMITTED AND REPORTED UNDER THE ESA 4(d) RULE BY UDWR, 1985–2010

[UDWR 2010b, 2011; Day 2012, pers. comm.]

Year *	Spring count	Rangewide population estimate	Permitted take	Permitted take percentage of rangewide population estimate	Reported take	Reported take percentage of rangewide population estimate	Reported take percentage of permitted take
1985	3,299	23,753	845	3.6	426	1.8	50
1986	4,400	31,680	2,040	6.4	1,247	3.9	61
1987	4,771	34,351	975	2.8	370	1.1	38
1988	4,640	33,408	2,415	7.2	528	1.6	22
1989	7,527	54,194	3,050	5.6	838	1.5	27
1991	4,492	32,342	4,200	13.0	1,632	5.0	39
1992	4,067	29,282	3,520	12.0	1,543	5.3	44
1993	3,954	28,469	1,050	3.7	599	2.1	57
1994	3,702	26,654	1,190	4.5	779	2.9	65
1995	3,576	25,747	630	2.4	461	1.8	73
1996	3,917	28,202	520	1.8	436	1.5	84
1997	4,359	31,385	1,065	3.4	589	1.9	55
1998	5,106	36,763	1,220	3.3	717	1.9	59
1999	5,068	36,490	2,496	6.8	1,233	3.4	49
2000	5,892	42,422	3,700	8.7	1,386	3.3	37
2001	4,223	30,406	3,719	12.2	1,626	5.3	43
2002	4,933	35,518	3,781	10.6	1,760	4.9	46
2003	3,729	26,849	2,620	9.8	1,195	4.4	45
2004	4,102	29,534	1,360	4.6	363	1.2	27
2005	5,375	38,700	1,470	3.8	673	1.7	46
2006	5,524	39,773	1,060	2.7	343	0.9	32
2007	5,991	43,135	944	2.2	482	1.1	51
2008	5,791	41,695	1,204	2.9	561	1.3	47
2009	5,827	41,954	1,532	3.6	558	1.3	36
2010	5,648	40,666	1,870	4.7	1,425	3.6	76
AVG	4,796	34,535	1,939	5.7	814	2.6	48

* In 1990, colonies on private lands were not counted, due to staffing and budget limitations. Thus, these incomplete estimates are excluded from this table. In addition, take from 1985 to 1990 occurred only on non-Federal lands in Cedar and Parowan Valleys, Iron County. Take from 1991 to present was authorized on non-Federal lands rangewide.

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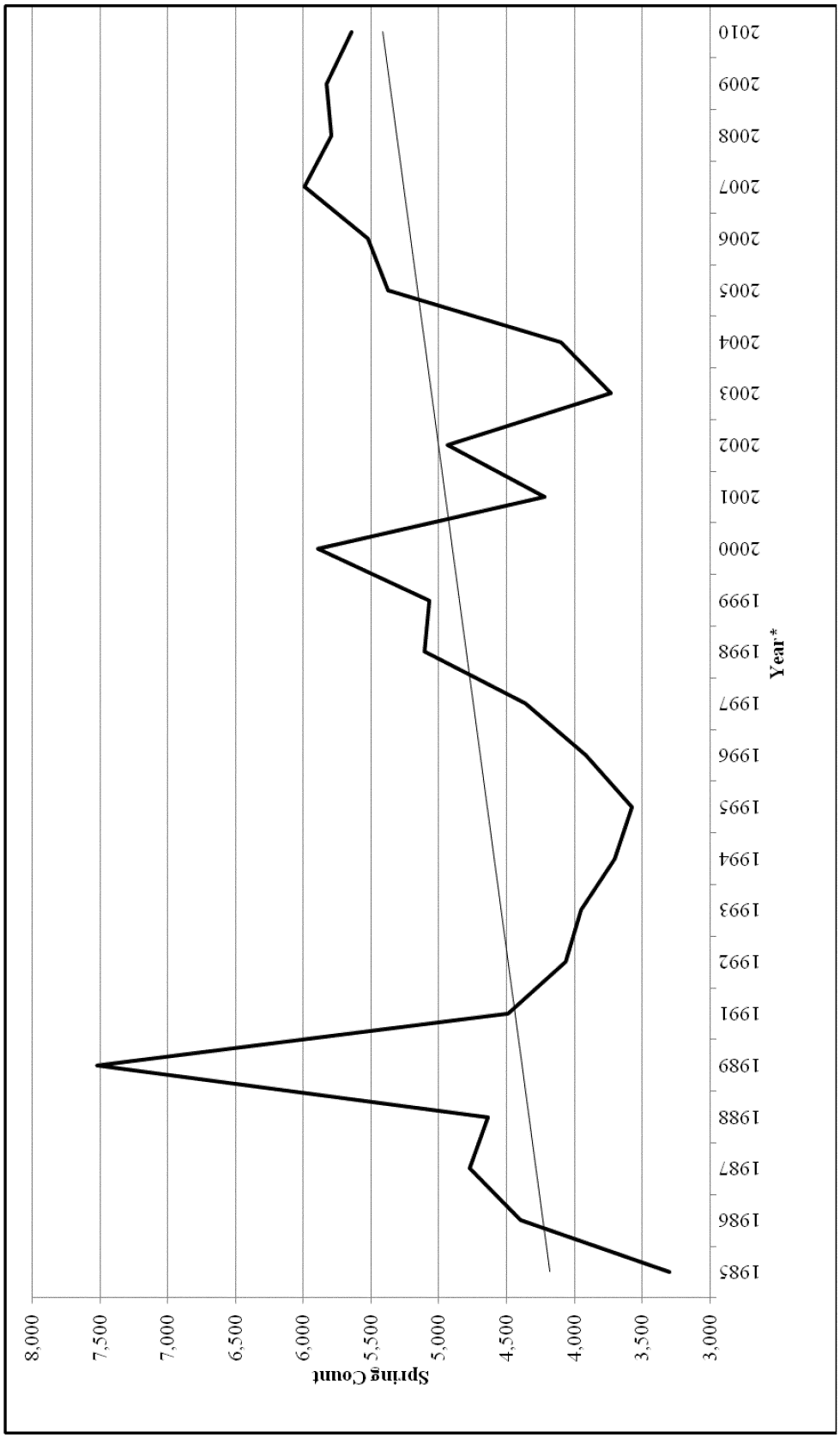
FIGURE 1. Utah Prairie Dog Spring Counts, with Rangewide Population Trend Line, 1985–2010 (UDWR 2010b, 2011).



* Surveys from 1990 are not included, because they were incomplete (*i.e.*, they did not include private lands), due to staffing and budget limitations.

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Amendments to the 4(d) Special Rule for Utah Prairie Dogs

Based on new scientific information and 25 years of available data, we amend the previous 4(d) special rule. This amendment clarifies the previous special rules, by more specifically identifying locations and situations where lethal take is allowed because we have determined it to be compatible with recovery of the species; these are agricultural lands, properties within 0.8 km (0.5 mi) of conservation lands, and areas where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites. We also are providing a take exemption for otherwise legal activities associated with standard agricultural practices. In these circumstances, imposing the take prohibitions is not considered necessary and advisable for the conservation of the Utah prairie dog. In fact, allowing take in these specific situations likely will result in greater conservation gains for the Utah prairie dog than would the application of all section 9 prohibitions (see *Limiting Where Take Is Allowed* and *Incidental Take From Normal Agricultural Practices,* below). We also are providing limits to the amount and methods of take that may be allowed. Finally, we are providing the opportunity for entities other than UDWR to evaluate and permit control on lands specified under this rule.

Our amendments are largely consistent with the past practices and permitting as administered by UDWR under the previous special rules. Utah prairie dog populations have remained stable to increasing throughout implementation of the previous special rules as implemented under the UDWR permit system (see Figure 1). Our amendments are necessary and advisable to ensure sufficient conservation for Utah prairie dogs and the species' continuing stable-to-increasing, long-term population trends. Below we describe the restrictions on direct take and the new take provisions.

This regulation extends the prohibitions in section 9(a)(1) of the ESA to Utah prairie dogs on all other lands across the species' range, where not specifically exempted by this 4(d) rule. We have determined that the regulation of take in the areas specified in this 4(d) rule is necessary and advisable for the conservation of the Utah prairie dog.

Permitting Take

Agricultural Lands

The previous special rules (49 FR 22330, May 29, 1984; 56 FR 27438, June 14, 1991) allowed take of Utah prairie dogs when permitted by UDWR. Under these rules, UDWR biologists were required to count Utah prairie dogs, determine extent of damage, determine level of take, and issue permits to applicants who requested the ability to control prairie dogs on their lands. At the time the previous rules were published, UDWR biologists were likely the only persons with the expertise to perform these permitting tasks. However, we now have a larger partnership effort, in the form of the Utah Prairie Dog Recovery Implementation Program, in which members of other State, Federal, Tribal, and local entities and the public are working together on various programs to facilitate the species' recovery (USFWS 2012, p. 1.9–11). Because of this partnership, we can reasonably assume that other entities may hire biologists or individuals with expertise in Utah prairie dogs, and that these individuals may be available to conduct many of the permitting responsibilities previously undertaken by the UDWR. Approved permitting entities would at a minimum be required to employ a sufficient number of professional wildlife biologists to conduct all permitting responsibilities; request and complete permitting training from the UDWR for staff assigned to permitting; complete the USFWS's annual Utah prairie dog survey training; and maintain a complete reporting and tracking system for take, including annual reports on the number and location of permits issued, spring population counts and boundaries of permitted colonies, number of animals allowed to be taken, number of animals actually taken, method of take, and method of disposal of all Utah prairie dogs taken. Thus, this special rule allows, with the Service's written approval, other entities to perform the UDWR permitting and reporting tasks for control activities. For simplicity, this rule refers throughout to ''permitting entities,'' and thus applies to UDWR or other permitting entities should those entities take over specific responsibilities under this special rule.

Safety Hazards, Human Cultural and Burial Sites

Take would be allowed where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites (see *Limiting Where Take is Allowed,* Safety Hazards, Human Cultural and Burial Sites, below) when Utah prairie dogs are determined, with the written approval of the Service, to be presenting serious human safety hazards (*e.g.,* airport safety areas, recreational sports fields, nursing homes, schools), or disturbing the sanctity of a significant human cultural or human burial site sites (*e.g.,* public cemetery, sacred Tribal sites) if these lands are determined not necessary for the conservation of the species. No permit would be required in these instances.

Limiting Where Take Is Allowed

The 1991 special rule allowed take on private lands anywhere within the range of the Utah prairie dog. However, in practice and in accordance with Utah Code (R657–19–6, R657–19–7), UDWR permitted take only on agricultural lands where prairie dogs were causing damage. In this revision to the special rule, we limit the locations where take is allowed to agricultural lands, private property within 0.8 km (0.5 mi) of conservation lands, and areas where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites.

Agricultural Lands

Permitting entities will issue permits for direct take on agricultural lands. This is consistent with UDWR's permitting procedures under the previous special rules. However, this revision provides a specific definition for agricultural lands for clarification purposes. Specifically, the above activities are exempted from the take prohibition only on lands meeting the Utah Farmland Assessment Act of 1969 definition of agricultural lands (Utah Code Annotated Sections 59–2–501 through 59–2–515). Thus, to be considered agricultural land under this amendment, lands must: (1) Meet the general classification of irrigated, dryland, grazing land, orchard, or meadow; (2) be capable of producing crops or forage; (3) be at least 2 contiguous ha (5 contiguous ac) (smaller parcels may qualify where devoted to agriculture use in conjunction with other eligible acreage under identical legal ownership); (4) be managed in such a way that there is a reasonable expectation of profit; (5) have been devoted to agricultural use for at least 2 successive years immediately preceding the year in which application is made; and (6) meet State average annual (per-acre) production requirements. Limiting permitted take to agricultural lands is consistent with the justification

provided in the previous special rules for the species (as summarized above).

Additionally, agricultural operators must demonstrate to the permitting entity that their land is being physically or economically impacted by Utah prairie dogs. Before an application can be approved, the permitting entity must conduct a visual census of the applicant's property to verify that the land is being physically or economically impacted by Utah prairie dogs. The visual census will count prairie dogs on the applicant's property and determine a total population estimate (adults and juveniles) for the colony. A minimum spring count of seven animals is required to ensure that permits are authorized only where resident prairie dogs have become established on agricultural lands (Day 2011, pers. comm.). Thus, lands being minimally impacted by dispersing prairie dogs are not covered. These restrictions are consistent with past UDWR practice. Utah prairie dog populations have remained stable to increasing throughout implementation of the previous special rules and past practices, as implemented under the UDWR permit system. As described below, we also have concluded that allowing take on agricultural lands benefits Utah prairie dog conservation efforts (see ''Conservation Benefits of Allowing Take on Specific Lands''). Therefore, consistent with past practice and data that indicate these restrictions will support the ongoing conservation of the species, we adopt these restrictions.

Properties Near Conservation Lands

Permitting entities will be allowed to issue permits for direct take on private properties within 0.8 km (0.5 mi) of Utah prairie dog conservation lands. All private properties within 0.8 km (0.5 mi) of conservation lands automatically fall into this category even if they also are agricultural lands. Although the 1991 special rule already allowed for take in this situation (*i.e.,* take was allowed on private lands across the species' range), such take was not previously authorized by UDWR practice or Utah Code (R657–19–6, R657–19–7). However, we believe the continuation of this provision in our rulemaking is important for Utah prairie dog recovery efforts. Permitting take in this manner on private property within 0.8 km (0.5 mi) of conservation lands promotes landowner and community support for Utah prairie dog recovery on non-Federal lands.

Conservation lands are areas set aside for the preservation of Utah prairie dogs and are managed specifically or primarily toward that purpose. Conservation lands are generally selected or approved by the Recovery Team, taking into consideration spatial distribution, colony size, colony persistence, connectivity between habitats, and their ability to contribute to the species' recovery (USFWS 2012, p. 3.5–4). Conservation lands may include, but are not limited to, non-Federal properties set aside as conservation banks, fee title purchased properties, properties under conservation easements, or properties subject to a safe harbor agreement. In order to be recognized as Utah prairie dog conservation land, a description of the parcel must be submitted to the permitting entity, accompanied by documentation that clearly defines the conservation benefits to the Utah prairie dog. In addition, documentation must be available describing the location of all private properties within 0.8 km (0.5 mi) of the conservation land parcel; the baseline populations of prairie dogs on the private properties (the highest estimated population size (adults and juveniles) of the last 5 years prior to the establishment of the conservation property); and the methods of Utah prairie dog control that will be allowed on the private properties. If no UDWR surveys were conducted during the previous 5-year period prior to establishment of the conservation property, then the baseline population is the estimated total (summer) population size on that property as determined in the first survey conducted after the establishment of the conservation property. The amount of permitted take on properties within 0.8 km (0.5 mi) of conservation lands, discussed further below, will be limited each year to the number of animals that exceed the baseline estimated population size (adults and juveniles) (see *Limiting the Amount and Distribution of Direct Take That Can Be Permitted,* ''Properties Near Conservation Lands,'' below).

As described below (see ''Conservation Benefits of Allowing Take on Specific Lands''), we find that this addition to the special rule is prudent for the conservation of Utah prairie dogs. We can lose recovery opportunities for the species if nearby landowners believe that activities on their lands will be encumbered in the future if prairie dogs migrate from conservation lands to nearby properties. This change to the 4(d) rule should greatly facilitate conservation opportunities by removing opposition to those efforts by other stakeholders that could be affected.

Safety Hazards, Human Cultural and Burial Sites

Take is allowed in areas where Utah prairie dogs are determined, with the written approval of the Service, to be presenting serious human safety hazards (*e.g.,* airport safety areas, recreational sports fields, nursing homes, schools), or disturbing the sanctity of significant human burial or human cultural sites if these lands are determined not necessary for the conservation of the species. Significant human burial sites may include public cemeteries and tribal burial grounds (for example, as described by the Native American Graves Protection and Repatriation Act; Pub. L. 101–601; 25 U.S.C. 3001–3013). Significant human cultural sites may include sacred tribal sites such as Pow Wow grounds and sacred structures. No permit is required in these instances once written approval is received from the Service.

Take will only be allowed by the Service in areas where a credible, serious public safety hazard or harm to significant human cultural or human burial sites could be clearly documented. Areas of serious human safety concern do not include public rangelands or properties being developed for residential, commercial, or transportation uses. In addition, we do not intend for this rule to be used to eliminate prairie dogs because of concerns regarding plague transmission to humans, unless this disease becomes a proven human safety issue in the future, and directly linked to the presence of Utah prairie dogs.

To reduce hazards, prairie dog burrows may be filled with dirt if they are directly creating human hazards or disturbing the sanctity of significant human cultural or human burial sites. Utah prairie dogs also may be translocated from these sites to approved translocation sites by properly trained personnel using a Service-approved translocation protocol. Lethal take in approved situations is considered a last resort, and is only allowable after all practicable measures to resolve the conflict are implemented. All practicable measures means, with respect to these situations, the: (1) Construction of prairie-dog proof fence, above and below grade to specifications approved by the Service, around the area in which there is concern, and (2) translocation of Utah prairie dogs out of the area in which there is a concern. Translocations will include all animals that can be captured within the fenced area, regardless of the weight or sex of that animal. Lethal take is allowed only to remove prairie dogs that remain in

these areas after the measures to fence and translocate are successfully carried out. Despite our best engineering efforts, prairie-dog proof fences may still be breached by prairie dogs. The local communities or private entities are required to maintain the fence, fix any breaches, and modify the fences as necessary to limit access of prairie dogs in order for the lethal take authorization to be sustained long term. These circumstances will be certified in writing by the Service following any necessary site visits and coordination with the requesting entity. As stated above, no permit will be required to allow take under these conditions.

Conservation Benefits of Allowing Take on Specific Lands

Overall, continuing to allow permitted take on agricultural lands, lands within 0.8 km (0.5 mi) of conservation lands, and lands where Utah prairie dogs create serious human safety concerns or disturb the sanctity of significant human cultural or human burial sites is critical to facilitating the species' recovery. As previously described, Utah prairie dogs can reach unnaturally high densities and abundance on agricultural lands because of increased forage quantity and quality, and lower predator numbers (see ''Habitat Requirements and Food Habits'' section, above). If prairie dog populations on agricultural lands are left uncontrolled, the consequent crowding may result in diminished forage resources, leading to decreased reproduction and survival or increased emigration (Crocker-Bedford and Spillett 1981, pp. 21–22; Reeve and Vosburgh 2006 pp. 122–123). Controlling populations by removing some prairie dogs decreases competition for limited food resources, consequently resulting in increased reproduction and decreased mortality (Cully 1997, pp. 153–156; Reeve and Vosburgh 2006, pp. 122–123).

Controlled removal also may help mediate the potential for plague outbreaks on prairie dog colonies in some situations. High animal densities can play a role in facilitating the transmission of the disease between individuals (Cully 1989, p. 49; Anderson and Williams 1997, p. 730; Gage and Kosoy 2005, pp. 509 and 519–520). Therefore, allowing control on agricultural lands may enhance the long-term conservation of the Utah prairie dog on these lands by maintaining more sustainable populations (*i.e.,* more natural animal densities are less likely to degrade their forage resources, and less likely to have large-scale plague outbreaks). However, as previously described (see ''Life History''), there are a variety of factors that play a role in the occurrence and extent of enzootic and epizootic plague events, and thus we are not able to conclude that reducing prairie dog population densities will always result in the reduction of plague occurrence or its resulting impacts to prairie dog colonies.

We have concluded that allowing some control of Utah prairie dogs will increase the participation of landowners and local communities in the species' conservation and recovery. Until recently, Utah prairie dog recovery efforts focused on habitat enhancements and translocation of the animals to Federal lands (USFWS 1991, pp. 19–33). Consequently, recovery was largely dependent on achieving sufficient population numbers on Federal lands, without considering the potential for conservation benefits that could be achieved on private lands. We now have concluded that recovery will be achieved more rapidly if we increase conservation efforts on private and other non-Federal lands (where the majority of the species' occupied habitat occurs). Our new Utah Prairie Dog Revised Recovery Plan emphasizes conservation efforts on private and other non-Federal lands (USFWS 2012, p. 2.3–2).

New or increased Federal regulations can be disincentives for recovery efforts. These disincentives may be nearly insurmountable for State, Tribal, and private landowners. Many agricultural producers feel that Utah prairie dogs impact their operations through loss of forage for their cattle; equipment damage from driving across burrows; livestock injury if animals step in burrows; and decreased crop yields (*e.g.,* prairie dogs eat crop vegetation such as alfalfa) (Elmore and Messmer 2006, p. 9). Local communities and congressional representatives are concerned regarding safety and sacredness issues associated with prairie dogs that occur respectively along airport runways and in local cemeteries. In addition, we expect that increased focus on establishing and managing non-Federal conservation lands will likely increase the size and extent of prairie dog colonies on and adjacent to these conservation lands. Thus, as recovery becomes more and more successful on non-Federal lands, regulatory relief will become increasingly important.

To achieve recovery, we will need to create incentives for private landowners and local communities to participate in prairie dog habitat improvement and protection measures. We can achieve this only if we demonstrate that the benefits of prairie dog conservation outweigh the costs to the landowner and communities, and if control programs that address landowner concerns and opposition are available when needed (Elmore and Messmer 2006, p. 13). Some producers are interested in working with us on habitat and range improvement projects that benefit livestock and Utah prairie dogs simultaneously, or participating in conservation easements that benefit the species (Elmore and Messmer 2006, pp. 10–11, 13). However, agricultural producers want the ability to control or translocate prairie dogs to minimize levels of damage (Elmore and Messmer 2006, pp. 10, 13). Similarly, local communities want the ability to control Utah prairie dogs in specific situations where they cause serious human safety concerns or disturb the sanctity of human cultural or human burial sites.

Our recent experiences show that if we are mindful of landowner, community, and safety needs, and if we provide mechanisms to control Utah prairie dogs where they conflict with certain human land uses or create serious safety hazards, we can improve landowner and local community support for the species' conservation. For example, in a 2005 safe harbor agreement, a landowner agreed to restore habitat and allow the establishment of a new colony of prairie dogs on his property through translocations (USFWS 2005, entire), but conditioned his willingness to accept translocated animals on the fact that his safe harbor agreement allowed him to control animals if they impacted his livestock operations (USFWS 2005, pp. 5–6). Between 2005 and 2007, we completed five individual Utah prairie dog safe harbor agreements, all of which include the ability for a landowner to control some prairie dogs where they may impact their agricultural activities. These five safe harbor agreements provide habitat improvements for Utah prairie dogs on 1,230 ac (497 ha) of habitat.

Additionally, there may be opportunities to protect Utah prairie dogs and their habitats through fee-title purchase or conservation easements with willing landowners. We are more likely to gain community support for these land protection mechanisms if we can provide regulatory flexibility for neighboring landowners. For example, in 2001, the UDWR and Iron County purchased 73 ha (180 ac) in Parowan Valley, and renamed the area as the Parowan Valley Wildlife Management Area, designating it for the protection of a large Utah prairie dog colony. At the time, there was concern that

neighboring landowners would be negatively impacted if prairie dog management activities resulted in the growth and expansion of the existing prairie dog colony. Therefore, to support the purchase and protection of this important colony, we worked with the landowner to allow the control of prairie dogs (above a 2001 baseline number on each property) for properties within 0.8 km (0.5 mi) of the Parowan Valley Wildlife Management Area. Because of the issuance of this permit, the local community supported the purchase and management of the property for conservation of the Utah prairie dog.

Another opportunity to promote the use of conservation easements is the Utah Prairie Dog Habitat Credit Exchange program (hereafter referred to as the ''habitat credit exchange'') or similar conservation banking opportunities. The credit exchange allows a program administrator (in this case, the Panoramaland Resource Conservation and Development Council, Inc.) to enroll willing landowners in a Utah prairie dog conservation bank that is beneficial to landowners, developers, and prairie dogs. A pilot program implemented in 2010 pays landowners to protect properties in perpetuity with conservation easements that conserve Utah prairie dogs. Conservation on private lands can then be used to mitigate development in Utah prairie dog habitat. The habitat credit exchange, or other conservation banking opportunities, can help us promote mitigation in a way that provides a net benefit to the species by incorporating private lands and protecting prairie dogs on these lands with perpetual conservation easements (Environmental Defense 2009, p. 1). Again, we believe that we are more likely to gain community support for these land protection mechanisms if we can provide regulatory flexibility for neighboring landowners.

The protection of many conservation lands will occur as mitigation required to obtain incidental take permits under section 10(a)(1)(B) and their associated HCPs. The existing Iron County HCP allows the use of mitigation banks to offset the impacts of development to Utah prairie dogs (Iron County 2006). We are working with the counties and local communities to develop a rangewide HCP to replace the Iron County HCP. It is too early to describe specific mitigation scenarios under a new rangewide HCP, other than to summarize our intent that a new HCP contribute to recovery and simultaneously accommodate urban growth. Conservation banking agreements and conservation easements to conserve Utah prairie dog habitats on private or other non-Federal lands are likely tools that will be employed under this new HCP. We believe that local support for any conservation lands set aside for the species in association with HCPs, especially in urban or agricultural areas, will be greatly enhanced by our ability to control the expansion of colonies onto neighboring lands.

Many of the enrolled conservation lands will likely be in or adjacent to agricultural production. The goal in establishing conservation lands is to increase prairie dog populations. As such, we believe there will be site-specific needs to control some animals adjacent to the enrolled conservation lands, on nearby agricultural and other private properties. Our ability to provide sufficient control measures is essential if we are to gain increased interest on the part of private landowners and local communities in the long-term conservation of the Utah prairie dog.

Collectively, the available information indicates it is prudent to limit where take may be permitted to: (1) Agricultural lands being physically or economically impacted by Utah prairie dogs when the spring count on the agricultural lands is seven or more individuals (see *Limiting the Amount and Distribution of Direct Take That Can Be Permitted,* ''Agricultural Lands,'' below), (2) private properties within 0.8 km (0.5 mi) of Utah prairie dog conservation lands, and (3) locations where Utah prairie dogs present serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites—*e.g.,* airport safety areas, recreational sports fields, cemeteries, sacred Tribal sites. Limiting the existing take authority to these locations is consistent with UDWR's permitting practices under the previous special rules. Prairie dogs in these areas achieve population densities and abundances higher than their counterparts in native semiarid grassland communities. In addition, allowing take on private property within 0.8 km (0.5 mi) of conservation lands and areas with safety or human cultural concerns will promote landowner and community support for Utah prairie dogs that is necessary to achieve recovery on non-Federal lands. The ability to allow some control of prairie dogs is prudent from a biological and social context, and has and will continue to enhance our ability to recover the species. Utah prairie dog populations have remained stable to increasing throughout implementation of the previous special rule and past practices, as implemented under the UDWR's permit system.

Limiting the Amount and Distribution of Direct Take That Can Be Permitted

Agricultural Lands

The 1991 special rule allowed UDWR to permit take for a maximum of 6,000 animals annually, without additional restrictions as long as such take was not having an effect that was inconsistent with Utah prairie dog conservation. A set maximum take limit such as this could be considered a fixed harvest rate.

According to recent literature, we now conclude that fixed harvest rates can lead to extirpation of prairie dog colonies, at least in the case of black-tailed prairie dogs (Reeve and Vosburgh 2006, pp. 123–125). This colony loss will occur more rapidly with larger fixed annual harvests (Reeve and Vosburgh 2006, pp. 123–125).

From 1985 through 2010, the total estimated rangewide population of Utah prairie dogs (including juveniles) ranged from 23,753 to 54,194 animals (see Table 3, above). Thus, since 1991, if UDWR had authorized the maximum amount of allowed take (6,000 animals), it would have represented 11 to 26 percent of the total estimated annual rangewide population (adults and juveniles). The UDWR has never authorized the 1991 rule's maximum allowed take (6,000 animals). Actual reported take has always been considerably below the maximum allowance. We do not know if a fixed amount of 6,000 animals would negatively affect Utah prairie dog populations over time. Therefore, when considered alongside the specific existing data for the Utah prairie dog, the information from available literature that pertains to harvest of prairie dogs in general seems to indicate that additional safeguards are prudent.

According to the literature, a fluctuating harvest rate based on a percentage of the known population can help ensure maintenance of a sustainable population, with no risk of extinction (Reeve and Vosburgh 2006, p. 123). Available models indicate that harvest rates of 20 to 25 percent of a prairie dog population are sustainable (Reeve and Vosburgh 2006, p. 123; CDOW 2007, p. 135); however, these models were not specific to Utah prairie dogs. In our view, the Utah prairie dog situation differs from the ones modeled. One major difference is that prairie dog productivity and survivorship, key assumptions for these models, are substantially higher in colonies occurring on irrigated agricultural land than they are on native semiarid

grasslands (Collier 1975, pp. 42–43, 53; Crocker-Bedford and Spillet 1981, p. 1, 15–17). These differences suggest that existing models for black-tailed and Gunnison prairie dogs are poor predictors of likely impacts to Utah prairie dogs; the existing models are not specific to agricultural lands as in the case of this special rule. Thus, the suggested sustainable harvest rates recommended by these models are not directly applicable to agricultural lands occupied by Utah prairie dogs. Regardless, we use this available modeling in conjunction with data from 25 years of implementation of the previous special rules to allow take in a manner that promotes the conservation of the Utah prairie dog.

Although the previous special rules did not follow a fluctuating harvest-rate model (*i.e.,* a fixed rate of 6,000 animals could be taken annually), we used the available UDWR implementation data to determine the yearly permitted and actual take numbers as percentages of total annual population estimates. Under the UDWR system, permitted take has averaged 5.7 percent of the total rangewide population estimate (range equals 1.8 to 13.0 percent), with actual take averaging 2.6 percent of the total rangewide population (range equals 0.9 to 5.3 percent). With these levels of permitted and reported take, rangewide Utah prairie dog populations have, to date, remained stable to increasing (see Figure 1, above).

This rule limits the allowable permitted take to no more than 10 percent of the estimated annual rangewide population (adults and juveniles). Take associated with agricultural lands can never exceed 7 percent of the estimated annual rangewide population. The remaining allowable take is reserved for properties within 0.8 km (0.5 mi) of conservation lands (see below).

While our new limit on allowable take is above the average actual take under the previous special rules, UDWR-permitted take associated with agricultural lands previously met or exceeded the standard for agricultural lands (7 percent) eight times since 1985. Thus, this rule is more restrictive than past practice in some years and less restrictive than past practice in other years. We also note that actual take has always been less than permitted take (see Table 3, above), and we expect this trend to continue under this revised special rule. In addition, our new limit on allowable take is well below the standards set by the previously described modeling where harvest rates of 20 to 25 percent are sustainable.

We include additional safeguards. Permitting entities will spatially distribute the 7 percent allowed take on agricultural lands across the three Recovery Units, based on the distribution of the total annual population estimate within each Recovery Unit. This spatial distribution will help ensure that the take is not clustered in one area, and is instead more uniform based on comparative annual population numbers.

Furthermore, we are limiting within-colony take on agricultural lands to one-half of a colony's estimated annual productivity. Annual productivity = [(2 × spring adult count) × 0.67 (proportion of adult females) × 0.97 (proportion of breeding females) × 4 (average number of young per breeding female)], or approximately 36 percent of the total estimated population of the colony. This limit is consistent with UDWR's past practices. Under these practices, since 1985, we have never verified the loss of a prairie dog colony because of take permitted by UDWR (Day 2010, pers. comm.). Furthermore, according to UDWR personnel, prairie dog counts have remained stable to increasing on sites where permits are repeatedly requested, indicating a self-sustaining population and, sometimes, the expansion of these colonies despite long-term control efforts (Day 2010, pers. comm.). Our available data show that reported take in 1 year has not resulted in significant population declines of the colony the following year (Brown 2012). Thus, limiting within-colony take on agricultural lands to no more than one-half of a colony's estimated annual productivity (approximately 36 percent of the total estimated colony population) is consistent with conservation of the Utah prairie dog.

Colony size will be taken into consideration by the permitting biologist when evaluating the permittee's property and determining appropriate take levels, because the impacts of take may be greater on smaller colonies (CDOW 2007, p. 135). Personnel from the permitting entity will count prairie dogs on the applicant's property and determine a total population estimate (adults and juveniles) for each colony. The permitting entity will identify each permitted colony by name or number. A minimum spring count of seven animals (total population estimate = 50 animals) is required to ensure that permits are authorized only where resident prairie dogs have become established on agricultural lands (Day 2011, pers. comm.), and to ensure that lethal take does not result in the elimination of the colony (CDOW 2007, p. 128). If the maximum amount of take (one-half of the colony's productivity = 18 prairie dogs) occurs on this size colony, it would reduce the total colony size to 32 animals prior to the following breeding season. Colonies of at least 25 prairie dogs are likely to show population growth with very little risk of extinction. Populations with 50 or greater animals show no risk of extinction and strong population growth (CDOW 2007, p. 128). Therefore, we expect prairie dog colonies of at least 32 animals to continue to exist long term with annual, regulated lethal take. This conclusion is supported by our observations that we have never verified the loss of a Utah prairie dog colony because of take permitted by UDWR under the previous special rules, and prairie dog counts have remained stable to increasing on sites where permits were repeatedly requested and given since 1985 (Day 2010, pers. comm.).

These limits are largely consistent with UDWR's past practice, which has successfully controlled prairie dogs in site-specific locations without negatively impacting recovery of the species (Day 2010, pers. comm.; Brown 2012). In fact, this rule is more restrictive in that it increases the minimum colony size for permitting from a spring count of five animals (1991 special rule) to a spring count of seven animals (total estimated population size = 50 animals) because that is the best available information we have to ensure continued population growth rates and low extinction risk (CDOW 2007, p. 128).

Properties Near Conservation Lands

As noted above, a maximum of 7 percent of estimated annual rangewide population is allocated to agricultural lands. The remaining take (3 percent or more, depending on the percent of take associated with agricultural lands) is reserved for permitted take on private property within 0.8 km (0.5 mi) of Utah prairie dog conservation lands. This level of take allows us to address impacts to private lands associated with increased prairie dog distribution and numbers that are likely to result from the rangewide protection of conservation properties. Without such ability, private landowners and local governments would likely not support, and could prevent, much if not all recovery progress on private lands. We have determined that the ability to respond to this need, in a carefully regulated environment, is necessary and advisable for the conservation of the Utah prairie dog.

The extent of take on properties within 0.8 km (0.5 mi) of conservation lands is further limited to not reduce populations below the baseline estimated total population size (adults and juveniles) that existed on these lands prior to the establishment of the conservation property. This provision provides assurances to the landowners that they will not incur new Federal regulatory restrictions as a result of their habitat improvements and the reintroduction of prairie dogs on a conservation property. Conversely, this provision assists us with the creation of conservation properties by allowing landowners to take prairie dogs down to, but not below, the established baseline population. The property's baseline is the highest estimated population size (adults and juveniles) on the property during the 5 years prior to establishment of the conservation property, except that if no UDWR surveys to determine population size on a property were conducted during such 5-year period, the baseline population is the estimated total (summer) population size on that property as determined in the first survey conducted after the establishment of the conservation property. Thus, this provision provides a conservation benefit for Utah prairie dogs by promoting landowner support for such efforts while not reducing populations below the established baseline. Similar provisions were incorporated into all previously approved Utah prairie dog safe harbor agreements.

Safety Hazards, Human Cultural and Burial Sites

We are not limiting the amount of translocation or lethal take on lands where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites. These sites are relatively small areas, and for lethal take the areas must be fenced, and prairie dogs removed by translocation prior to the Service's written approval for lethal take. For example, fencing was recently constructed around the Parowan airport runway to preclude prairie dogs from using 53 ac (21 ha) of occupied habitat, and the 5 ac (2 ha) Paragonah cemetery will be fenced in 2012; prairie dogs will be translocated from these sites prior to lethal take. Thus, we expect that the numbers of Utah prairie dogs lethally removed will be small. In addition, as previously described, these areas do not contribute to conservation of the species because they are generally within otherwise developed areas with substantial human activity and habitat fragmentation. Translocation of prairie dogs from these sites also will assist with recovery efforts on Federal lands (USFWS 2012, p. 3.5–7).

Most studies on the impacts of shooting are related to recreational hunting on black-tailed prairie dog colonies. This information indicates that recreational shooting of other prairie dog species can cause localized effects on a population (Stockrahm 1979, pp. 80–84; Knowles 1988, p. 54; Vosburgh 1996, pp. 13, 15, 16, and 18; Vosburgh and Irby 1998, pp. 366–371; Pauli 2005, p. 1; Reeve and Vosburgh 2006, p. 144), but populations typically rebound thereafter (Knowles 1988, p. 54; Vosburgh 1996, pp. 16, 31; Dullum et al. 2005, p. 843; Pauli 2005, p. 17; Cully and Johnson 2006, pp. 6–7). Extirpations due to shooting, while documented, are rare (Knowles 1988, p. 54). Impacts to other species of prairie dogs from unregulated or minimally regulated recreational shooting, as cited above, are likely to be more pronounced than impacts to Utah prairie dog permitted control, given our restrictions on the amount and distribution of take.

On the whole, we believe our limits on the amount and distribution of take ensures that this rule does not negatively impact the stable-to-increasing Utah prairie dog population trends of the last 25 years. Continuing to allow sufficient permitted take limits will help ensure that private landowners and local communities are willing to work with us on prairie dog conservation efforts (see *Limiting Where Take is Allowed,* above). Consequently, we believe this final rule is sufficient to address prairie dog control issues and Utah prairie dog recovery simultaneously.

Limiting Take by Season

Agricultural Lands and Properties Near Conservation Lands

We are limiting take on agricultural lands and properties within 0.8 km (0.5 mi) of conservation lands by season. Take is allowed between June 15 and December 31. This is a moderate change from the dates authorized by the previous special rules, but is based on our most current knowledge of the species biology; pups emerge from their burrows by approximately mid-June, at which time they are foraging independently (Hoogland 2003, p. 236; see ''Life History,'' above). Therefore, the loss of female adult prairie dogs to shooting will not negatively affect the survivability of the remaining young. In addition, prairie dog populations with seasonal shooting closures of March 14 to June 15 show positive population growths and low to negligible risk of extirpation (CDOW 2007, p. 135). These seasonal shooting closure dates directly correspond to our timing of June 15 through December 31 for allowing direct lethal take on agricultural lands. Thus, we can conclude that restricting use of this 4(d) rule between the dates of January 1 through June 14 will result in positive population growths with low to negligible risk of extinction. This conclusion is supported by our observations that we have never verified the loss of a Utah prairie dog colony because of take permitted by UDWR, and prairie dog counts have remained stable to increasing on sites where permits were repeatedly requested over the last 25 years (Day 2010, pers. comm.). In this timeframe, UDWR provided permits to landowners beginning June 1. Thus, this revision to June 15 is more conservative than past practice, and is based on the best current available science.

According to the literature and on-the-ground experience with Utah prairie dogs, our timing of permitted Utah prairie dog control, when combined with other take limitations outlined elsewhere in this rule (*e.g.,* a harvest rate based on a percentage of the known population and restrictions on lands where take is allowed), is sufficient to allow long-term, stable-to-improving population trends to continue. Thus, permitted Utah prairie dog control on agricultural lands and properties near conservation lands is allowed from June 15 to December 31.

Lethal take from March to May would likely kill pregnant or lactating females so that neither they nor their offspring would reproduce the following year (Knowles 1988, p. 55). If the timing of lethal take is restricted to times outside of the breeding and young-rearing (lactating) periods, then impacts can be minimized (Vosburgh and Irby 1998, p. 370; CDOW 2007, pp. 135–137). In fact, as described in this and previous rules (49 FR 22333, May 29, 1984; 56 FR 27439–27441, June 14, 1991), controlling prairie dogs when populations are at high densities (*i.e.,* particularly during the summer months when the aboveground prairie dog population explodes as the juveniles emerge from their burrows) may enhance long-term population growth rates by reducing competition for limited resources and increasing overwinter survival (see *Limiting Where Direct Take Can Be Permitted*). This information is supported by observations that Utah prairie dog colonies are maintained at high levels on properties that have received multiple annual control permits despite over 25 years of permitted control under

the previous special rules (Day 2010, pers. comm.).

Safety Hazards, Human Cultural and Burial Sites

We will not restrict lethal take to a specified timeframe in areas where prairie dogs present a serious human safety concern or disturb the sanctity of a significant human cultural or human burial site because the specific intent of lethal take in these areas is to remove all remaining prairie dogs from these areas following implementation of all practicable measures, including fencing and translocations.

Limiting Methods Allowed To Implement Direct Take

The previous special rules did not restrict the method or type of take UDWR could permit. In practice, UDWR previously permitted the control of Utah prairie dogs through translocation efforts, trapping intended to lethally remove prairie dogs, and shooting. This amendment limits methods of take that can be permitted on agricultural lands and properties within 0.8 km (0.5 mi) of conservation lands to be consistent with this past practice.

Agricultural Lands and Properties Near Conservation Lands

Translocations of Utah prairie dogs are used to increase the numbers of prairie dog colonies in new locations across the species' range. Translocation of Utah prairie dogs occurs within and between recovery units in part to address the species' limited levels of genetic diversity (USFWS 2012, p. 1.9–1; Roberts *et al.* 2000). Translocation efforts include habitat enhancement at selected translocation sites and live trapping of Utah prairie dogs from existing colonies to move them to the selected translocation sites. In short, translocations play an important role in establishing new colonies and facilitating gene flow.

Thus, translocation will be one of the approved methods of taking Utah prairie dogs. Previously, only UDWR performed Utah prairie dog translocations. This rule allows all properly trained and permitted individuals to translocate prairie dogs to new colony sites in support of recovery actions, provided these parties comply with current Service-approved translocation guidance. Translocated prairie dogs count toward the take limits established by the previous special rules and will continue to count toward the more restricted take limits in this rule. Translocation activities must be in accordance with Service-approved translocation protocol in order for the provisions of this rule to apply.

While translocation is and will continue to be the preferred take option, largely due to its contribution to recovery, finite staff resources and a limited availability of suitable translocation sites require that other tools also be available. Thus, we are limiting the methods of intentional lethal take on agricultural lands and properties within 0.8 km (0.5 mi) of conservation lands to forms with a proven success record as demonstrated by past UDWR permitting, including lethal removal through trapping and shooting. Under this rule, permitted lethal take can be carried out by the landowner or the U.S. Department of Agriculture—Wildlife Services with the landowner's permission. Use of these methods has occurred over the past 25 years, while the total population rangewide and within individual colonies subject to take have remained stable to increasing (Day 2010, pers. comm.).

We are specifically prohibiting drowning, poisoning, and the use of gas cartridges, anticoagulants, and explosive devices as methods of permissible lethal control on agricultural lands and properties within 0.8 km (0.5 mi) of conservation lands. Drowning or poisoning are typically applied across large areas and usually kill large numbers of prairie dogs (Collier 1975, p. 55). These techniques were not employed by UDWR under the previous rule and are explicitly prohibited by this rule because they do not allow control agents to target a specific number of prairie dogs or track actual take.

One potential concern is lead poisoning as an indirect impact from shooting. Specifically, shooting may increase the potential for lead poisoning in predators and scavengers consuming shot prairie dogs (Reeve and Vosburgh 2006, p. 154). This risk may extend to prairie dogs, which have occasionally been observed scavenging carcasses (Hoogland 1995, p. 14). Expanding bullets leave an average of 228.4 milligrams (mg) (3.426 grains) of lead in a prairie dog carcass, while nonexpanding bullets averaged 19.8 mg (0.297 grains) of lead (Pauli and Buskirk 2007, p. 103). The amount of lead in a single prairie dog carcass shot with one expanding bullet is potentially sufficient to acutely poison scavengers or predators, and may provide an important portal for lead entering wildlife food chains (Pauli and Buskirk 2007, p. 103). A wide range of sublethal toxic effects also is possible from smaller quantities of lead (Pauli and Buskirk 2007, p. 103).

At the present time, we do not have information to indicate that the concern of potential lead poisoning is translating into impacts on Utah prairie dogs. Allowed take is limited to agricultural lands, properties within 0.8 km (0.5 mi) of conservation lands, and areas where prairie dogs create serious human hazards or disturb the sanctity of significant human cultural or human burial sites. Therefore, any potential site-specific impacts as a result of potential lead poisoning are limited in scope and likely of minor consequence to the Utah prairie dog. Limitations on the timing of allowed control further limit the scope of potential impacts. Our December 3, 2009, black-tailed prairie dog status review came to a similar conclusion when it found use of expandable lead shot did not pose a substantial risk of lead poisoning to surviving prairie dogs due to scavenging carcasses (74 FR 63343).

Given these findings, this rule does not prohibit certain types of shot (expandable vs. nonexpendable or lead vs. nonlead). However, we may consider ammunition-type restrictions in the future if available data indicate such restrictions would be necessary and advisable to provide for the conservation of the species.

Safety Hazards, Human Cultural and Burial Sites

The use of any lethal take methodology will be allowed in areas where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites. At the time that lethal take is authorized at these sites, the areas will have been fenced and prairie dogs translocated off-site. Therefore, we anticipate that relatively small numbers of prairie dogs will remain in these areas. We do not consider these areas important to the conservation of the species because as previously stated they are generally within otherwise developed areas with substantial human activity and habitat fragmentation. It is our intent that these designated areas remain free of prairie dogs, and thus all otherwise lawful methodologies for lethal take are allowable.

Exemption for Incidental Take From Normal Agricultural Practices

Normal agricultural practices can result in the unlawful take (harm, harass, or kill) of Utah prairie dogs. For example, agricultural equipment can accidentally crush burrows or individual animals. Similarly, burrows also can be flooded by normal irrigation practices and thus made uninhabitable

for Utah prairie dogs, or result in incidental mortality. Although the incidental take permit for the Iron County HCP (Iron County 2006, entire) authorizes normal agricultural practices as a form of non-permanent take in Iron County, this incidental take permit does not extend to address these issues for agricultural users across the entire range of the Utah prairie dog.

We are exempting incidental take resulting from agricultural practices on legitimately operating agricultural lands. Exempted practices include plowing to depths not exceeding 46 centimeters (cm) (18 in.), discing, harrowing, irrigating crops, mowing, harvesting, and bailing, as long as the activities are not intended to eradicate Utah prairie dogs. These are traditional practices on the landscape where Utah prairie dogs occur.

While it is possible that some incidental mortality or harassment results from these activities, no available information indicates sizable or noteworthy impacts. Similarly, the available information (namely, annual Utah prairie dog surveys conducted by UDWR rangewide; see ''Distribution and Abundance,'' above) does not indicate adverse impacts at the colony or species level. The continued presence of large, persistent colonies on agricultural lands despite ongoing agricultural uses indicates any negative impacts are minor and temporary. Agricultural operations make the land more productive than it would be in its natural state. Provided that careful regulation of direct take continues, this increased productivity appears, based on individual colony persistence and abundance data, to more than offset any temporary negative impacts that are created by the incidental take of individual prairie dogs.

Providing a take exemption for otherwise legal activities associated with standard agricultural practices is necessary and advisable to provide for the conservation of the species. This is the case because agricultural users are a key partner in our efforts to recover the Utah prairie dog. As previously described, up to 85 percent of prairie dogs occur on private lands (see Table 2), many of which are in agricultural production (USFWS 2012, p. 1.7–3). Agricultural users are often interested in participating in conservation programs for the species such as safe harbors and conservation easements if they know they have some regulatory flexibility regarding their daily operational activities (see *Limiting Where Take is Allowed,* Conservation Benefits of Allowing Take on Specific Lands, above; Elmore and Messmer 2006, p. 9–13; USFWS 2012, p. 2.3–2). If we can provide regulatory flexibility to these land users, they are more likely to support rangewide conservation programs for the Utah prairie dog.

Because such incidental take is not limited in quantity, it is imperative we build in safeguards to prevent abuse. Therefore, the above activities are exempted from incidental take prohibitions on agricultural lands, only in accordance with the previously described Utah Farmland Assessment Act of 1969 (Utah Code Annotated Sections 59–2–501 through 59–2–515). To be considered agricultural land under this rule, lands must meet the following requirements: They must meet the general classification of irrigated, dryland, grazing land, orchard, or meadow; must be capable of producing crops or forage; must be at least 2 contiguous ha (5 contiguous ac) (smaller parcels may qualify where devoted to agriculture use in conjunction with other eligible acreage under identical legal ownership); must be managed in such a way that there is a reasonable expectation of profit; must have been devoted to agricultural use for at least 2 successive years immediately preceding the year in which application of agricultural land status is made; and must meet State average annual (per acre) production requirements.

Limiting the take to such lands ensures only legitimately operating agricultural producers will be eligible for the incidental take provisions as described in this rule. As previously discussed, available information indicates that prairie dog populations on agricultural lands are not negatively affected by ongoing standard agricultural practices. In fact, 25 years of data under the previous special rules show stable-to-increasing, rangewide prairie dog population trends. Providing the safeguard of specifically defining agricultural lands ensures that we limit the allowable incidental take to specific types of agricultural uses, of which any possible resulting negative impact would be only a minor and temporary accompaniment to the continued long-term benefits to the species. As described earlier, we conclude that allowing direct lethal take in agricultural areas will increase the participation of landowners and local communities in the species' conservation and recovery (see *Limiting Where Take is Allowed,* ''Conservation Benefits of Allowing Take on Specific Lands''). This same benefit is anticipated with standard agricultural practices because agricultural users are a key partner for Utah prairie dog recovery efforts (see *Exemption for Incidental Take from Normal Agricultural Practices,* above).

Effects of This Rule

The 1991 special rule (56 FR 27438, June 14, 1991; 50 CFR 17.40(g)) authorized UDWR to permit take of up to 6,000 animals on private land within the species' range annually. We amend that rule with new restrictions on direct take previously authorized and add a new incidental take authorization. Table 4 summarizes the amendments finalized by this rule.

TABLE 4—SUMMARY OF OUR FINAL AMENDMENTS

Final Amendments	
Who Can Allow Take	UDWR or, with the Service's written approval, other entities can perform the permitting and reporting tasks for control activities on agricultural lands or properties within 0.8 km (0.5 mi) of conservation lands. No permits are required for take in areas where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites.
Where Direct Take Is Allowed	Direct take is limited to: Agricultural land being physically or economically impacted by Utah prairie dogs when the spring count on the agricultural lands is seven or more individuals; private properties within 0.8 km (0.5 mi) of Utah prairie dog conservation land; and areas where human safety hazards or the sanctity of significant human cultural or human burial sites are a serious concern, but only after all practicable measures to resolve the conflict are implemented.

TABLE 4—SUMMARY OF OUR FINAL AMENDMENTS—Continued

Amount of Rangewide Direct Take Allowed	The upper permitted take limit may not exceed 10 percent of the estimated rangewide population annually for agricultural lands and properties within 0.8 km (0.5 mi) of conservation lands; and, on agricultural lands, may not exceed 7 percent of the estimated annual rangewide population annually. There is no limit for the amount of take in areas where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites, and take in these circumstances does not contribute to the upper permitted take limits described above.
Site-Specific Limits on Amount of Direct Take	On agricultural lands, within-colony take is limited to one-half of a colony's estimated annual production (approximately 36 percent of estimated total population). On properties neighboring conservation lands, take is restricted to animals in excess of the baseline population. The baseline population is the highest estimated total (summer) population size on that property during the 5 years prior to establishment of the conservation property, except that if no UDWR surveys to determine population size on a property were conducted during such 5-year period, the baseline population is the estimated total (summer) population size on that property as determined in the first survey conducted after the establishment of the conservation property. There are no site-specific direct take limits in areas where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites.
Timing of Allowed Direct Take	The timing of permitted direct take on agricultural lands and properties ne within 0.8 km (0.5 mi) of conservation lands is limited to June 15 through December 31. There is no timing restriction where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites, except that translocations must be completed prior to conducting any lethal take.
Methods Allowed to Implement Direct Take	On agricultural lands and properties within 0.8 km (0.5 mi) of conservation lands, direct take is limited to activities associated with translocation efforts by trained and permitted individuals complying with current Service-approved guidance, trapping intended to lethally remove prairie dogs, and shooting. Actions intended to drown or poison prairie dogs, and the use of gas cartridges, anticoagulants, or explosive devices is prohibited in these areas. There are no restrictions on methods to implement take in areas where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or burial sites, except that translocations will be conducted before lethal measures of control are allowed.
Service Ability to Further Restrict Direct Take	Unchanged. The Service may immediately prohibit or restrict take as appropriate for the conservation of the species.
Incidental Take for Agricultural Activities	Utah prairie dogs may be taken when take is incidental to otherwise legal activities associated with standard agricultural practices (see Regulation Promulgation section for specifics).

First, this rule restricts where direct take can be permitted to: (1) Agricultural land being physically or economically impacted by Utah prairie dogs when the spring count on the agricultural lands is 7 or more individuals; (2) private property within 0.8 km (0.5 mi) of Utah prairie dog conservation land; and (3) areas where Utah prairie dogs are determined, with the approval of the Service, to be presenting a serious human safety hazard (*e.g.,* airport safety areas, recreational sports fields, nursing homes, schools), or disturbing the sanctity of significant human cultural or human burial sites if these lands are determined not necessary for the conservation of the species.

Second, this rule limits the amount and distribution of direct take that can be permitted. Total take cannot exceed 10 percent of the estimated annual rangewide population. On agricultural lands, permitted take is limited to 7 percent of the estimated annual rangewide population and within-colony take is limited to one-half of a colony's estimated annual productivity. On properties within 0.8 km (0.5 mi) of conservation lands, the remaining take (3 percent of the estimated annual rangewide population or more, depending on the amount permitted on agricultural lands) is restricted to animals in excess of the baseline population.

Third, this rule limits the methods of take that can be permitted on agricultural lands and properties within 0.8 km (0.5 mi) of conservation lands to include: (1) Activities associated with translocation efforts by trained and permitted individuals complying with current Service-approved guidance; (2) trapping intended to lethally remove prairie dogs; and (3) shooting.

These limitations on direct take are largely consistent with past UDWR practice. Slight modifications are included where implementation data indicate modifications are warranted.

Additionally, this rule exempts standard agricultural practices from incidental take prohibitions on private property meeting the Utah Farmland Assessment Act of 1969 (Utah Code Annotated Sections 59–2–501 through 59–2–515) definition of agricultural lands. Any Utah prairie dog mortalities resulting from these standard agricultural practices are in addition to the direct or intentional take described above. Allowable practices include plowing to depths that do not exceed 46 cm (18 in.), discing, harrowing, irrigating crops, mowing, harvesting, and bailing, as long as the activities are not intended to eradicate Utah prairie dogs.

Finally, the Service maintains the right to immediately prohibit or restrict permitted taking. Restrictions on permitted taking could be implemented without additional rulemaking, as appropriate for the conservation of the species, if we receive evidence that taking pursuant to the special rule is having an effect that is inconsistent with the conservation of the Utah prairie dog. If restrictions on permitted taking are required, the Service will immediately notify the permitting entities in writing.

These new restrictions on direct take and the new incidental take provision will support the conservation of the species while still providing relief and conservation incentives to private landowners. On the whole, we believe this rule will help maintain the stable-to-increasing (more likely increasing) long-term population trends we have seen over the last 25 years, and facilitate the recovery of the Utah prairie dog.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

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

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

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities'' (see 5 U.S.C. 605(b)). Based on the information that is available to us at this time, we certify that this regulation will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

Utah prairie dogs have been Federally listed under the ESA since the early 1970s (38 FR 14678, June 4, 1973; 39 FR 1158, January 4, 1974). A section 4(d) special rule has been in place since 1984 that provides protections deemed necessary and advisable to provide for the conservation of the species (49 FR 22330, May 29, 1984; 56 FR 27438, June 14, 1991). These special regulations allowed limited take of Utah prairie dogs on private land from June 1 through December 31, as permitted by UDWR (50 CFR 17.40(g)). While this final rule places limits on the previous special rules, the changes are largely consistent with past UDWR permitting practices. Because this rule largely institutionalizes past practices, there should be little or no increased costs associated with this regulation compared to the past similar special rules that were in effect for the last several decades.

In summary, we have considered whether the rule results in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that these amendments do not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal governments,'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

This rule does not impose a legally binding duty on non-Federal Government entities or private parties. Instead, this amendment to the previous special rules establishes take authorizations and limitations deemed necessary and advisable to provide for the conservation of the Utah prairie dog. Application of the provisions within this rule, as limited by existing regulations and this amendment, is optional.

(b) We do not believe that this rule significantly or uniquely affects small governments. The State of Utah originally requested measures such as this regulation to assist with reducing conflicts between Utah prairie dogs and local landowners on agricultural lands (49 FR 22330, May 29, 1984). In addition, the UDWR actively assists with implementation of the 1984 special rule, as amended in 1991, and will do the same under this regulation, through a permitting system. Under this rule, we have included the ability for other permitting entities to perform many of the UDWR's permitting and reporting tasks for control activities. However, this change was in response to a recommendation from UDWR provided in that agency's comments to our proposed rule. Thus, no intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments will not change; and fiscal capacity will not be substantially directly affected. The special rule operates to maintain the existing relationship between the States and the Federal Government. Furthermore, the limitations on where permitted take can occur, the amount of take that can be permitted, and methods of take that can be permitted are largely consistent with past UDWR practices. Therefore, the rule will not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

Takings

This action is exempt from the requirements of E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights). According to section VI(D)(3) of the Attorney General's

Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings, regulations allowing the take of wildlife issued under the ESA fall under a categorical exemption. This rule pertains to regulation of take (defined by the ESA as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'') deemed necessary and advisable to provide for the conservation of the Utah prairie dog. Thus, this exemption applies to this action.

Regardless, we do not believe this action poses significant takings implications. This rule will substantially advance a legitimate government interest (conservation and recovery of listed species). However, it will not deny property owners economically viable use of their land, and will not present a bar to all reasonable and expected beneficial use of private property. We believe this rule provides substantial flexibility to our partners while still providing for the conservation of the Utah prairie dog. Should additional take provisions be required, an applicant has the option to develop a habitat conservation plan and request an incidental take permit (see section 10(a)(1)(B) of the ESA). This approach allows permit holders to proceed with an activity that is legal in all other respects, but that results in the ''incidental'' take of a listed species.

We have concluded that this action does not result in any takings of private property. Should any takings implications associated with this amendment be realized, they will likely be insignificant.

Federalism

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this amendment with, appropriate State resource agencies in Utah. The State of Utah originally requested measures such as this regulation to assist with reducing conflicts between Utah prairie dogs and local landowners on agricultural lands (49 FR 22330, May 29, 1984). In addition, the UDWR actively assists with implementation of the previous special rules, and will do the same under this regulation, through a permitting system. Under this rule, we have included the ability for other permitting entities to perform many of the UDWR's permitting and reporting tasks for control activities. However, this change was in response to a recommendation from UDWR provided in that agency's comments to our proposed rule. Thus, no intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments will not change, and fiscal capacity will not be substantially directly affected. The special rule operates and, as amended, will continue to operate to maintain the existing relationship between the State and the Federal Government. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a federalism summary impact statement pursuant to the provisions of E.O. 13132.

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have amended the previous special rules for the Utah prairie dog in accordance with the provisions of the ESA. Under section 4(d) of the ESA, the Secretary may extend to a threatened species those protections provided to an endangered species as deemed necessary and advisable to provide for the conservation of the species. These amendments satisfy this standard.

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

In 1983, upon recommendation of the Council on Environmental Quality, the Service determined that National Environmental Policy Act (NEPA) documents need not be prepared in connection with regulations adopted pursuant to section 4(a) of the ESA (*http://ceq.hss.doe.gov/nepa/regs/1983/1983guid.htm*). The Service subsequently expanded this determination to section 4(d) rules. A section 4(d) rule provides the appropriate and necessary take prohibitions and authorizations for a species that has been determined to be threatened under section 4(a) of the ESA. It is our view that NEPA procedures unnecessarily overlay NEPA's own matrix upon the ESA section 4 decisionmaking process. For example, the opportunity for public comment—one of the goals of NEPA—is already provided through section 4 rulemaking procedures.

However, out of an abundance of caution, we complied with the provisions of NEPA for this rulemaking. We analyzed the impact of this modification to the existing special rule and determined that there were no significant impacts or effects caused by this rule. A final environmental assessment was completed for this action, and is available for public inspection (see **ADDRESSES** section).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations With Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the ESA), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. Therefore, we coordinated with affected Tribes within the range of the Utah prairie dog. We did not receive any comments on the proposed special regulations from Tribes or Tribal members during the public comment period.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued E.O. 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect this action to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant

energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rulemaking is available upon request from our Utah Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons stated in the preamble, the Service amends part 17, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.40 by revising paragraph (g) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(g) Utah prairie dog (*Cynomys parvidens*).

(1) Except as noted in paragraphs (g)(2) through (g)(6) of this section, all prohibitions of § 17.31(a) and (b) and exemptions of § 17.32 apply to the Utah prairie dog.

(2) A Utah prairie dog may be directly or intentionally taken as described in paragraphs (g)(3) and (4) of this section on agricultural lands, properties within 0.8 kilometers (km) (0.5 miles (mi)) of conservation lands, and areas where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites.

(3) *Agricultural lands and properties near conservation lands.* When permitted by the Utah Division of Wildlife Resources (UDWR), or other parties as authorized in writing by the Service, direct or intentional take is allowed on private properties that are located within 0.8 km (0.5 mi) of conservation land, and on agricultural land. Records on permitted take will be maintained by the State (or other parties as authorized in writing by the Service), and made available to the Service upon request.

(i) *Agricultural land.* (A) Take may be permitted only on agricultural land being physically or economically affected by Utah prairie dogs, and only when the spring count on the agricultural lands is seven or more individuals, and only during the period of June 15 to December 31; and

(B) The land must:

(1) Meet the general classification of irrigated, dryland, grazing land, orchard, or meadow;

(2) Be capable of producing crops or forage;

(3) Be at least 2 contiguous hectares (5 contiguous acres) in area (smaller parcels may qualify where devoted to agricultural use in conjunction with other eligible acreage under identical legal ownership);

(4) Be managed in such a way that there is a reasonable expectation of profit;

(5) Have been devoted to agricultural use for at least 2 successive years immediately preceding the year in which application is made; and

(6) Meet State average annual (per-acre) production requirements.

(ii) *Private property near conservation land.* (A) Take may be permitted on private properties within 0.8 km (0.5 mi) of Utah prairie dog conservation land during the period of June 15 to December 31.

(B) Conservation lands are defined as non-Federal areas set aside for the preservation of Utah prairie dogs and are managed specifically or primarily toward that purpose. Conservation lands may include, but are not limited to, properties set aside as conservation banks, fee-title purchased properties, properties under conservation easements, and properties subject to a safe harbor agreement (see § 17.22). Conservation lands do not include Federal lands.

(iii) *Amount of permitted take on agricultural lands and private property near conservation land.* (A) The UDWR, or other parties as authorized in writing by the Service, will ensure that permitted take on agricultural lands and properties within 0.8 km (0.5 mi) of conservation lands does not exceed 10 percent of the estimated rangewide population annually.

(B) On agricultural lands, the UDWR, or other parties as authorized in writing by the Service, will limit permitted take to 7 percent of the estimated annual rangewide population and will limit within-colony take to one-half of a colony's estimated annual production. The UDWR, or other parties as authorized in writing by the Service, will spatially distribute the 7 percent allowed take on agricultural lands across the three Recovery Units, based on the distribution of the total annual population estimate within each Recovery Unit.

(C) In setting take limits on properties within 0.8 km (0.5 mi) of conservation lands, the UDWR, or other parties as authorized in writing by the Service, will consider the amount of take that occurs on agricultural lands. The State, or other parties as authorized in writing by the Service, will restrict the remaining permitted take (the amount that would bring the total take up to 10 percent of the estimated annual rangewide population) on properties within 0.8 km (0.5 mi) of conservation lands to animals in excess of the baseline population. The baseline population of these lands is determined in accordance with paragraph (g)(3)(iii)(D) of this section.

(D) Take on properties within 0.8 km (0.5 mi) of conservation lands is restricted to prairie dogs in excess of the baseline population. The baseline population is the highest estimated total (summer) population size on that property during the 5 years prior to the establishment of the conservation property, except that if no UDWR surveys to determine population size on a property were conducted during such 5-year period, the baseline population is the estimated total (summer) population size on that property as determined in the first survey conducted after the establishment of the conservation property. The baseline population will be established by the UDWR, or other parties as authorized in writing by the Service.

(E) Translocated Utah prairie dogs will count toward the take limits in paragraphs (g)(3)(iii)(A) through (D) of this section.

(iv) *Methods of allowed direct take on agricultural lands and private properties near conservation land.* Methods for controlling Utah prairie dogs on agricultural lands and properties within 0.8 km (0.5 mi) of conservation lands are limited to activities associated with translocation efforts by trained and permitted individuals complying with current Service-approved guidance, trapping intended for lethal removal, and shooting. Actions intended to drown or poison Utah prairie dogs and the use of gas cartridges, anticoagulants, and explosive devices are prohibited.

(4) *Human safety hazards and significant human cultural or human burial sites.*

(i) Nonlethal take is allowed where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites, if approved in writing by the Service. To reduce hazards, prairie dog burrows may be filled with dirt if they are directly creating human hazards or disturbing the sanctity of

significant human cultural or human burial sites. Utah prairie dogs also may be translocated from these sites to approved translocation sites by properly trained personnel using Service-approved translocation protocols.

(ii) Direct or intentional lethal take is allowed where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites, but only after all practicable measures to resolve the conflict are implemented, and only as approved in writing by the Service. A permit is not required to allow take under these conditions.

(A) All practicable measures means, with respect to these situations:

(*1*) Construction of prairie-dog-proof fence, above and below grade to specifications approved by the Service, around the area in which there is concern.

(*2*) Translocation of Utah prairie dogs out of the fenced area in which there is a concern must be conducted prior to allowing lethal take. Lethal take is allowed only to remove prairie dogs that remain in these areas after the measures to fence and translocate are successfully carried out.

(*3*) Continued maintenance or modification of the fence as needed to preclude Utah prairie dogs from entering the fenced sites.

(B) There are no restrictions on the amount, timing, or methods of lethal take allowed on lands where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites, as long as all qualifications in paragraphs (g)(4)(ii)(A)(1)through (3) of this section are met.

(C) The amount of take in areas where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites does not contribute to the upper permitted take limits described above for agricultural lands and private properties within 0.8 km (0.5 mi) of conservation lands.

(5) *Incidental take associated with agriculture.* Utah prairie dogs may be taken when take is incidental to otherwise-legal activities associated with legal and standard agricultural practices on legitimately operating agricultural lands. Acceptable practices include plowing to depths that do not exceed 46 cm (18 in.), discing, harrowing, irrigating crops, mowing, harvesting, and bailing, as long as the activities are not intended to eradicate Utah prairie dogs. There is no numeric limit established for incidental take associated with standard agricultural practices. Incidental take is in addition to, and does not contribute to, the take limits described in paragraphs (g)(2) through (4) of this section. A permit is not required for incidental take associated with agricultural practices.

(6) If the Service receives evidence that take pursuant to paragraphs (g)(2) through (5) of this section is having an effect that is inconsistent with the conservation of the Utah prairie dog, the Service may immediately prohibit or restrict such take as appropriate for the conservation of the species. The Service will notify the permitting entities in writing if take restrictions are necessary.

* * * * *

Dated: July 17, 2012.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–18284 Filed 8–1–12; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

Vol. 77 Thursday,

No. 149 August 2, 2012

Part III

Department of Justice

Antitrust Division

United States v. United Technologies Corporation and Goodrich Corporation; Proposed Final Judgment and Competitive Impact Statement; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. United Technologies Corporation and Goodrich Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *United Technologies Corporation and Goodrich Corporation,* Civil Action No. 1:12-cv-01230. On July 26, 2012, the United States filed a Complaint alleging that the proposed acquisition of Goodrich Corporation (''Goodrich'') by United Technologies Corporation (''UTC'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires UTC to divest assets comprising Goodrich's small engine control products business, including Goodrich's facility in West Hartford, Connecticut and other tangible and intangible assets used in this business. The proposed Final Judgment also requires UTC to divest Goodrich's electric generation and distribution systems business, including Goodrich's facilities in Pitstone, United Kingdom and Twinsburg, Ohio, other tangible and intangible assets used in this business, and Goodrich's shares in the TRW–Thales Aerolec SAS joint venture. Finally, the proposed Final Judgment requires UTC to divest Goodrich's shares in the AEC joint venture, as well as provide Rolls-Royce plc an additional time period in which it would be able to purchase certain assets relating to the aftermarket services utilized by that joint venture.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: (202) 514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site, filed with the Court and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 8700, Washington, DC 20530 (telephone: (202) 307–0924).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, United States Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 8700, Washington, DC 20530, Plaintiff, v. *United Technologies Corporation, United Technologies Building,) Hartford, Connecticut 06101 and Goodrich Corporation, Four Coliseum Centre,) 2730 West Tyvola Road,) Charlotte, North Carolina 28217, Defendants*

[Civil Action No. 1:12-cv-01230]

Complaint

The United States of America (''United States''), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants United Technologies Corporation (''UTC'') and Goodrich Corporation (''Goodrich'') to enjoin UTC's proposed acquisition of Goodrich. The United States complains and alleges as follows:

I. Nature of the Action

1. Pursuant to an asset purchase agreement dated September 21, 2011, UTC proposes to acquire all the shares of Goodrich. The transaction is valued at approximately $18.4 billion. If consummated, the acquisition would constitute the largest aerospace acquisition in history.

2. UTC and Goodrich are the only two significant suppliers in the worldwide market for large main engine generators. The proposed acquisition would eliminate competition between UTC and Goodrich for large main engine generators.

3. UTC is one of only a few producers of aircraft turbine engines in the world. Either on its own or through a partnership, Goodrich produces and services engine control systems, a critical component on such engines, for several of UTC's leading competitors. Following the acquisition, UTC could disadvantage its engine competitors by withholding or delaying delivery, increasing prices, or reducing the quality of its servicing of engine control systems for competitors' engines. UTC also could exploit confidential information gained through its work on those engine control systems to disadvantage its competitors. The proposed acquisition therefore is likely to reduce competition substantially for aircraft turbine engines.

4. UTC and a joint venture in which Goodrich has a fifty percent share are two of the world's three leading producers of engine control systems for large aircraft turbine engines. The proposed acquisition likely would reduce competition substantially for engine control systems for large aircraft turbine engines.

5. As a result, the proposed acquisition likely would substantially lessen competition in the worldwide markets for the development, manufacture, and sale of large main engine generators, aircraft turbine engines, and engine control systems for large aircraft turbine engines, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. The Defendants

6. UTC is incorporated in Delaware and has its headquarters in Hartford, Connecticut. UTC produces a wide range of products for the aerospace industry and other industries, including, among other products, aircraft generators, aircraft engine control systems and components, aircraft engines, and helicopters. UTC's main aerospace divisions are Pratt & Whitney, Hamilton Sundstrand, and Sikorsky. In 2010, UTC had revenues of approximately $54 billion.

7. Goodrich is incorporated in New York and has its headquarters in Charlotte, North Carolina. Goodrich manufactures a variety of products for the aerospace industry, including, among other products, aircraft generators, aircraft engine control systems and components, landing gear, and actuation systems. In 2010, Goodrich had revenues of approximately $7.2 billion. In 2001, Goodrich began a joint venture with Thales Avionics Electrical Systems SA called TRW-Thales Aerolec SAS (''Aerolec'') for the purpose of collaborating on the development of variable-frequency main engine generators for large aircraft. References to Goodrich throughout the remainder of this Complaint also refer to Aerolec.

III. Jurisdiction and Venue

8. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. 4 and 25, as amended, to prevent and restrain Defendants from violating

Section 7 of the Clayton Act, 15 U.S.C. 18.

9. Defendants develop, manufacture, and sell aircraft systems and components and other products in the flow of interstate commerce. Defendants' activities in the development, manufacture, and sale of these products substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

10. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is therefore proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c).

IV. Large Main Engine Generators

A. Background

11. An electrical generator is a device that converts mechanical energy into electrical energy. The main engine of an aircraft generates mechanical energy. The main engine has a generator, which through electromagnetic induction converts the mechanical energy created by the engine to electrical energy.

12. The generator is responsible for generating power for all the in-flight systems that run on electricity, including pumping breathable air into the fuselage, operating the lights, and running the navigation and communication equipment in the cockpit.

13. To operate, the generator depends on the motion of the main engine. As the engine turns, it rotates a shaft leading to the generator, which generates electric power through electromagnetic induction. The outgoing electricity flows into the primary electrical distribution system, which routes it through the aircraft to the lighting system, environmental control systems, and other systems requiring electric power.

14. Aircraft power generation is a complicated process because aircraft engines change speed, according to the rate of acceleration or deceleration, the density of the air through which the aircraft is flying, and the angle of flight. Such variations require the generator to smooth out the peaks and valleys of propulsion to deliver the consistent power required by the aircraft's electrical systems.

15. The specifications of the main engine generator vary based on the size of the aircraft on which it is used. That aircraft size—large or small—determines the amount of power required from the generator. Large aircraft include primarily aircraft that seat 100 passengers or more, such as commercial aircraft like the Airbus A380 and A320 or the Boeing 777 and 737. Aircraft that do not qualify as large aircraft include regional jets, business jets, and helicopters, which are smaller and have considerably fewer seats than large aircraft.

16. Electrical systems on large aircraft are significantly different from those used on smaller aircraft. Large aircraft require more power than smaller aircraft. In addition, large aircraft and smaller aircraft have substantial differences in terms of power rating, voltage, speed, and cooling system. Further, large aircraft systematically use alternating current (''AC''), but smaller aircraft can use either AC or direct current (''DC''). AC generators can produce variable frequency or constant frequency electrical power. The generators that are able to power large aircraft generally have outputs above approximately 75 thousand volt-amps (''Kva''). Hereinafter, main engine generators with outputs of 75Kva or more will be referred to as ''large main engine generators.''

17. Designing a large main engine generator is generally more difficult than designing a main engine generator for a smaller aircraft because of the need to operate large main engine generators efficiently at high rotation speeds. Design engineering staff must be experienced with the impact of operating at higher speeds, which requires a more complex cooling system, more complex controls, and mechanically sizing the generator to fit the plane.

18. The friction created by the heavier rotor operating at faster speeds in a large main engine generator also requires a more complex cooling system. Main engine generators for smaller aircraft, generating 30 to 45Kva or less, are cooled sufficiently by air circulated within the generator chamber. Large main engine generators, however, require a system of tubing and gears to deliver mists of oil around the rotor to avoid over-heating. Oil-cooling systems are more complex and challenging to design.

19. The need for a heavier rotor and a more complex cooling system also makes it difficult to minimize the size and weight of a generator. Therefore, large main engine generators are designed to more demanding specifications than main engine generators for smaller aircraft.

20. Using two generators designed for smaller aircraft in place of one large main engine generator with the same total output would weigh more, take more space, require more connections to the electrical distribution system and the gearbox, and would be more costly. Weight and space, in particular, are important factors in generator selection and likely would dissuade a customer from approving such a design.

21. A generator used in an auxiliary power unit (''APU'') cannot be used in place of a main engine generator. APU generators are designed to perform a function different from main engine generators and, therefore, differ in mechanical design, electrical design, and cooling technique.

B. Relevant Markets

1. Product Market

22. Large main engine generators have specific applications, for which other products cannot be employed. An aircraft needs a main engine generator and cannot operate without one. In addition, main engine generators for use on smaller aircraft, such as regional or business jets, cannot be used in large aircraft because they do not provide sufficient output to power the aircraft and have other different specifications. Further, generators for other parts of an aircraft, such as the APU, cannot be used on a main engine for a large aircraft because they do not have the same performance characteristics as main engine generators.

23. A small but significant increase in the price of large main engine generators would not cause customers of those generators to substitute a smaller generator, a generator for an APU, or any other product, or to reduce purchases of large main engine generators, in volumes sufficient to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of large main engine generators is a line of commerce and relevant market within the meaning of Section 7 of the Clayton Act.

2. Geographic Market

24. Aircraft manufacturers purchase large main engine generators primarily from companies located in the United States or Europe. However, suppliers typically offer a worldwide organization to support the provision of maintenance and repair services. Customers do not consider transportation costs, a small proportion of the cost of the finished aircraft, to be a significant cost driver.

25. Accordingly, the world is the relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects of the Proposed Acquisition

26. UTC's proposed acquisition of Goodrich likely would lessen

competition substantially in the market for the development, manufacture, and sale of large main engine generators. UTC and Goodrich are the only significant competitors for large main engine generators. For the past twelve years, either UTC or Goodrich has won every competition for large main engine generators. Indeed, UTC and Goodrich were the top two bidders in almost every one of those competitions. UTC and Goodrich have been each other's closest competitor based on technical and commercial considerations.

27. UTC's and Goodrich's bidding behaviors often have been constrained by the possibility of losing sales of large main engine generators to the other. Each firm has often considered the other company's offering when planning bids and research and development activities.

28. Customers have benefited from the competition between UTC and Goodrich for sales of large main engine generators by receiving lower prices, more favorable contractual terms, more innovative products, and shorter delivery times. The combination of UTC and Goodrich would eliminate this competition and its future benefits to customers. Post-acquisition, UTC likely would have the incentive and the ability profitably to increase prices and reduce innovation.

29. UTC and Goodrich invest significantly to remain the two leading suppliers of large main engine generators in the future, and customers expect them to remain the leading suppliers. Future product development for large main engine generators likely would benefit from vigorous innovation competition between UTC and Goodrich.

30. Other companies that have some capability to develop large main engine generators are not close competitors to UTC and Goodrich. For example, no other company has an installed base of large main engine generators. Any other firm would need substantial time and expense to achieve UTC's or Goodrich's record of experience, flight time, and reliability. UTC's and Goodrich's installed base of large main engine generators also provides them the ability to develop new large main engine generators more efficiently and at a lower cost than other companies.

31. Companies that manufacture main engine generators for small aircraft do not compete effectively with UTC and Goodrich for large main engine generators because those companies' experiences with main engine generators for smaller aircraft do not provide them the ability to design and manufacture large main engine generators, which are more complicated products. Similarly, companies that make generators for APUs do not compete effectively with UTC and Goodrich for large main engine generators because those companies' experiences with APU generators do not provide them the ability to design and manufacture large main engine generators, which again are more complicated products.

32. The proposed acquisition, therefore, likely would substantially lessen competition for the development, manufacture, and sale of large main engine generators. This likely would lead to higher prices, less favorable contractual terms, and less innovation in violation of Section 7 of the Clayton Act.

D. Difficulty of Entry

33. Sufficient, timely entry of additional competitors into the market for large main engine generators is unlikely. Therefore, entry or the threat of entry into this market would not prevent the harm to competition caused by the elimination of Goodrich as a supplier of these products.

34. Firms attempting to enter into the market for the development, manufacture, and sale of large main engine generators face several barriers to entry. Main engine generators perform critical functions on the aircraft and likely will be used throughout the life of the aircraft program, which may be twenty or thirty years. As a result, aircraft manufacturers are reluctant to purchase a product from a supplier not already known for its expertise in large main engine generators. A manufacturer must be able to demonstrate that its large main engine generator meets the necessary specifications and need for reliability. While some companies may have demonstrated experience in other types of generators, such experience is not considered by customers to be as relevant as experience specifically in large main generators.

35. UTC and Goodrich emphasize to customers their prior experience in large main engine generators to demonstrate reliability. Moreover, this experience allows them to develop a new large main engine generator at an initial development cost lower than that of companies that do not already have similar generators in operation. They also are able to demonstrate the technical and financial ability successfully to manage production, aftermarket service, and warranty work for large main engine generators, which companies trying to enter this market would not be able to do.

36. Developing a large main engine generator is technically difficult. Manufacturers of main engine generators for smaller aircraft or generators for other parts of the aircraft, such as APUs, face significant technical hurdles in designing and developing large main engine generators. Large main engine generators present unique technical challenges relating to the preservation of power quality at speeds much higher than those reached in main engine generators for smaller aircraft and generators for APUs. Large main engine generators also generate higher current levels than other generators, and require an oil cooling system. The manufacturer of main engine generators for smaller aircraft and APU generators cannot design and produce a large main engine generator simply by making a main engine generator for a smaller aircraft or an APU generator proportionately larger, but must instead completely redesign the generator.

37. Further, substantial time and significant financial investment would be required for a company to design and develop a large main engine generator. Even companies that already make other types of generators, or that already are attempting to develop a large main engine generator, would require up to five years or more and an investment of over $50 million to develop a product that is competitive with those offered by UTC and Goodrich.

38. As a result of these barriers, entry into the market for large main engine generators would not be timely, likely, or sufficient to defeat the substantial lessening of competition that likely would result from UTC's acquisition of Goodrich.

V. Aircraft Turbine Engines

A. Background

39. Most modern commercial, business, and military aircraft are powered by turbine engines. These engines operate by burning a fuel-and-air mixture in a combustion chamber, with the resulting combustion products turning a propeller blade on a turboprop engine, a rotor shaft on a turboshaft engine, or a fan in front of a turbofan engine.

40. Turbofan engines power most commercial transport aircraft, business jets, and many military aircraft. Generally, large commercial aircraft, regional jets, and military aircraft use the most powerful turbofan engines, while business jets use turbofan engines of lower power. The power delivered by a turbofan engine is measured in terms of pounds of thrust (''pounds thrust''),

and such engines are generally categorized by their thrust class.

41. Turboprop engines primarily are used to power smaller aircraft, such as commuter aircraft. Turboshaft engines power helicopters. The power delivered by turboprop and turboshaft engines is measured in terms of shaft horsepower (shp).

42. Due to their complexity and the degree of expertise and skill required for their design, development and production, few companies produce aircraft turbine engines.

43. Aircraft turbine engines typically continue in service for decades and require regular maintenance, repair, and overhaul. When selecting an engine, customers take into account the difficulty and cost of servicing the engine. Engines that require more frequent servicing or are otherwise more difficult or costly to own and operate are less attractive to customers and therefore less competitive.

44. There are only three main producers of aircraft turbine engines of greater than 10,000 pounds thrust. (Hereinafter the term ''large aircraft turbine engines'' will refer to engines of this thrust range.) UTC, through its Pratt & Whitney subsidiary, and Rolls-Royce Group plc (''Rolls-Royce'') are two of these three producers. UTC manufactures turbine engines of up to 90,000 pounds thrust, while Rolls-Royce manufactures turbine engines of up to 97,000 pounds thrust.

45. There are only a few producers of aircraft turbine engines of 10,000 pounds thrust or less. (Hereinafter the term ''small aircraft turbine engines'' will refer to engines of this thrust range.) UTC, through its Pratt & Whitney subsidiary, is one of these producers.

46. It is critical that fuel be fed into aircraft turbine engines in a precise manner, so that the engine responds to the pilot's instructions in the most efficient manner possible. The system that accomplishes this is the engine control system, or ECS. The core of the ECS is a computer, usually called an electronic engine control, or EEC, that receives information from multiple sensors in the engine and from the pilot's controls, and calculates the amount of fuel to be sent to the engine. The ECS also includes the engine's main fuel pump and a fuel metering unit, or FMU, which controls the amount of fuel coming into the engine from the main fuel pump.

47. In virtually all modern aircraft turbine engines, the EEC within the ECS is a full-authority digital engine control, or FADEC. The FADEC consists of hardware and two types of software: the operating system and the application software. The operating system is provided by the FADEC supplier. The application software contains sensitive performance data relating to the particular engine and is usually provided by the engine manufacturer.

48. An ECS, including the FADEC, is designed and developed to meet the specific performance requirements for the particular engine on which it will be installed. As a result, the ECS supplier has insight into the design and cost of not only its ECS, but also the customer's engine. Some ECS suppliers also provide the application software on the FADEC. Such suppliers have access to competitively sensitive confidential business information about the fuel efficiency and performance principles around which the customer's engine is designed.

49. In 2008, Goodrich and Rolls-Royce formed Aero Engine Controls (AEC), a joint venture to produce ECSs. The AEC joint venture agreement requires Rolls-Royce to purchase all of its ECSs for engines of over 4000 pounds thrust or 2000 shp from AEC. Therefore, there are no alternative suppliers of ECSs for Rolls-Royce large aircraft turbine engines.

50. The AEC joint venture agreement gives Goodrich the exclusive right to provide replacement parts and undertake maintenance, repair and overhaul of ECSs for Rolls-Royce large aircraft turbine engines. Because the volume of commerce for aftermarket service of any given ECS is quite small, there are no secondary suppliers for ECS replacement parts or service. Aftermarket parts and service for ECSs must be provided by the original ECS manufacturer or a reseller designated by that manufacturer. Therefore, it would not be possible for purchasers of these Rolls-Royce engines to obtain parts or service for these ECSs from any supplier other than Goodrich.

B. Relevant Markets

1. Product Markets

a. Aircraft Turbine Engines

51. To a large extent, each aircraft platform is limited in the type and size of engine with which it may be powered. The choice of a turbofan, turboprop or turboshaft engine is dictated by aircraft type, range and speed, and is specified by the manufacturer. The engine must provide the amount of power needed for that particular aircraft to perform properly and safely, while at the same time being as light as possible. Thus, only a limited range of engine sizes is considered for any particular aircraft.

52. For any given aircraft, a small but significant increase in the price of an aircraft turbine engine of the required type and thrust would not cause sufficient purchases of such engines to be shifted to engines of a different type or significantly higher or lower thrust so as to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of the turbine engine required for each type of aircraft is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

53. Although the engine required for each such aircraft thus may be deemed a separate product market, in each such market there are few competitors.

54. The proposed acquisition of Goodrich by UTC would affect competition in each large aircraft turbine engine market in the same manner. It is therefore appropriate to aggregate large aircraft turbine engine markets for purposes of analyzing the effects of the acquisition.

55. The proposed acquisition of Goodrich by UTC would affect competition in each small aircraft turbine engine market in the same manner. It is therefore appropriate to aggregate small aircraft turbine engine markets for purposes of analyzing the effects of the acquisition.

b. ECSs for Aircraft Turbine Engines

56. All aircraft turbine engines require an ECS in order to operate properly. No aircraft engine can be sold or operated without an ECS. There are no other products that perform the functions of an ECS in receiving and analyzing data from sensors and pilot controls, calculating the optimal flow rate of fuel into the engine combustion chamber, and feeding the proper amount of fuel into the engine combustion chamber.

57. Each ECS is designed to work on a specific engine, and one ECS cannot be substituted for an ECS on another engine. Therefore, a small but significant increase in the price of the ECS designed for a particular engine would not cause enough purchases to be shifted to a different ECS so as to make such a price increase unprofitable. Accordingly, the development, manufacture, sale, and aftermarket service of the ECS for each aircraft turbine engine is a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act.

58. Although the ECS required for each particular engine thus may be deemed a separate product market, the AEC joint venture agreement requires Rolls-Royce to purchase all ECSs for large aircraft turbine engines from AEC

and grants exclusive aftermarket rights to such ECSs to Goodrich. Thus the proposed acquisition would affect competition in each such market in the same manner. It is therefore appropriate to aggregate the markets for ECSs for large aircraft turbine engines for purposes of analyzing the effects of the acquisition.

59. The proposed acquisition would have the same effect in each market for ECSs for small aircraft turbine engines. It is therefore appropriate to aggregate the markets for ECSs for small aircraft turbine engines for purposes of analyzing the effects of the acquisition.

2. Geographic Market

60. Aircraft manufacturers purchase aircraft turbine engines and the ECSs for those engines primarily from companies located in the United States or Europe. However, suppliers typically offer a worldwide organization to support the provision of maintenance and repair services. Customers do not consider transportation costs, a small proportion of the cost of the finished aircraft, to be a significant cost driver.

61. Accordingly, the world is the relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects of the Proposed Acquisition

1. Large Aircraft Turbine Engines

62. As discussed in paragraph 43 above, there are only three primary competitors in the markets for the development, manufacture, and sale of large aircraft turbine engines. UTC, through its Pratt & Whitney subsidiary, and Rolls-Royce are two of those competitors. Goodrich is a partner in AEC, from which Rolls-Royce must obtain its ECSs for most such engines. If UTC were to purchase Goodrich, and thus Goodrich's share of AEC, UTC would be both a producer of large aircraft turbine engines and the sole-source supplier of ECSs to one of its leading engine competitors.

63. After the acquisition UTC, through its position as a partner in the AEC joint venture, would have the incentive and ability to cause AEC to withhold or delay delivery of ECSs to its competitor, Rolls-Royce, resulting in the inability of Rolls-Royce to deliver engines on the schedule required by customers.

64. In addition, after the acquisition UTC, through its position as the exclusive supplier of aftermarket parts and services for ECSs on Rolls-Royce large aircraft turbine engines, would have the incentive and ability to raise the costs of such parts and services, or to lower the availability of such parts and services, making Rolls-Royce a less reliable supplier of large aircraft large turbine engines.

65. Such strategies to raise Rolls-Royce's costs and reduce its reliability would be profitable to UTC post-merger because the sale of large aircraft turbine engines provides much more revenue and profit than the sale of ECSs or the aftermarket service of ECSs for those engines. Therefore, if UTC were able to gain additional engine sales by causing AEC to withhold or delay delivery of ECSs for Rolls-Royce engines, or by increasing the cost or difficulty of obtaining aftermarket service on such ECSs, the additional engine sales would result in considerably more revenue and profit to UTC than the revenue and profit lost from any decrease in sales of or aftermarket service on such ECSs.

66. These actions by UTC likely would harm purchasers of large aircraft turbine engines because UTC and Rolls-Royce have been, and likely will continue to be, in some competitions the two best-positioned suppliers of large aircraft turbine engines. By making Rolls-Royce unable to deliver engines or by raising its costs, UTC may substantially affect competition and gain the ability to raise prices or reduce quality.

67. In addition, because AEC produces the ECSs for Rolls-Royce engines, AEC has accurate information concerning the cost of the ECS and each of the ECS components used on each Rolls-Royce engine covered by the AEC agreement. Moreover, because AEC provides the application software for the FADECs for these Rolls-Royce engines, it has access to competitively-sensitive confidential business information concerning the engine itself, including the fuel efficiency and performance principles around which each engine is designed.

68. Following the acquisition of Goodrich and its share of AEC, UTC would have the incentive and ability to use this information to its advantage in bidding on large aircraft turbine engines. For example, such information would reveal to UTC when it could offer higher pricing or less innovative solutions without risk of losing a large aircraft turbine engine sale.

69. Therefore, UTC's acquisition of Goodrich would give UTC both the ability and the incentive to reduce the competitiveness of Rolls-Royce in the supply of large aircraft turbine engines. If UTC were to reduce the competitiveness of Rolls-Royce in the markets for these engines, customers for those engines would have significantly fewer choices, and competition thus would be lessened substantially.

2. Small Aircraft Turbine Engines

70. As discussed in paragraph 44 above, UTC, through its Pratt & Whitney subsidiary, is one of a small number of significant competitors in the markets for the development, manufacture, and sale of small aircraft turbine engines. Several of UTC's competitors purchase the ECSs for certain of their small aircraft turbine engines from Goodrich. Therefore, if UTC were to purchase Goodrich, UTC would be both a producer of small aircraft turbine engines and a supplier of ECSs to its competitors.

71. At least three years are required to design and develop an ECS for a small aircraft turbine engine. Therefore, if an engine manufacturer must replace the supplier of the ECS on a specific engine, at least three years will pass before the engine manufacturer can deliver an engine with a replacement ECS. Aircraft manufacturers often demand delivery of an engine in less than three years.

72. If, after the acquisition, UTC were to withhold or delay delivery of Goodrich ECSs to companies that compete with UTC for the design, development, manufacture, and sale of small aircraft turbine engines, those companies might be unable to deliver engines on the schedule required by their customers. Such customers likely would have to turn to a different engine supplier.

73. In such circumstances, UTC might be the best positioned alternative engine supplier. As a result, customers that would otherwise choose a competing engine could be forced to purchase an engine from UTC.

74. The sale of small aircraft turbine engines provides much more revenue and profit than the sale of ECSs for those engines. Therefore, if UTC were able to gain additional engine sales by withholding or delaying delivery of ECSs to its engine competitors, the additional engine sales would result in considerably more revenue and profit to UTC than the revenue and profit lost from any decrease in sales of such ECSs.

75. UTC's acquisition of Goodrich therefore would give UTC both the ability and the incentive to make its competitors unable to compete effectively to supply small aircraft turbine engines. If UTC were to make its competitors unable to compete effectively in the development, manufacture, and sale of small aircraft turbine engines, customers for those engines would have significantly fewer choices, and competition would be lessened substantially.

D. Difficulty of Entry

76. Sufficient, timely entry of additional competitors into the markets for aircraft turbine engines is unlikely to prevent the harm to competition in the markets for aircraft turbine engines that is likely to occur as a result of the proposed acquisition.

77. Entry of any new competitor into the development, manufacture, and sale of aircraft turbine engines is unlikely and cannot happen in a time period that would prevent significant competitive harm. The primary purchasers of aircraft turbine engines are aircraft manufacturers, of which there are very few in the world. Aircraft manufacturers are extremely hesitant to purchase components from unproven sources, particularly such major components as engines. A firm seeking to enter this business would need many years and an enormous financial investment to design and develop a new aircraft turbine engine. No firm has successfully entered this business in decades.

78. Such entry is unlikely to occur in a timeframe sufficient to prevent competitive harm. Engine purchasers typically expect delivery of the first engine for a new aircraft from one to five years after contract award. A new entrant into any market for aircraft turbine engines, even a firm already manufacturing other aircraft turbine engines, would require much more time to develop and market a new engine.

79. As a result of these barriers, entry into the markets for aircraft turbine engines would not be timely, likely, or sufficient to defeat the substantial lessening of competition that is likely to result from UTC's acquisition of Goodrich.

VI. Engine Control Systems for Large Aircraft Turbine Engines

A. Background

80. The ECS in a large aircraft turbine engine is a major determinant of key engine performance parameters including fuel economy, safe operation, and thrust in different situations. In order to maximize engine performance, the ECS must be closely integrated with the engine during both the design stage and the assembly process. Changes in an engine design can necessitate changes in an ECS design, and vice versa.

81. As a result, large aircraft turbine engines and the ECSs for those engines are not sold separately to engine purchasers. It would not be practical for even the most sophisticated engine purchasers to integrate an ECS and an engine. All large aircraft turbine engines are sold with an ECS installed by the ECS producer and the engine manufacturer.

82. In large part because of the highly integrated nature of engines and ECSs, each of the three major producers of large aircraft turbine engines has a preferred supplier for the ECSs used on its engines. Each engine manufacturer purchases the great majority of the ECSs used on its engines from its preferred supplier.

83. Because of these preferred supplier relationships, there are only three significant suppliers of ECSs for large aircraft turbine engines, one for each engine producer. UTC and AEC, the Goodrich-Rolls-Royce joint venture, are two of the three suppliers. UTC, through its Hamilton Sundstrand subsidiary, supplies the ECSs used on most of its own engines. AEC supplies the ECSs used on most Rolls-Royce engines.

B. Relevant Markets

1. Product Market

84. As discussed in paragraphs 56 to 58 above, the development, manufacture, sale, and aftermarket service of the ECS for large aircraft turbine engines is a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act.

2. Geographic Market

85. Aircraft manufacturers purchase ECSs for large aircraft turbine engines primarily from companies located in the United States or Europe. However, suppliers typically offer a worldwide organization to support the provision of maintenance and repair services. ECS customers do not consider transportation costs, a small proportion of the cost of the finished aircraft, to be a significant cost driver.

86. Accordingly, the world is the relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects of the Proposed Transaction

87. UTC's proposed acquisition of Goodrich likely would lessen competition substantially in the market for ECSs for large aircraft turbine engines. UTC and AEC are two of the three producers of such ECSs. If UTC were to purchase Goodrich and thus Goodrich's share of AEC, UTC would control fifty percent of one of its two leading competitors for such ECSs.

88. Although an ECS for a large aircraft turbine engine is generally purchased by an engine builder from its preferred supplier, independent source selections can and do take place. For example, an aircraft manufacturer may purchase a replacement ECS from an ECS manufacturer other than its preferred supplier to upgrade the ECS on an engine already in service. This occurs when an existing ECS becomes difficult to repair due to parts obsolescence issues. In addition, engine manufacturers occasionally form teams to compete for new large aircraft turbine engine projects. In either of these situations, an ECS supplier may be selected by competition rather than on the basis of an existing preferred supplier arrangement. After the acquisition UTC, through its position as a partner in the AEC joint venture, would have the incentive and ability to impede AEC's pursuit of such projects in competition with UTC. Competition for ECSs for large aircraft turbine engines thus would be lessened substantially.

89. UTC, through its Pratt & Whitney subsidiary, and Rolls-Royce are two of the world's three primary manufacturers of large aircraft turbine engines. The companies conduct independent work into the research, development and design of new ECSs for such engines, UTC through its Hamilton Sundstrand subsidiary and Rolls-Royce through AEC. After UTC acquires Goodrich, UTC and Rolls-Royce would share control of AEC, and UTC has explored using AEC as a vehicle to combine its ECS business with that of Rolls-Royce, to share intellectual property and research and development results, and to eliminate some product lines, rather than competing with Rolls-Royce to independently develop innovative and cost-effective ECS solutions. Competition for ECSs for large aircraft turbine engines thus would be lessened substantially, as engine customers would be offered two engines from UTC and Rolls-Royce, but only a single ECS. This loss of competition would result in less innovative and cost-effective ECSs for large aircraft turbine engines.

D. Difficulty of Entry

90. Sufficient, timely entry of additional competitors into the market for ECSs for large aircraft turbine engines is unlikely. Therefore, entry or the threat of entry into this market would not prevent the harm to competition caused by UTC's acquisition of Goodrich and its share of AEC.

91. A firm seeking to enter this market would need substantial time and a significant financial investment to design and develop a new ECS for a large aircraft turbine engine. Even those firms that produce ECSs for smaller engines would need at least five years and an investment of $50 million or

more to develop an ECS for a large aircraft turbine engine that is competitive with those produced today by UTC and AEC.

92. A firm attempting to enter this market would be unlikely to obtain sufficient sales to be economically viable. Because most of these products are purchased by the three primary engine manufacturers from their existing preferred suppliers, a new entrant would have few opportunities to recover the considerable investment required to develop a new ECS for large aircraft turbine engines. Independent competitions are unlikely to occur with sufficient frequency to permit an entrant to recover its costs.

93. As a result of these barriers, entry into the market for ECSs for large aircraft turbine engines would not be timely, likely, or sufficient to defeat the substantial lessening of competition that likely would result from UTC's acquisition of Goodrich.

VII. Violations Alleged

94. UTC's proposed acquisition of Goodrich likely would lessen competition substantially in the development, manufacture, and sale of large main engine generators, aircraft turbine engines, and engine control systems for large aircraft turbine engines, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

95. Unless enjoined, the proposed acquisition likely would have the following anticompetitive effects relating to large main engine generators, among others:

(a) Actual and potential competition between UTC and Goodrich would be eliminated;

(b) competition likely would be substantially lessened;

(c) prices likely would increase, contractual terms likely would be less favorable to the customers, and innovation likely would decrease.

96. Unless enjoined, the proposed acquisition likely would have the following anticompetitive effects relating to aircraft turbine engines, among others:

(a) Competition likely would be substantially lessened;

(b) prices would likely increase, contractual terms likely would be less favorable to the customers, and innovation likely would decrease.

97. Unless enjoined, the proposed acquisition likely would have the following anticompetitive effects relating to ECSs for large aircraft turbine engines, among others:

(a) Actual and potential competition between UTC and Goodrich would be eliminated;

(b) competition likely would be substantially lessened;

(c) prices would likely increase, contractual terms likely would be less favorable to the customers, and innovation likely would decrease.

VIII. Requested Relief

98. The United States requests that this Court:

(a) Adjudge and decree that UTC's acquisition of Goodrich would be unlawful and violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) preliminarily and permanently enjoin and restrain Defendants and all persons acting on their behalf from consummating the proposed acquisition of Goodrich by UTC, or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine UTC with Goodrich;

(c) award the United States its costs for this action; and

(d) award the United States such other and further relief as the Court deems just and proper.

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Dated: July 26, 2012.

United States District Court For the District of Columbia

United States Of America Plaintiff, v. *United Technologies Corporation and Goodrich Corporation, Defendants.*

[Civil Action No. 1:12–cv–01230]

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On September 21, 2011, defendants United Technologies Corporation (''UTC'') and Goodrich Corporation (''Goodrich'') entered into an agreement whereby UTC proposes to acquire Goodrich for approximately $18.4 billion.

The United States filed a civil antitrust Complaint against UTC and Goodrich on July 26, 2012, seeking to enjoin the proposed acquisition. The Complaint alleged that the proposed acquisition likely would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, in the worldwide markets for the development, manufacture, and sale of large main engine generators, aircraft turbine engines, and engine control systems for large aircraft turbine engines. That loss of competition likely would result in increased prices, less favorable contractual terms, and decreased innovation in the markets for these products.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to eliminate the anticompetitive effects that would have resulted from UTC's acquisition of Goodrich. Under the proposed Final Judgment, which is explained more fully below, UTC is required to divest assets relating to Goodrich's main engine generator business and Goodrich's engine controls business. UTC is also required to divest Goodrich's shares in a joint venture related to engine controls, and extend until December 31, 2023 the option of a third party to purchase a portion of the Goodrich engine controls business related to that joint venture.[1] Each of the products discussed in the Complaint and the proposed transaction's potential anticompetitive effects on each relevant product market are discussed in turn below.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

[1] Throughout its investigation of the UTC/Goodrich acquisition, the United States has worked closely with the European Commission and has obtained substantially the same remedies. The United States will continue to cooperate with the European Commission as appropriate in implementing the remedies provided in the proposed Final Judgment.

II. Description of the Events Giving Rise to the Alleged Violations

A. The Defendants

UTC is incorporated in Delaware and has its headquarters in Hartford, Connecticut. UTC produces a wide range of products for the aerospace and other industries, including, among other products, aircraft generators, aircraft engine control systems and components, aircraft engines, and helicopters. UTC's main aerospace divisions are Pratt & Whitney, Hamilton Sundstrand, and Sikorsky. In 2010, UTC had revenues of approximately $54 billion.

Goodrich is incorporated in New York and has its headquarters in Charlotte, North Carolina. Goodrich manufactures a variety of products for the aerospace industry, including, among other products, aircraft generators, aircraft engine control systems and components, landing gear, and actuation systems. In 2010, Goodrich had revenues of approximately $7.2 billion.

B. The Competitive Effects of the Acquisition in the Market for Large Main Engine Generators

An aircraft electrical generator is a device that converts some of the mechanical energy created by an aircraft engine into electrical power used by communication and navigation equipment, environmental control systems, interior and exterior lighting, and other aircraft systems. As the engine turns, it rotates a shaft connected to the generator, which by electromagnetic induction converts some of the mechanical energy into electrical power. Electricity flows into the primary electrical distribution system, which routes it through the aircraft to the lighting bus, environmental control systems, and other systems requiring electric power.

Aircraft electrical power generation is quite complex. Because aircraft engines change speed according to the rate of acceleration or deceleration, air density, and angle of flight, the shaft connected to the generator will rotate at higher or lower rates. This variability must be taken into account by the generator, which must deliver a steady level of power to the aircraft systems.

Large aircraft (which include commercial aircraft seating 100 or more passengers) generally require much more electrical power than smaller aircraft. Main engine generators for large aircraft generally have power output above approximately 75 thousand volt-amps (''Kva'').[2] Main engine generators for large and small aircraft also have substantial differences in terms of rotational speed and cooling system. Moreover, large aircraft almost always use alternating current (''AC'') rather than direct current (''DC''), while smaller aircraft use either AC or DC. AC generators can produce variable frequency or constant frequency electrical power.

Designing a large main engine generator is generally more difficult than designing a small main engine generator because of the need to operate large generators efficiently at high rotational speeds. This requires a more complex cooling system to deal with the friction created by a heavier rotor operating at faster speeds. Small generators, generating 30 to 45Kva or less, are cooled sufficiently by air circulated within the generator chamber. Large generators, however, require a system of tubing and gears to deliver mists of oil around the rotor to avoid over-heating. Oil-cooling systems are more complex and challenging to design.

The need for a heavier rotor and a more complex cooling system also makes it difficult to minimize the size and weight of a large main engine generator. Therefore, such generators are designed to more demanding specifications than small main engine generators. Design engineering staffs must be familiar with the more demanding requirements of large main engine generators.

While multiple smaller generators could produce the same total power output as a single large main engine generator, multiple generators would weigh more, consume more space, require more connections to the electrical distribution system and the gearbox, and be more costly than a single generator. Weight and space, in particular, are important factors in generator selection and likely would dissuade a customer from approving a multiple-generator design.

Generators used in auxiliary power units (''APUs'') cannot be used in place of large main engine generators. APU generators are designed to perform a function different from main engine generators and, therefore, differ in mechanical design, electrical design, and cooling technique.

1. Relevant Product Market

Large main engine generators have specific applications, for which other products cannot be employed. An aircraft needs a main engine generator and cannot operate without one. In addition, main engine generators for use on smaller aircraft cannot be used in large aircraft because they do not provide sufficient output to power the aircraft and have other different specifications. Further, generators for other parts of an aircraft, such as the APU, cannot be used on the main engine of a large aircraft because they do not have the same performance characteristics as main engine generators.

A small but significant increase in the price of large main engine generators would not cause customers of those generators to substitute a smaller generator, a generator for an APU, or any other product, or to reduce purchases of large main engine generators, in volumes sufficient to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of large main engine generators is a line of commerce and relevant market within the meaning of Section 7 of the Clayton Act.

2. Relevant Geographic Market

Aircraft manufacturers purchase large main engine generators primarily from companies located in the United States or Europe. However, suppliers typically offer a worldwide organization to support the provision of maintenance and repair services. Customers do not consider transportation costs, a small proportion of the cost of the finished aircraft, to be a significant cost driver. Accordingly, the world is the relevant geographic market within the meaning of Section 7 of the Clayton Act.

3. Anticompetitive Effects

UTC's proposed acquisition of Goodrich likely would lessen competition substantially in the market for the development, manufacture, and sale of large main engine generators. UTC and Goodrich are the only significant competitors for large main engine generators. For the past twelve years, either UTC or Goodrich has won every competition for large main engine generators. Indeed, UTC and Goodrich were the top two bidders in almost every one of those competitions. The firms have been each other's closest competitors based on technical and commercial considerations.

The bidding behaviors of UTC and Goodrich often have been constrained by the possibility of losing sales of large main engine generators to the other. Each firm has often considered the other company's offering when planning bids

[2] Hereinafter, main engine generators with outputs of 75Kva or more will be referred to as ''large main engine generators.''

and research and development activities.

Customers have benefited from the competition between UTC and Goodrich for sales of large main engine generators by receiving lower prices, more favorable contractual terms, more innovative products, and shorter delivery times. The combination of UTC and Goodrich would eliminate this competition and its future benefits to customers. Post-acquisition, UTC likely would have the incentive and the ability profitably to increase prices and reduce innovation.

UTC and Goodrich invest significantly to remain the two leading suppliers of large main engine generators in the future, and customers expect them to maintain these positions. Future product development for large main engine generators would benefit from vigorous innovation competition between UTC and Goodrich.

Other companies that have some capability to develop large main engine generators are not close competitors to UTC and Goodrich. For example, no other company has an installed base of large main engine generators. Any other firm would need substantial time and expense to achieve UTC's or Goodrich's record of experience, flight time, and reliability. UTC's and Goodrich's installed base of large main engine generators also provides them the ability to develop new large main engine generators more efficiently and at a lower cost than other companies.

Companies that manufacture main engine generators for small aircraft do not compete effectively with UTC and Goodrich for large main engine generators because those companies' experiences with main engine generators for smaller aircraft do not provide them the ability to design and manufacture large main engine generators, which are more complicated products. Similarly, companies that make generators for APUs do not compete effectively with UTC and Goodrich for large main engine generators because those companies' experiences with APU generators do not provide them the ability to design and manufacture large main engine generators, which again are more complicated products.

The proposed acquisition, therefore, likely would substantially lessen competition for the development, manufacture, and sale of large main engine generators. This likely would lead to higher prices, less favorable contractual terms, and less innovation in violation of Section 7 of the Clayton Act.

4. Difficulty of Entry

Sufficient, timely entry of additional competitors into the market for large main engine generators is unlikely. Therefore, entry or the threat of entry into this market would not prevent the harm to competition caused by the elimination of Goodrich as a supplier of these products.

Firms attempting to enter into the market for the development, manufacture, and sale of large main engine generators face several barriers to entry. Main engine generators perform critical functions on the aircraft and likely will be used throughout the life of the aircraft program, which may be twenty or thirty years. As a result, aircraft manufacturers are reluctant to purchase a product from a supplier not already known for its expertise in large main engine generators. A manufacturer must be able to demonstrate that its large main engine generator meets the necessary specifications and need for reliability. While some companies may have demonstrated experience in other types of generators, such experience is not considered by customers to be as relevant as experience specifically in large main generators.

UTC and Goodrich emphasize to customers their prior experience in large main engine generators to demonstrate reliability. Moreover, this experience allows them to develop a new large main engine generator at an initial development cost lower than that of companies that do not already have similar generators in operation. They also are able to demonstrate the technical and financial ability successfully to manage production, aftermarket service, and warranty work for large main engine generators, which companies trying to enter this market would not be able to do.

Developing a large main engine generator is technically difficult. Manufacturers of main engine generators for smaller aircraft or generators for other parts of the aircraft, such as APUs, face significant technical hurdles in designing and developing large main engine generators. Large main engine generators present unique technical challenges relating to the preservation of power quality at speeds much higher than those reached in main engine generators for smaller aircraft and generators for APUs. Large main engine generators also generate higher current levels than other generators, and require an oil cooling system. Manufacturers of main engine generators for smaller aircraft and APU generators cannot design and produce a large main engine generator simply by making a main engine generator for a smaller aircraft or an APU generator proportionately larger, but must instead completely redesign the generator.

Further, substantial time and significant financial investment would be required for a company to design and develop a large main engine generator. Even companies that already make other types of generators, or that already are attempting to develop a large main engine generator, would require up to five years or more and an investment of over $50 million to develop a product that is competitive with those offered by UTC and Goodrich.

As a result of these barriers, entry into the market for large main engine generators would not be timely, likely, or sufficient to defeat the substantial lessening of competition that likely would result from UTC's acquisition of Goodrich.

C. The Competitive Effects of the Acquisition in the Market for Aircraft Turbine Engines

Most modern commercial, business, and military aircraft are powered by turbine engines. These engines operate by burning a fuel-and-air mixture in a combustion chamber, with the resulting combustion products turning a propeller blade on a turboprop engine, a rotor shaft on a turboshaft engine, or a fan in front of a turbofan engine. Turbofan engines power most commercial transport aircraft, business jets, and many military aircraft. Generally, large commercial aircraft, regional jets, and military aircraft use the most powerful turbofan engines, while business jets use turbofan engines of lower power. The power delivered by a turbofan engine is measured in terms of pounds of thrust (''pounds thrust''), and such engines are generally categorized by their thrust class. Turboprop engines primarily are used to power smaller aircraft, such as commuter aircraft. Turboshaft engines power helicopters. The power delivered by turboprop and turboshaft engines is measured in terms of shaft horsepower (shp).

Due to their complexity and the degree of expertise and skill required for their development, and production, few companies produce aircraft turbine engines of any kind. Aircraft turbine engines typically continue in service for decades and require regular maintenance, repair, and overhaul. When selecting an engine, customers take into account the difficulty and cost of servicing the engine, including the engine control system (''ECS'') on the engine. Engines that require more frequent servicing or are otherwise more difficult or costly to own and operate

are less attractive to customers and therefore less competitive. There are only three main producers of aircraft turbine engines of greater than 10,000 pounds thrust. (Hereinafter the term ''large aircraft turbine engines'' will refer to engines of this thrust range.) UTC, through its Pratt & Whitney subsidiary, and Rolls-Royce Group plc (''Rolls-Royce'') are two of these three producers. UTC manufactures turbine engines of up to 90,000 pounds thrust, while Rolls-Royce manufactures turbine engines of up to 97,000 pounds thrust. There are only a few producers of aircraft turbine engines of 10,000 pounds thrust or less. (Hereinafter the term ''small aircraft turbine engines'' will refer to engines of this thrust range.) UTC, through its Pratt & Whitney subsidiary, is one of these producers.

It is critical that fuel be fed into aircraft turbine engines in a precise manner, so that the engine responds to the pilot's instructions in the most efficient manner possible. The system that accomplishes this is the ECS. The core of the ECS is a computer, usually called an electronic engine control, or EEC, that receives information from multiple sensors in the engine and from the pilot's controls, and calculates the amount of fuel to be sent to the engine. The ECS also includes the engine's main fuel pump and a fuel metering unit, or FMU, which controls the amount of fuel coming into the engine from the main fuel pump.

In virtually all modern aircraft turbine engines, the EEC within the ECS is a full-authority digital engine control, or FADEC. The FADEC consists of hardware and two types of software: the operating system and the application software. The operating system is provided by the FADEC supplier. The application software contains sensitive performance data relating to the particular engine and is usually provided by the engine manufacturer, although in some cases the ECS supplier provides this software.

An ECS, including the FADEC, is designed and developed to meet the specific performance requirements of the particular engine on which it will be installed. As a result, the ECS supplier has insight into the design and cost of not only its ECS, but also the customer's engine. ECS suppliers that provide the application software also have access to competitively sensitive confidential business information about the fuel efficiency and performance principles around which the customer's engine is designed.

In 2008, Goodrich and Rolls-Royce formed Aero Engine Controls (''AEC''), a joint venture to produce ECSs. The AEC joint venture agreement requires Rolls-Royce to purchase all of its ECSs for engines of over 4000 pounds thrust or 2000 shp from AEC. Therefore, there are no alternative suppliers of ECSs for Rolls-Royce large aircraft turbine engines.

The AEC joint venture agreement gives Goodrich the exclusive right to provide replacement parts and undertake maintenance, repair, and overhaul of ECSs for Rolls-Royce large aircraft turbine engines. Because the volume of commerce for aftermarket service of any given ECS is quite small, there are no secondary suppliers for ECS replacement parts or service. Aftermarket parts and service for ECSs must be provided by the original ECS manufacturer or a reseller designated by that manufacturer. Therefore, it would not be possible for purchasers of these Rolls-Royce engines to obtain parts or service for these ECSs from any supplier other than Goodrich.

1. Relevant Product Markets

a. Aircraft Turbine Engines

To a large extent, each aircraft platform is limited in the type and size of engine with which it may be powered. The choice of a turbofan, turboprop, or turboshaft engine is dictated by aircraft type, range and speed, and is specified by the manufacturer. The engine must provide the amount of power needed for that particular aircraft to perform properly and safely, while at the same time being as light as possible. Thus, only a limited range of engine sizes is considered for any particular aircraft.

For any given aircraft, a small but significant increase in the price of an aircraft turbine engine of the required type and thrust would not cause sufficient purchases of such engines to be shifted to engines of a different type or significantly higher or lower thrust so as to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of the turbine engine required for each type of aircraft is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

Although the engine required for each such aircraft thus may be deemed a separate product market, in each such market there are few competitors. The proposed acquisition of Goodrich by UTC would affect competition in each large aircraft turbine engine market in the same manner. It is therefore appropriate to aggregate large aircraft turbine engine markets for purposes of analyzing the effects of the acquisition. Similarly, the proposed acquisition of Goodrich by UTC would affect competition in each small aircraft turbine engine market in the same manner. It is therefore also appropriate to aggregate small aircraft turbine engine markets for purposes of analyzing the effects of the acquisition.

b. ECSs for Aircraft Turbine Engines

All aircraft turbine engines require an ECS in order to operate properly. No aircraft engine can be sold or operated without an ECS. There are no other products that perform the functions of an ECS in receiving and analyzing data from sensors and pilot controls, calculating the optimal flow rate of fuel into the engine combustion chamber, and feeding the proper amount of fuel into the engine combustion chamber.

Each ECS is designed to work on a specific engine, and one ECS cannot be substituted for an ECS on another engine. Therefore, a small but significant increase in the price of the ECS designed for a particular engine would not cause enough purchases to be shifted to a different ECS so as to make such a price increase unprofitable. Accordingly, the development, manufacture, sale, and aftermarket service of the ECS for each aircraft turbine engine is a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act.

Although the ECS required for each particular engine thus may be deemed a separate product market, the AEC joint venture agreement requires Rolls-Royce to purchase all ECSs for large aircraft turbine engines from AEC and grants exclusive aftermarket rights to such ECSs to Goodrich. Thus the proposed acquisition would affect competition in each such market in the same manner. It is therefore appropriate to aggregate the markets for ECSs for large aircraft turbine engines for purposes of analyzing the effects of the acquisition.

The proposed acquisition would have the same effect in each market for ECSs for small aircraft turbine engines. It is therefore appropriate to aggregate the markets for ECSs for small aircraft turbine engines for purposes of analyzing the effects of the acquisition.

2. Relevant Geographic Market

Aircraft manufacturers purchase aircraft turbine engines and the ECSs for those engines primarily from companies located in the United States or Europe. However, suppliers typically offer a worldwide organization to support the provision of maintenance and repair services. Customers do not consider transportation costs, a small proportion of the cost of the finished aircraft, to be

a significant cost driver. Accordingly, the world is the relevant geographic market within the meaning of Section 7 of the Clayton Act.

3. Anticompetitive Effects

a. Large Aircraft Turbine Engines

As discussed above, there are only three primary competitors in the markets for the development, manufacture, and sale of large aircraft turbine engines. UTC, through its Pratt & Whitney subsidiary, and Rolls-Royce are two of those competitors. Goodrich is a partner in AEC, from which Rolls-Royce must obtain its ECSs for most such engines. If UTC were to purchase Goodrich, and thus Goodrich's share of AEC, UTC would be both a producer of large aircraft turbine engines and the sole-source supplier of ECSs to one of its leading engine competitors.

After the acquisition UTC, through its position as a partner in the AEC joint venture, would have the incentive and ability to cause AEC to withhold or delay delivery of ECSs to its competitor Rolls-Royce, resulting in the inability of Rolls-Royce to deliver engines on the schedule required by customers. In addition, after the acquisition UTC, through its position as the exclusive supplier of aftermarket parts and services for ECSs on Rolls-Royce large aircraft turbine engines, would have the incentive and ability to raise the costs of such parts and services, or to reduce the availability of such parts and services, making Rolls-Royce a less reliable supplier of large aircraft turbine engines. Such strategies to raise Rolls-Royce's costs and reduce its reliability would be profitable to UTC post-merger because the sale of large aircraft turbine engines provides much more revenue and profit than the sale of ECSs or the aftermarket service of ECSs for those engines. Therefore, if UTC were able to gain additional engine sales by causing AEC to withhold or delay delivery of ECSs for Rolls-Royce engines, or by increasing the cost or difficulty of obtaining aftermarket service on such ECSs, the additional engine sales would result in considerably more revenue and profit to UTC than the revenue and profit lost from any decrease in sales of or aftermarket service on such ECSs. These actions by UTC likely would harm purchasers of large aircraft turbine engines because UTC and Rolls-Royce have been, and likely will continue to be, in some competitions the two best-positioned suppliers of large aircraft turbine engines. By making Rolls-Royce unable to deliver engines or by raising its costs, UTC may substantially affect competition and gain the ability to raise prices or reduce quality.

In addition, because AEC produces the ECSs for Rolls-Royce engines, AEC has accurate information concerning the cost of the ECS and each of the ECS components used on each Rolls-Royce engine covered by the AEC agreement. Moreover, because AEC provides the application software for the FADECs for these Rolls-Royce engines, it has access to competitively-sensitive confidential business information concerning the engine itself, including the fuel efficiency and performance principles around which each engine is designed. Following the acquisition of Goodrich and its share of AEC, UTC would have the incentive and ability to use this information to its advantage in bidding on large aircraft turbine engines. For example, such information would reveal to UTC when it could offer higher pricing or less innovative solutions without risk of losing a large aircraft turbine engine sale.

Therefore, UTC's acquisition of Goodrich would give UTC both the ability and the incentive to reduce the competitiveness of Rolls-Royce in the supply of large aircraft turbine engines. If UTC were to reduce the competitiveness of Rolls-Royce in the markets for these engines, customers for those engines would have significantly fewer choices, and competition thus would be lessened substantially.

b. Small Aircraft Turbine Engines

As discussed above, UTC, through its Pratt & Whitney subsidiary, is one of a small number of significant competitors in the markets for the development, manufacture, and sale of small aircraft turbine engines. Several of UTC's competitors purchase the ECSs for certain of their small aircraft turbine engines from Goodrich. Therefore, if UTC were to purchase Goodrich, UTC would be both a producer of small aircraft turbine engines and a supplier of ECSs to its competitors.

At least three years are required to design and develop an ECS for a small aircraft turbine engine. Therefore, if an engine manufacturer must replace the supplier of the ECS on a specific engine, at least three years will pass before the engine manufacturer can deliver an engine with a replacement ECS. Aircraft manufacturers often demand delivery of an engine in less than three years.

If, after the acquisition, UTC were to withhold or delay delivery of Goodrich ECSs to companies that compete with UTC for the development, manufacture, and sale of small aircraft turbine engines, those companies might be unable to deliver engines on the schedule required by their customers. Such customers likely would have to turn to a different engine supplier. In such circumstances, UTC might be the best-positioned alternative engine supplier. As a result, customers that would otherwise choose a competing engine could be forced to purchase an engine from UTC.

The sale of small aircraft turbine engines provides much more revenue and profit than the sale of ECSs for those engines. Therefore, if UTC were able to gain additional engine sales by withholding or delaying delivery of ECSs to its engine competitors, the additional engine sales would result in considerably more revenue and profit to UTC than the revenue and profit lost from any decrease in sales of such ECSs.

UTC's acquisition of Goodrich therefore would give UTC both the ability and the incentive to make its competitors unable to compete effectively to supply small aircraft turbine engines. If UTC were to make its competitors unable to compete effectively in the development, manufacture, and sale of small aircraft turbine engines, customers for those engines would have significantly fewer choices, and competition would be lessened substantially.

4. Difficulty of Entry

Sufficient, timely entry of additional competitors into the markets for aircraft turbine engines is unlikely to prevent the harm to competition in the markets for aircraft turbine engines that is likely to occur as a result of the proposed acquisition. Entry of any new competitor into the manufacture and sale of aircraft turbine engines is unlikely and cannot happen in a time period that would prevent significant competitive harm. The primary purchasers of aircraft turbine engines are aircraft manufacturers, of which there are very few in the world. Aircraft manufacturers are extremely hesitant to purchase components from unproven sources, particularly such major components as engines. A firm seeking to enter this business would need many years and an enormous financial investment to design and develop a new aircraft turbine engine. No firm has successfully entered this business in decades.

Such entry is unlikely to occur in a timeframe sufficient to prevent competitive harm. Engine purchasers typically expect delivery of the first engine for a new aircraft from one to five years after contract award. A new entrant into any market for aircraft turbine engines, even a firm already manufacturing other aircraft turbine

engines, would require much more time to develop and market a new engine.

As a result of these barriers, entry into the markets for aircraft turbine engines would not be timely, likely, or sufficient to defeat the substantial lessening of competition that is likely to result from UTC's acquisition of Goodrich.

D. The Competitive Effects of the Acquisition in the Market for Engine Control Systems for Large Aircraft Turbine Engines

The ECS in a large aircraft turbine engine is a major determinant of key engine performance parameters including fuel economy, safe operation, and thrust in different situations. In order to maximize engine performance, the ECS must be closely integrated with the engine during both the design stage and the assembly process. Changes in an engine design can necessitate changes in an ECS design, and vice versa. As a result, large aircraft turbine engines and the ECSs for those engines are not sold separately to engine purchasers. It would not be practical for even the most sophisticated engine purchasers to integrate an ECS and an engine. All large aircraft turbine engines are sold with an ECS installed by the ECS producer and the engine manufacturer.

In large part because of the highly integrated nature of engines and ECSs, each of the three major producers of large aircraft turbine engines has a preferred supplier for the ECSs used on its engines. Each engine manufacturer purchases the great majority of the ECSs used on its engines from its preferred supplier.

Because of these preferred supplier relationships, there are only three significant suppliers of ECSs for large aircraft turbine engines, one for each engine producer. UTC and AEC, the Goodrich-Rolls-Royce joint venture, are two of the three suppliers. UTC, through its Hamilton Sundstrand subsidiary, supplies the ECSs used on most of its own engines. AEC supplies the ECSs used on most Rolls-Royce engines.

1. Relevant Product Market

As discussed in Paragraph II(C)(1)(a) of this Competitive Impact Statement, the development, manufacture, sale, and aftermarket service of the ECS for large aircraft turbine engines is a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act.

2. Relevant Geographic Market

Aircraft manufacturers purchase ECSs for large aircraft turbine engines primarily from companies located in the United States or Europe. However, suppliers typically offer a worldwide organization to support the provision of maintenance and repair services. ECS customers do not consider transportation costs, a small proportion of the cost of the finished aircraft, to be a significant cost driver. Accordingly, the world is the relevant geographic market within the meaning of Section 7 of the Clayton Act.

3. Anticompetitive Effects

UTC's proposed acquisition of Goodrich likely would lessen competition substantially in the market for ECSs for large aircraft turbine engines. UTC and AEC are two of the three producers of such ECSs. If UTC were to purchase Goodrich and thus Goodrich's share of AEC, UTC would control fifty percent of one of its two leading competitors for such ECSs.

Although an ECS for a large aircraft turbine engine is generally purchased by an engine builder from its preferred supplier, independent source selections can and do take place. For example, an aircraft manufacturer may purchase a replacement ECS from an ECS manufacturer other than its preferred supplier to upgrade the ECS on an engine already in service. This occurs when an existing ECS becomes difficult to repair due to parts obsolescence issues. In addition, engine manufacturers occasionally form teams to compete for new large aircraft turbine engine projects. In either of these situations, an ECS supplier may be selected by competition rather than on the basis of an existing preferred supplier arrangement. After the acquisition UTC, through its position as a partner in the AEC joint venture, would have the incentive and ability to impede AEC's pursuit of such projects in competition with UTC. Competition for ECSs for large aircraft turbine engines would thus be lessened substantially.

Competition also could be substantially lessened in other ways. UTC, through its Pratt & Whitney subsidiary, and Rolls-Royce are two of the world's three primary manufacturers of large aircraft turbine engines. The companies conduct independent work into the research, development and design of new ECSs for such engines, UTC through its Hamilton Sundstrand subsidiary and Rolls-Royce through AEC. After UTC acquires Goodrich, UTC and Rolls-Royce would share control of AEC, and UTC has explored using AEC as a vehicle to combine its ECS business with that of Rolls-Royce, to share intellectual property and research and development results, and to eliminate some product lines, rather than competing with Rolls-Royce to independently develop innovative and cost-effective ECS solutions. Competition for ECSs for large aircraft turbine engines thus would be lessened substantially, as engine customers would be offered two engines from UTC and Rolls-Royce, but only a single ECS. This loss of competition would result in less innovative and cost-effective ECSs for large aircraft turbine engines.

4. Difficulty of Entry

Sufficient, timely entry of additional competitors into the market for ECSs for large aircraft turbine engines is unlikely. Therefore, entry or the threat of entry into this market would not prevent the harm to competition caused by UTC's acquisition of Goodrich and its share of AEC.

A firm seeking to enter this market would need substantial time and a significant financial investment to design and develop a new ECS for a large aircraft turbine engine. Even those firms that produce ECSs for smaller engines would need at least five years and an investment of $50 million or more to develop an ECS for a large aircraft turbine engine that is competitive with those produced today by UTC and AEC.

Moreover, a firm attempting to enter this market would be unlikely to obtain sufficient sales to be economically viable. Because most of these products are purchased by the three primary engine manufacturers from their existing preferred suppliers, a new entrant would have few opportunities to recover the considerable investment required to develop a new ECS for large aircraft turbine engines. Independent competitions are unlikely to occur with sufficient frequency to permit an entrant to recover its costs.

As a result of these barriers, entry into the market for ECSs for large aircraft turbine engines would not be timely, likely, or sufficient to defeat the substantial lessening of competition that likely would result from UTC's acquisition of Goodrich.

III. Explanation of the Proposed Final Judgment

The divestitures required by the proposed Final Judgment will eliminate the anticompetitive effects that likely would result from UTC's acquisition of Goodrich. These divestitures will preserve the current state of competition in the development, manufacture, and sale of large main engine generators, aircraft turbine engines, and engine control systems for large aircraft turbine engines.

A. Divestitures

1. Engine Controls

a. Divestiture Assets

The proposed Final Judgment requires UTC to divest all of the Goodrich assets that are used to design, develop, and manufacture engine control products for small engines, such as electronic engine controls, fuel metering units, and main fuel pumps (hereinafter, the ''Engine Controls Divestiture Assets,'' defined in Section II(M) of the proposed Final Judgment).[3] The assets to be divested include Goodrich's manufacturing facility located in West Hartford, Connecticut, and all tangible and intangible assets used by or located in that facility. The assets to be divested also include the assets used by or located in Goodrich's facility in Montreal, Canada, for engine control products for small engines.[4] The divestiture assets include all assets used for maintenance, repair, and overhaul (''MRO'') services that are performed at the West Hartford facility and the assets used for MRO services for small engines that are performed at the Goodrich Montreal facility.[5] The divestiture assets exclude assets relating to MRO services at other Goodrich facilities that are not being divested.[6] The divestiture of the Engine Controls Divestiture Assets will provide the acquirer with all the assets it needs to successfully develop, manufacture, and sell engine control products.

In addition, to address intellectual property that Goodrich is unable to transfer outright, Paragraphs II(M)(5) and (6) include as a part of the Engine Controls Divestiture Assets an exclusive, irrevocable, royalty-free license for Goodrich intellectual property that is used exclusively for engine control products and a similar, but non-exclusive, license for such intellectual property that is used primarily, but not exclusively, for engine control products. These licenses will further ensure that the acquirer has the assets it needs to be a viable competitor in the engine controls systems business.

b. Divestiture Timing

In antitrust cases involving mergers in which the United States seeks a divestiture remedy, the United States generally requires that divestitures take place within the shortest time period reasonable under the circumstances. A quick divestiture has the benefits of restoring competition lost because of the acquisition and reducing the possibility of dissipation of the value of the assets. Paragraph IV(A) requires UTC to divest the Engine Control Divestiture Assets as a viable ongoing business within one hundred eighty days after the Complaint is filed, or five days after notice of the entry of the Final Judgment by the Court.

This divestiture period is longer than those often found in antitrust consent decrees, but is warranted in this case. The Engine Control Divestiture Assets do not currently comprise a separate, stand-alone business, making their separation from the remainder of Goodrich more difficult than would otherwise be the case. Also, the Engine Controls Divestiture Assets include assets that are currently in the process of being relocated from Goodrich's facility in Montreal to the West Hartford facility, which will take a few months to complete. In addition, in the particular circumstances of this case and given the large number of complex and critical products produced by the divested business, due diligence by the acquirer of the divestiture assets is likely to be a lengthy process. The proposed Final Judgment allows this divestiture period to be extended until ten calendar days after the receipt of any governmental approvals, including those from authorities outside the United States, that are required by the acquirer as a condition of closing. UTC and Goodrich must use their best efforts to seek all necessary approvals as expeditiously as possible.

2. Aircraft Electrical Generation

a. Divestiture Assets

The proposed Final Judgment requires UTC to divest the Goodrich assets used to design, develop, manufacture, market, service, distribute, repair and/or sell aircraft electrical generation and electrical distribution systems (hereinafter, the ''Electrical Power Divestiture Assets,'' defined in Section II(Q) of the proposed Final Judgment). The tangible assets to be divested include Goodrich's facilities in Pitstone, Buckinghamshire in the United Kingdom[7] and in Twinsburg, Ohio. The tangible assets to be divested also include manufacturing equipment, tooling, fixed assets, personal property, inventory, materials, licenses, permits, authorizations, agreements, contracts, customer lists, and repair, performance and other records. The intangible assets to be divested include patents, licenses, sublicenses, technical information, intellectual property, know-how, trade secrets, designs, design protocols, research data concerning historic and current research and development efforts, design tools, and simulation capability.[8] This divestiture will provide the acquirer with the assets it needs to successfully develop, manufacture, and sell aircraft electrical generation and electrical distribution systems.[9]

In addition, the proposed Final Judgment requires that UTC divest all of its shares in the Aerolec joint venture, as defined in Paragraph II(T). The acquirer of the Aerolec shares and the acquirer of the Electrical Power Divestiture Assets must be the same,

[3] The divestiture assets also include ancillary engine control products such as engine actuators and various pumps and valves that are currently manufactured at the facilities being divested. The divestiture of these product lines is necessary to ensure the continued viability of the West Hartford facility and the overall viability of the assets.

[4] Goodrich is in the process of closing its Montreal facility and transitioning the assets to various other Goodrich facilities. Goodrich is transitioning the assets relating to engine control products for small engines to the West Hartford facility and those assets are included in the divestiture assets.

[5] The divestiture assets specifically exclude those assets relating to MRO services for several large engines currently performed at the Montreal facility because those services are not related to the small engine control products being divested.

[6] The assets relating to MRO services performed at Goodrich facilities that are not being divested are excluded because most of the MRO services for engine control products for small engines are performed at the West Hartford facility. In addition, as discussed more fully below, a transition services agreement will provide the acquirer any MRO services it needs for a period of up to two years.

[7] The Pitstone facility also houses Goodrich's motor drives business. The motor drives are unrelated to electrical power generation and distribution and are not complementary products. In addition, the inclusion of the motor drives business is not necessary to ensure the viability of the Pitstone facility and the electrical power divestiture assets. The physical assets associated with the motor drives business are minimal and easily removed from the Pitstone facility. Further, any equipment shared by the two businesses will remain at the Pitstone facility. Therefore, the motor drives business is not included in the divestiture assets and is required to be removed from the Pitstone facility prior to the divestiture of the Electrical Power Divestiture Assets.

[8] The Electrical Power Divestiture Assets also include Goodrich's obligations to provide warranty services to BAE Systems on a torpedo program and all assets necessary to fulfill those obligations. This program is not related to electrical generation and distribution systems. However, this program has been manufactured and serviced from the Pitstone facility for several years and it would be disruptive to remove the services from the Pitstone facility.

[9] The Electrical Power Divestiture Assets exclude Goodrich's assets in and personnel operating out of Goodrich's development center in Bengaluru, India, and Goodrich's facilities that provide customer support for Goodrich's aircraft electrical generation systems and electrical distribution systems products, other than the facilities in Pitstone and Twinsburg. These facilities provide some services to the divested business. However, these services are minor and can be replicated by the acquirer of the divested assets. In addition, as discussed more fully below, a transition services agreement will provide the acquirer any engineering or maintenance, repair, and overhaul services it needs for a period of up to two years.

unless Thales acquires the Aerolec shares. This provision is necessary to avoid a situation in which the interests of the acquirer of the Aerolec shares potentially are not aligned with the interests of the acquirer of the Electrical Power Divestiture Assets, especially because the acquirer of the Electrical Power Divestiture Assets would be performing the majority of the work within the Aerolec joint venture.

Further, Paragraph II(Q)(5) ensures that any rights to intellectual property and know-how that Goodrich has pursuant to a certain agreement with Thales relating to the Aerolec joint venture will be divested to the acquirer of the Engine Control Divestiture Assets and will not remain with Goodrich.

b. Divestiture Timing

Paragraph V(A) of the proposed Final Judgment requires UTC to divest the Electrical Power Divestiture Assets within one hundred eighty days after the Complaint is filed, or five days after notice of the entry of the Final Judgment by the Court. This divestiture period is warranted by the specific circumstances related to these assets. The divestiture of the Electrical Power Divestiture Assets is likely to take up to six months because Defendants must move the motor drives business from the Pitstone facility prior to the divestiture. In addition to the time necessary to locate suitable space near the Pitstone facility and to transition the business, it is necessary to replace one piece of testing equipment at the Pitstone facility that currently is shared between the motor drives business and the Electrical Power Divestiture Assets. Although this equipment will remain at the Pitstone facility, the motor drives business will need new equipment once the business is removed from the Pitstone facility. The proposed Final Judgment allows the divestiture period to be extended until ten calendar days after the receipt of any governmental approvals that are required by the acquirer as a condition of closing. UTC and Goodrich must use their best efforts to seek all necessary approvals as expeditiously as possible.

Pursuant to Paragraph V(S), UTC must divest the Aerolec shares either to the acquirer of the Electrical Power Divestiture Assets or to Thales, which has various rights to purchase the shares pursuant to the Aerolec shareholders agreement between Thales and Goodrich. Due to Thales's rights and the time periods permitted for Thales to exercise these rights in the Aerolec shareholders agreement, Defendants may be unable to divest the Aerolec shares at the same time as the Electrical Power Divestiture Assets. In particular, Thales has two options by which it may purchase the Aerolec shares—a change of control option, which would allow Thales to purchase the Aerolec shares once the UTC/Goodrich merger is consummated, and a transfer option, by which Thales has the right to purchase the Aerolec shares once Goodrich has selected a potential third-party acquirer and agreed on a price.

The timing of the divestiture of the Aerolec shares will vary depending on whether Thales exercises these options. The divestiture periods for the Aerolec shares, provided in Paragraphs V(C), (D), and (E), are designed to require the divestiture of the Aerolec shares as soon as possible while taking into account the contractually permitted time periods for Thales to exercise its various rights. When Goodrich is required to select a potential third-party acquirer of the Aerolec shares prior to Thales exercising its rights, the divestiture period includes time for UTC to reach a deal with the acquirer of the Electrical Power Divestiture Assets and have the acquirer approved by the United States. Paragraph V(E) addresses the situation where Thales does not exercise any of its options to purchase the Aerolec shares. The proposed Final Judgment provides time for Defendants to comply with additional procedures required by the Aerolec shareholders agreement relating to the sale of the shares to a third party.

3. AEC Shares

Paragraph VI(A) of the proposed Final Judgment requires the divestiture to Rolls-Royce of Goodrich's shares in the AEC joint venture, defined in Paragraph II(Y), within one hundred eighty days after the filing of the Complaint, or five days after the notice of entry of the Final Judgment. The divestiture of Goodrich's AEC shares will prevent UTC from jointly developing engine control systems with Rolls-Royce through the AEC joint venture or from disadvantaging Rolls-Royce in future competitions for large aircraft turbine engines. The one hundred eighty-day divestiture period provides sufficient time for Rolls-Royce to complete the process of acquiring Goodrich's shares under the procedures established in the AEC joint venture agreement, including time to determine the price of the AEC shares. The proposed Final Judgment allows the divestiture period to be extended until ten calendar days after the receipt of any governmental approvals that are required by Rolls-Royce as a condition of closing. UTC and Goodrich must use their best efforts to seek all necessary approvals as expeditiously as possible.

In the unlikely event that Goodrich's shares in AEC are not divested to Rolls-Royce, Paragraph VI(B) of the proposed Final Judgment requires the divestiture of the shares to another acquirer within one hundred eighty days after the date that Rolls-Royce waives its option to acquire the shares or its option expires. While it is unlikely that Rolls-Royce will not purchase Goodrich's AEC shares,[10] this provision ensures that Goodrich's AEC shares will be divested even if the sale to Rolls-Royce does not go through. The one hundred eighty-day divestiture period provides sufficient time for operation of the procedures established by the AEC joint venture agreement for the sale of Goodrich's shares to a third party.

B. Other Provisions

1. Transition Services Agreements

Because the acquirer will be purchasing equipment and other assets that must be integrated into its existing operations, it may need the assistance of the former Goodrich employees to enable the acquirer to supply the divested engine controls systems, aircraft electrical generation and electrical distribution systems, and other products produced with the divested assets as seamlessly as possible. Therefore, Paragraphs IV(H) and V(L) of the proposed Final Judgment require that, at the option of the acquirer, UTC enter into transition services agreements by which UTC will provide technical and engineering assistance, and maintenance, repair, and overhaul services to the acquirer for up to one year, with the possibility of a one-year extension upon approval by the United States.

These transition services agreements do not raise competitive concerns under the circumstances of this particular case. The agreements are limited in duration to one year, plus the opportunity for a one-year extension. Also, the supply of these services from UTC to the acquirer is unlikely to provide UTC any competitive insight into the operations of the acquirer, and therefore will not harm competition.

2. Supply Agreements

The proposed Final Judgment provides for several supply agreements between UTC and the acquirers of the divestiture assets, at the option of the party receiving the supplied product, to allow the acquirers and UTC to fulfill current contractual obligations. These supply arrangements are necessary

[10] Rolls-Royce has entered into agreements with Defendants to exercise its option to purchase the AEC shares.

because some contractual obligations that will be divested to the acquirer require the supply of products and services from parts of Goodrich that are not being divested, while other contractual obligations that will not be divested require the supply of products and services from the divested businesses.

Paragraphs IV(I) and V(M) require that UTC provide each acquirer, at the option of the acquirer, with any components that the acquirer may need to operate the divested assets for up to one year, with the possibility of an extension of up to one additional year upon approval by the United States. These general components agreements guarantee the acquirer a source for components that currently are provided from parts of Goodrich that are not being divested, and give the acquirer time to identify alternative sources of supply or to manufacture the products on its own.

Paragraphs IV(J), IV(K), V(N), and V(O) provide for specific supply agreements to each acquirer that require UTC, at the option of the acquirer, to supply certain parts, engineering expertise, and/or maintenance service necessary to allow the acquirer to fulfill contractual obligations it will acquire from Goodrich as a part of the divestiture. These supply arrangements and their terms are tailored to the particular contracts that make them necessary. Accordingly, the lengths of the supply agreements in Paragraphs IV(J) and (K) in practice will amount to the life of the program for which the products and services are necessary.[11] The supply agreement in Paragraph V(N) will last for the life of the program for one product and for one year for another product, with the option of a one-year extension upon approval by the United States.[12] The supply agreement in Paragraph V(O) will last until the underlying contract expires in December 2013.

The proposed Final Judgment also provides for supply agreements, at UTC's option, whereby the acquirers of the divestiture assets will provide UTC with certain parts and/or services for specified programs to enable UTC to fulfill certain Goodrich contractual obligations that will not be divested. These supply agreements, described in Paragraphs IV(L) and V(P), are limited to specified engines and/or engine control systems. Like the other supply agreements, each agreement is tailored to the particular contract that makes it necessary, and accordingly its length in practice amounts to the life of the program for which the parts and/or services are required.

These supply agreements do not raise competitive concerns under the circumstances of this particular case, as the supply agreements are not likely to provide UTC or the acquirers with any competitive insight into the other's business. While some of these supply agreements will be longer than a typical supply agreement in the divestiture context, the contracts for the particular products being supplied have already been awarded and there is no ability to affect future competitions based on the supply of components for these previously awarded contracts.

Finally, Paragraphs IV(M) and V(Q) require that, at UTC's option, the acquirers provide UTC a non-exclusive license for intellectual property that currently is used both for the products being divested and for other Goodrich products that UTC will retain. Under these provisions, UTC may not use these licenses for engine control products, systems, or services or for aircraft electrical generation and electrical distribution systems, respectively. UTC also would be prohibited from transferring the license, except as a part of a sale of the business in which the license is used. These provisions are necessary to ensure that UTC has access to intellectual property required to run other portions of Goodrich, but prevents UTC from using these licenses to compete against the acquirers in the respective divested businesses.

3. Contract Extensions

Paragraph IV(N) requires UTC to offer to extend any contracts between the divested engine controls business and manufacturers of aircraft turbine engines that are scheduled to expire prior to the divestiture, unless the contracts have been renegotiated in the meantime. Such contracts will be extended until thirty days after the divestiture of the Engine Control Divestiture Assets. This extension will ensure that UTC's turbine engine competitors have access to the necessary engine control system components prior to the divestiture of the Engine Controls Divestiture Assets.

4. Extension of the AEC Aftermarket Option

Paragraph VI(C) of the proposed Final Judgment requires that UTC offer Rolls-Royce a new option for an additional period of time to purchase assets relating to the Goodrich aftermarket business, which services AEC products. The new option extends until the earlier of: (1) December 31, 2023 (when the exclusivity period of the aftermarket agreement between AEC and Goodrich expires); or (2) the date on which UTC no longer owns or controls substantially all of the Goodrich aftermarket business. This provision is necessary to eliminate any risk that UTC could disadvantage Rolls-Royce in its sale of engine control products for large aircraft turbine engines by making it difficult for customers to obtain parts or services for those engines. This new period does not affect any prior agreements between either of the Defendants and Rolls-Royce and does not affect UTC's ability to sell the Goodrich aftermarket business to a third party. However, this provision provides a specific procedure to be followed by UTC relating to its potential sale of the Goodrich aftermarket business. This procedure provides Rolls-Royce the ability to purchase the aftermarket business, but provides some limitations to ensure that UTC effectively retains the ability to sell the Goodrich aftermarket business to a third party.

5. Use of Divestiture Trustee

In the event that Defendants do not accomplish the divestitures within the period allotted, Section VII of the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. This requirement to appoint a divestiture trustee, if necessary, will encourage quick, effective divestitures in this matter. If a trustee is appointed, the proposed Final Judgment provides that UTC will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price and terms obtained and the speed with which the divestiture is accomplished. After his or her

[11] As an alternative to the agreement in Paragraph IV(K), UTC is required, at the acquirer's option, to provide a non-exclusive, irrevocable, royalty-free license to manufacture the parts necessary for the acquirer to fulfill its relevant contractual obligations. This license may be used only to manufacture the parts necessary to fulfill the acquirer's relevant contractual obligations, and the acquirer is prohibited from transferring this license, except as a part of the sale of the divestiture assets. This option allows the acquirer to determine whether it is more attractive to manufacture the parts on its own rather than to buy the parts from UTC.

[12] The agreement in Paragraph V(N) is limited to a one-year term with the option of an extension for one product (machined housings) because that product is a simple component that can be made by the acquirer relatively quickly and easily. Paragraph V(N) also provides an alternative similar to that provided in Paragraph IV(K), except that it allows for UTC to provide the acquirer with manufacturing know-how sufficient to enable the acquirer to manufacture the parts, as opposed to a license, because the products provided for by Paragraph V(N) require only know-how to manufacture.

appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of the six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as are appropriate to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

6. Use of Monitoring Trustee

Section XI provides that the United States may appoint a Monitoring Trustee for the Electrical Power Divestiture Assets and the Aerolec shares and/or the AEC shares. The Monitoring Trustee would have the power and authority to monitor the parties' compliance with the terms of the Final Judgment during the pendency of the divestiture. The Monitoring Trustee would also exercise control over the Aerolec shares and/or the AEC shares under the Hold Separate. The Monitoring Trustee would not have any responsibility or obligation for the operation of the parties' businesses. The proposed Final Judgment provides for a Monitoring Trustee because of the complexities of the divestiture, including the need to carve out the motor drives business from the Pitstone facility and the need for an independent individual to exercise control over Goodrich's shares in Aerolec and in AEC until they are divested. The Monitoring Trustee will serve at the Defendants' expense and on such terms and conditions as the United States approves, and the Defendants must assist the trustee in fulfilling its obligations. The Monitoring Trustee will file monthly reports and will serve until the divestitures are complete.

IV. Hold Separate Stipulation and Order

The Hold Separate ensures the viability of the assets being divested during the divestiture periods. Until the divestitures take place, the Hold Separate requires UTC to preserve and continue to operate the Engine Control Divestiture Assets and the Electrical Power Divestiture Assets as independent, ongoing, and economically viable businesses that are held entirely separate, distinct, and apart from UTC's assets and the other assets UTC acquires from Goodrich. During the divestiture period, UTC also is prohibited from coordinating the production, marketing, or terms of sale of the divested assets with any of its own assets or the other assets it acquires from Goodrich. To oversee UTC's compliance with its obligations under the Hold Separate, UTC is required to appoint, subject to the approval of the United States, a Hold Separate Manager for the Engine Control Divestiture Assets and a Hold Separate Manager for the Electrical Power Divestiture Assets. Duties of the latter include, until the motor drives business is removed from the Pitstone facility, ultimate responsibility for resolving conflicting demands for shared resources between the motor drives business and the business of the Electrical Power Divestiture Assets. This provision will limit UTC's involvement with the Pitstone facility during the period before the motor drives business is removed.

Regarding the Aerolec and AEC shares, the Hold Separate ensures that the Aerolec and AEC joint ventures remain viable, independent, competitive businesses. This includes requiring Defendants to keep the books, records, competitively-sensitive sales, marketing, or pricing information, and decision-making concerning both Aerolec and AEC separate, distinct, and apart from UTC's other operations. The Hold Separate also requires Defendants to assign control of the Aerolec shares and the AEC shares to the Monitoring Trustee within thirty days of the entry of the Hold Separate to ensure that the shares are held and managed separate and apart from UTC. During the thirty-day period before control is assigned to the Monitoring Trustee, Defendants may not exercise any rights or interests deriving from ownership of the Aerolec shares or AEC shares.

V. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Defendants.

VI. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site, and, under certain circumstances, published in the **Federal Register**. Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VII. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions preventing UTC's acquisition of Goodrich. The United States is satisfied, however, that the divestiture of the assets described in the proposed Final Judgment will preserve competition for the development, manufacture, and sale of large main engine generators, aircraft turbine engines, and engine control systems for large aircraft turbine engines in the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but would avoid the time,

expense, and uncertainty of a full trial on the merits of the Complaint.

VIII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B).

In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[13]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[14] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; see also *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged'') (citations omitted). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to

[13] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[14] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[15]

IX. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 26, 2012.

Respectfully submitted,

Kevin C. Quin (DC Bar # 415268),
U.S. Department of Justice, Antitrust Division, Litigation II Section, 450 Fifth Street NW., Suite 8700, Washington, DC 20530, (202) 307–0922, kevin.quin@usdoj.gov.

Certificate of Service

I, Kevin C. Quin, hereby certify that on July 26, 2012, I caused a copy of the foregoing Competitive Impact Statement, as well as the Complaint, Hold Separate Stipulation and Order, and Explanation of Consent Decree Procedures filed in this matter, to be served upon Defendants United Technologies Corporation and Goodrich Corporation by mailing the documents electronically to the duly authorized legal representatives of Defendants as follows:

Counsel for United Technologies Corporation

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United States District Court for the District Of Columbia

United States of America, Plaintiff v. *United Technologies Corporation and Goodrich Corporation, Defendants.*

[Civil Action No. 1:12-cv-01230]

Proposed Final Judgment

WHEREAS, Plaintiff, United States of America, filed its Complaint on July __, 2012, the United States and Defendants United Technologies Corporation (''UTC'') and Goodrich Corporation (''Goodrich''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights and assets by Defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires Defendants to make certain divestitures and make certain commitments for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' or ''Acquirers'' means the entity or entities to which Defendants divest the Divestiture Assets.

B. ''Acquirer of the Electrical Power Divestiture Assets'' means the entity to which Defendants divest the Electrical Power Divestiture Assets.

C. ''Acquirer of the Engine Control Divestiture Assets'' means the entity to which Defendants divest the Engine Control Divestiture Assets.

D. ''Acquirer of the AEC Shares'' means Rolls-Royce or another entity to which Defendants divest the AEC Shares.

E. ''Acquirer of the Aerolec Shares'' means Thales or another entity to which Defendants divest the Aerolec Shares.

F. ''UTC'' means Defendant United Technologies Corporation, a Delaware corporation with its headquarters in Hartford, Connecticut, its successors, assigns, subsidiaries, divisions, groups, affiliates, and partnerships, and their directors, officers, managers, agents, and employees.

G. ''Goodrich'' means Defendant Goodrich Corporation, a New York corporation with its headquarters in Charlotte, North Carolina, its successors, assigns, subsidiaries, divisions, groups, affiliates, and partnerships, and their directors, officers, managers, agents, and employees.

H. ''Rolls-Royce'' means Rolls-Royce Group plc, a company incorporated in England and Wales with a registered office in London, its successors, assigns, subsidiaries, divisions, groups, affiliates, and partnerships, and their directors, officers, managers, agents, and employees.

I. ''Thales'' means Thales Avionics Electrical Systems SA, a company incorporated in France with a registered office in Neuilly-Sur-Seine, France, its successors, assigns, subsidiaries, divisions, groups, affiliates, and partnerships, and their directors, officers, managers, agents, and employees.

J. ''West Hartford Facility'' means Goodrich's facility located at Charter Oak Boulevard, West Hartford, Connecticut 06133.

K. ''Montreal Facility'' means Goodrich's facility located at 5595

[15] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

Royalmount Avenue, Montreal H4P 1J9 QU, Canada, which will be transitioned to the West Hartford Facility.

L. ''Engine Control Products'' means all Goodrich products and services that are designed, developed, manufactured, marketed, serviced, distributed, repaired, and/or sold out of or using the assets located in the West Hartford Facility and/or the Montreal Facility on the date the Complaint is filed in this matter, including but not limited to electronic engine controls, fuel metering units, main fuel pumps, and ancillary engine control products (including but not limited to, engine actuators, ejector pumps and tanks, hot oil valves, shut-off valves, flow dividers, start flow control valves, lube pumps, and lube and scavenge pumps). Engine Control Products exclude maintenance, repair, and overhaul services currently performed at the Montreal Facility for the following: (1) Products designed specifically to be used on the Rolls-Royce Tay and Spey engines; (2) products designed specifically to be used on the General Electric F404 engine; (3) products designed specifically to be used on the Pratt & Whitney PW305 engine; and (4) the servo actuator and yaw damper product lines.

M. ''Engine Control Divestiture Assets'' means:

(1) The West Hartford Facility and all tangible and intangible assets used by or located in the West Hartford Facility;

(2) All tangible and intangible assets used by or located in the Montreal Facility that are used to design, develop, manufacture, market, service, distribute, repair, and/or sell Engine Control Products;

(3) All tangible assets, wherever located, that are used to design, develop, and/or manufacture Engine Control Products, including, but not limited to, assets relating to research and development activities, manufacturing equipment, tooling, fixed assets, personal property, inventory, office furniture, materials, supplies, licenses, permits, authorizations issued by any governmental organization, contracts, teaming arrangements, agreements, leases, commitments, certifications, supply agreements, understandings, customer lists, contracts, accounts, credit records, information technology systems, and repair, performance, and other records; and

(4) All intangible assets, wherever located, that are used to design, develop, and/or manufacture Engine Control Products, including, but not limited to, contractual rights, patents, licenses, sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures, quality assurance and control procedures, design tools, simulation capability, manuals and technical information provided to Goodrich employees, customers, suppliers, agents, or licensees, and research data concerning historic and current research and development efforts, including, but not limited to, designs of experiments and results of successful and unsuccessful designs and experiments;

(5) for intellectual property that is used exclusively for Engine Control Products that is owned and/or controlled by Goodrich, but for which Goodrich's ownership or control is in any way encumbered, an exclusive, irrevocable, royalty-free license for that intellectual property; and

(6) for intellectual property that is used primarily, but not exclusively, for Engine Control Products that is owned and/or controlled by Goodrich, but for which Goodrich's ownership or control is in any way encumbered, a non-exclusive, irrevocable, royalty-free license for that intellectual property.

N. ''Qualifying Customer Contracts'' means any contract or agreement: (1) Having an initial duration of longer than two years; (2) for the supply of any Engine Control Products to turbine engine manufacturers; (3) to which the business comprising the Engine Control Divestiture Assets is a party; (4) that are unexpired on the date the Complaint is filed in this matter; (5) the term of which will expire prior to the date of the consummation of the divestiture of the Engine Control Divestiture Assets; and (6) which have not been renegotiated prior to such consummation.

O. ''Twinsburg Facility'' means Goodrich's facility located at 8380 Darrow Road, Twinsburg, Ohio 44087.

P. ''Pitstone Facility'' means Goodrich's facility located at Pitstone Business Park, Westfield Road, Pitstone, Buckinghamshire LU7 9GT, United Kingdom.

Q. ''Electrical Power Divestiture Assets'' means:

(1) The Twinsburg Facility;

(2) The Pitstone Facility, provided, however, that the assets used exclusively for the motor drive business located at the Pitstone Facility shall not be divested pursuant to this Final Judgment;

(3) All tangible assets that are used to design, develop, manufacture, market, service, distribute, repair, and/or sell aircraft electrical generation systems and electrical distribution systems that currently are or have been designed, developed, manufactured, marketed, serviced, distributed, repaired, and/or sold by Goodrich Engine Control and Electrical Power Systems, including, but not limited to, assets relating to research and development activities, manufacturing equipment, tooling, fixed assets, personal property, inventory, office furniture, materials, supplies, licenses, permits, authorizations issued by any governmental organization, contracts, teaming arrangements, agreements, leases, commitments, certifications, supply agreements, understandings, customer lists, contracts, accounts, credit records, information technology systems, and repair, performance, and other records;

(4) All intangible assets that are used to design, develop, manufacture, market, service, distribute, repair and/or sell aircraft electrical generation systems and electrical distribution systems that currently are or have been designed, developed, manufactured, marketed, serviced, distributed, repaired, and/or sold by Goodrich Engine Control and Electrical Power Systems, including, but not limited to, contractual rights, patents, licenses, sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures, quality assurance and control procedures, design tools, simulation capability, manuals and technical information provided to Goodrich employees, customers, suppliers, agents, or licensees, and research data concerning historic and current research and development efforts, including, but not limited to, design of experiments and results of successful and unsuccessful designs and experiments;

(5) All intellectual property and know-how that is owned by Goodrich pursuant to the Intellectual Property Agreement between TRW Limited and Thales dated June 27, 2001; and

(6) Goodrich's obligations to BAE Systems pursuant to the Norwegian Sting Ray Mod 1 Torpedo System Programme Procurement Specification and Sub Contract for the Power Supply (5000) Section and Motor Control (6000) Section 296401001/01–02 Issue 1, dated

April 30, 2009 and all assets necessary to fulfill those obligations.

The Electrical Power Divestiture Assets exclude assets in or personnel operating out of Goodrich's development center located in Bengaluru, India and Goodrich's MRO Campuses.

R. ''Goodrich's MRO Campuses'' means all Goodrich facilities, except the Twinsburg Facility and the Pitstone Facility, from which customer support for Goodrich's aircraft electrical generation systems and electrical distribution systems products is provided.

S. ''Aerolec Shareholders Agreement'' means the Shareholders' Agreement dated May 31, 2001, between TRW France Holding SAS, TRW Limited, and Thales.

T. ''Aerolec Shares'' means all shares of TRW-Thales Aerolec SAS that are owned and/or controlled by Goodrich, TRW France Holding SAS, and/or TRW Limited that were acquired pursuant to the Aerolec Shareholders Agreement.

U. ''Change of Control Option'' means Thales's option to acquire the Aerolec Shares pursuant to section 7.2(H) of the Aerolec Shareholders Agreement.

V. ''Transfer Option'' means Thales's option to acquire the Aerolec Shares pursuant to section 7.2(E) of the Aerolec Shareholders Agreement.

W. ''AEC Joint Venture Agreement'' means the Joint Venture Agreement dated December 31, 2008, between Rolls-Royce Engine Controls Holdings Limited, Rolls-Royce Group plc, Goodrich Controls Holding Limited, Goodrich Actuation Systems Limited, Goodrich Corporation, and Rolls-Royce Goodrich Engine Control Systems Limited.

X. ''AEC'' means the joint venture established pursuant to the AEC Joint Venture Agreement.

Y. ''AEC Shares'' means all the shares in AEC that are owned and/or controlled by Goodrich.

Z. ''Goodrich Aftermarket Business'' means the worldwide aftermarket business conducted by Goodrich prior to the date Goodrich is acquired by UTC involving the maintenance, repair, and overhaul of units, equipment, and parts (including hardware and software) that are designed, assembled, manufactured, supported, or procured by AEC, the provision of training and documentation and support equipment, and the sale and supply of spare parts and initial provisioning for engine control systems for Rolls-Royce engines.

AA. ''Divestiture Assets'' means the Electrical Power Divestiture Assets, Aerolec Shares, Engine Control Divestiture Assets, and AEC Shares.

III. Applicability

A. This Final Judgment applies to UTC and Goodrich, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV, Section V, and Section VI of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, Defendants shall require the purchaser(s) to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirers of the assets divested pursuant to this Final Judgment.

IV. Divestiture of the Engine Control Divestiture Assets

A. Defendants are ordered and directed, within one hundred and eighty calendar days after the filing of the Complaint in this matter, or five calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Engine Control Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this period, not to exceed sixty calendar days in total, and shall notify the Court in such circumstances. If, however, applications seeking approval to sell the Engine Control Divestiture Assets have been filed within the period permitted for the divestiture of the Engine Control Divestiture Assets with authorities from which approval for the divestiture of the Engine Control Divestiture Assets is required by the Acquirer of the Engine Control Divestiture Assets as a condition of closing, but orders or other dispositive actions by such authorities on such applications have not been issued before the end of the period permitted for this divestiture, the period shall be extended with respect to the divestiture of the Engine Control Divestiture Assets until ten calendar days after such approvals are received. Defendants agree to use their best efforts to accomplish the divestiture of the Engine Control Divestiture Assets and to seek all necessary approvals as expeditiously as possible.

B. In accomplishing the divestitures ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Engine Control Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of any of the Engine Control Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Engine Control Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer of the Engine Control Divestiture Assets and the United States information relating to the personnel involved in the design, development, manufacture, marketing, servicing, distribution, repair, and/or sale of Engine Control Products to enable the Acquirer of the Engine Control Divestiture Assets to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer of the Engine Control Divestiture Assets to employ any Goodrich employee who is responsible for the design, development, manufacture, marketing, servicing, distribution, repair, and/or sale of Engine Control Products. Interference with respect to this paragraph includes, but is not limited to, enforcement of non-compete clauses and offers to increase salary or other benefits apart from those offered company-wide.

D. Defendants shall permit prospective Acquirers of the Engine Control Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities to be divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer of the Engine Control Divestiture Assets that each asset included in the Engine Control Divestiture Assets will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Engine Control Divestiture Assets.

G. Defendants shall warrant to the Acquirer of the Engine Control Divestiture Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Engine Control Divestiture Assets, and that following the sale of the Engine Control Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of any of the Engine Control Divestiture Assets.

H. At the option of the Acquirer of the Engine Control Divestiture Assets, UTC shall enter into a transition services agreement with the Acquirer of the Engine Control Divestiture Assets. This agreement shall include technical and engineering assistance and maintenance, repair, and overhaul services relating to Engine Control Products. The terms and conditions of any contractual arrangement meant to satisfy this provision must be commercially reasonable. The terms and conditions of any such transition services agreement shall be subject to the approval of the United States, in its sole discretion. The duration of this transition services agreement shall not be longer than one year. The United States, in its sole discretion, may approve an extension of the term of this transition services agreement for a period of up to one year. If the Acquirer of the Engine Control Divestiture Assets seeks an extension of the term of this transition services agreement, it shall so notify the United States in writing at least four months prior to the date the transition services agreement expires. The United States shall respond to any such request for extension in writing at least three months prior to the date the transition services agreement expires.

I. At the option of the Acquirer of the Engine Control Divestiture Assets, UTC shall enter into a supply agreement to supply components used in or necessary for the design, development, manufacture, marketing, servicing, distribution, repair, and/or sale of the Engine Control Products sufficient to meet the needs identified by the Acquirer of the Engine Control Divestiture Assets. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for these products. The terms and conditions of any such supply agreement shall be subject to the approval of the United States, in its sole discretion. The duration of this supply agreement shall not be longer than one year. The United States, in its sole discretion, may approve an extension of the term of this supply agreement for a period of up to one year. If the Acquirer of the Engine Control Divestiture Assets seeks an extension of the term of this supply agreement, it shall so notify the United States in writing at least four months prior to the date the supply agreement expires. The United States shall respond to any such request for extension in writing at least three months prior to the date the supply agreement expires.

J. At the option of the Acquirer of the Engine Control Divestiture Assets, UTC shall enter into a supply agreement to supply parts and provide engineering expertise sufficient to meet the needs identified by the Acquirer of the Engine Control Divestiture Assets to enable that Acquirer to provide maintenance, repair, and overhaul services for the following products: Engine control unit and fuel pump metering unit for the AE1107 engine; engine control unit and fuel pump metering unit for the AE3007 engine; engine control unit and fuel pump for the RB211 engine; engine control unit for the BR710 engine; engine control unit for the PW305 engine; engine control unit for the Tay engine; fuel metering unit for the Trent 700 engine; fuel metering unit for the Trent 800 engine; and fuel metering unit and actuator for the V2500 engine. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for these products. The terms and conditions of any such supply agreement shall be subject to the approval of the United States, in its sole discretion. At the option of the Acquirer of the Engine Control Divestiture Assets, this agreement may remain in effect so long as three or more of any aircraft equipped with an engine listed in this paragraph are in service.

K. At the option of the Acquirer of the Engine Control Divestiture Assets, UTC shall enter into a supply agreement to supply pressure sensors and transducers for the Goodrich EMC51, EMC60, and EMC101 electronic engine controls, and any derivatives of those electronic engine controls, sufficient to meet the needs identified by the Acquirer of the Engine Control Divestiture Assets. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for these products. The terms and conditions of any such supply agreement shall be subject to the approval of the United States, in its sole discretion. At the option of the Acquirer of the Engine Control Divestiture Assets, this agreement may remain in effect so long as five or more aircraft equipped with an electronic engine control listed in this paragraph are in service. In the alternative, at the option of the Acquirer of the Engine Control Divestiture Assets, UTC shall provide the Acquirer of the Engine Control Divestiture Assets a non-exclusive, irrevocable, royalty-free license solely to manufacture the pressure sensors and transducers necessary to fulfill the contractual obligations of the Acquirer of the Engine Control Divestiture Assets relating to the Goodrich EMC51, EMC60, and EMC101 electronic engine controls that exist on the date the Engine Control Divestiture Assets are divested. The Acquirer shall not transfer such license except as part of a sale of the Engine Control Divestiture Assets.

L. At the option of UTC, the Acquirer of the Engine Control Divestiture Assets shall enter into a supply agreement for parts sufficient to meet the needs identified by UTC to enable UTC to provide maintenance, repair, and overhaul services for the fuel control system for the LF507 engine; the fuel control system and the power turbine governor for the T53 engine; the fuel pump for the LTS101 engine; and the fuel pump for the PW100 engine. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for these products. The terms and conditions of any such supply agreement shall be subject to the approval of the United States, in its sole discretion. At the option of UTC, this agreement may remain in effect so long as five or more aircraft equipped with an engine listed in this paragraph are in service.

M. At the option of UTC, the Acquirer of the Engine Control Divestiture Assets shall provide UTC with a non-exclusive license for intellectual property that is included in the Engine Control Divestiture Assets but used for both Engine Control Products and other Goodrich products not being divested pursuant to this Final Judgment. UTC shall not transfer the license described in this paragraph except as part of a sale of the business in which the license is used. UTC shall not use the license described in this paragraph for engine control products, systems, and services. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for these products. The terms and conditions of any such license shall be subject to the approval of the United States, in its sole discretion.

N. Defendants shall offer to extend, with the same pricing and other terms and conditions, the Qualifying Customer Contracts for a period

expiring thirty calendar days after the date of the consummation of the divestiture of the Engine Control Divestiture Assets.

O. Unless the United States otherwise consents in writing, the divestiture of the Engine Control Divestiture Assets pursuant to Section IV or by the Divestiture Trustee appointed pursuant to Section VII of this Final Judgment shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Engine Control Divestiture Assets can and will be used by the Acquirer of the Engine Control Divestiture Assets as part of a viable, ongoing business that is engaged in the design, development, manufacture, marketing, servicing, distribution, repair, and sale of Engine Control Products and that the divestiture of the Engine Control Divestiture Assets will remedy the competitive harm alleged in the Complaint. The divestiture of the Engine Control Divestiture Assets, whether pursuant to Section IV or Section VII of this Final Judgment, shall be made to an Acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the design, development, manufacture, marketing, servicing, distribution, repair, and sale of Engine Control Products. The divestiture of the Engine Control Divestiture Assets shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer of the Engine Control Divestiture Assets and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Divestiture of the Electrical Power Divestiture Assets and Aerolec Shares

A. Defendants are ordered and directed to divest the Electrical Power Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion, no later than one hundred eighty calendar days after the filing of the Complaint in this matter, or five calendar days after notice of the entry of this Final Judgment by the Court, whichever is later. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed sixty calendar days in total, and shall notify the Court in such circumstances. If, however, applications seeking approval to sell the Electrical Power Divestiture Assets have been filed within the period permitted for the divestiture of the Electrical Power Divestiture Assets with authorities from which approval for the divestiture of the Electrical Power Divestiture Assets is required by the Acquirer of the Electrical Power Divestiture Assets as a condition of closing, but orders or other dispositive actions by such authorities on such applications have not been issued before the end of the period permitted for this divestiture, the period shall be extended with respect to the divestiture of the Electrical Power Divestiture Assets until ten calendar days after such approvals are received. Defendants agree to use their best efforts to accomplish the divestiture of the Electrical Power Divestiture Assets and to seek all necessary approvals as expeditiously as possible.

B. Defendants shall remove from the Pitstone Facility prior to the consummation of the divestiture of the Electrical Power Divestiture Assets all assets used exclusively for the motor drive business.

C. If Thales exercises the Change of Control Option, Defendants are ordered and directed, within one hundred eighty calendar days after the filing of the Complaint in this matter, or five calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Aerolec Shares to Thales in a manner consistent with this Final Judgment. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Aerolec Shares as expeditiously as possible.

D. If Thales does not exercise the Change of Control Option, but Thales does exercise the Transfer Option, Defendants are ordered and directed to divest the Aerolec Shares to Thales in a manner consistent with this Final Judgment within thirty calendar days after the date Thales notifies UTC that it will exercise the Transfer Option. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty calendar days in total, and shall notify the Court in such circumstances. Defendants agree to divest the Aerolec Shares as expeditiously as possible. If Thales does not exercise the Change of Control Option, Defendants further agree to provide notice to Thales pursuant to paragraph 7.2(E) of the Aerolec Shareholders Agreement no later than two business days after the sale of the Electrical Power Divestiture Assets is consummated.

E. If Thales does not exercise the Change of Control Option and does not exercise the Transfer Option, Defendants are ordered and directed to divest the Aerolec Shares in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion, within one hundred fifty calendar days after the earlier of: (1) The date Thales notifies UTC that it will not exercise the Transfer Option; or (2) the time period for Thales to exercise the Transfer Option expires. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty calendar days in total, and shall notify the Court in such circumstances. If, however, applications seeking approval to sell the Aerolec Shares have been filed within the period permitted for the divestiture of the Aerolec Shares with authorities from which approval for the divestiture of the Aerolec Shares is required by the Acquirer of the Aerolec Shares as a condition of closing, but orders or other dispositive actions by such authorities on such applications have not been issued before the end of the period permitted for this divestiture, the period shall be extended with respect to the divestiture of the Aerolec Shares until ten calendar days after such approvals are received. Defendants agree to use their best efforts to accomplish the divestiture of the Aerolec Shares and to seek all necessary approvals as expeditiously as possible.

F. In accomplishing the divestitures ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Electrical Power Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of any of the Electrical Power Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Electrical Power Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States and any Monitoring Trustee at the same time that such information is made available to any other person.

G. Defendants shall provide the Acquirer of the Electrical Power Divestiture Assets, the United States, and any Monitoring Trustee information relating to the Goodrich personnel involved in the design, development, manufacture, marketing, service, distribution, repair, and/or sale of aircraft electrical generation systems and electrical distribution systems to enable the Acquirer of the Electrical Power Divestiture Assets to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer of the Electrical Power Divestiture Assets to employ any Goodrich employee who is responsible for the design, development, manufacture, marketing, service, distribution, repair, and/or sale of aircraft electrical generation systems and electrical distribution systems. Interference with respect to this paragraph includes, but is not limited to, enforcement of non-compete clauses and offers to increase salary or other benefits apart from those offered company-wide. However, interference with respect to this paragraph shall not include acts by Defendants relating to employees of the Pitstone Facility that are necessary to comply with the employment laws of the United Kingdom.

H. Defendants shall permit prospective Acquirers of the Electrical Power Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities to be divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

I. Defendants shall warrant to the Acquirer of the Electrical Power Divestiture Assets that each asset included in the Electrical Power Divestiture Assets will be operational on the date of sale.

J. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Electrical Power Divestiture Assets.

K. Defendants shall warrant to the Acquirer of the Electrical Power Divestiture Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset included in the Electrical Power Divestiture Assets, and that following the sale of the Electrical Power Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of any of the Electrical Power Divestiture Assets.

L. At the option of the Acquirer of the Electrical Power Divestiture Assets, UTC shall enter into a transition services agreement with the Acquirer of the Electrical Power Divestiture Assets. This agreement shall include technical and engineering assistance and maintenance, repair, and overhaul services relating to aircraft electrical generation systems and electrical distribution systems. The terms and conditions of any contractual arrangement meant to satisfy this provision must be commercially reasonable. The terms and conditions of any such transitional services agreement shall be subject to the approval of the United States, in its sole discretion. The duration of this transition services agreement shall not be longer than one year. The United States, in its sole discretion, may approve an extension of the term of this transition services agreement for a period of up to one year. If the Acquirer of the Electrical Power Divestiture Assets seeks an extension of the term of this transition services agreement, it shall so notify the United States in writing at least four months prior to the date the transition services agreement expires. The United States shall respond to any such request for extension in writing at least three months prior to the date the transition services agreement expires.

M. At the option of the Acquirer of the Electrical Power Divestiture Assets, UTC shall enter into a supply agreement to supply components used in or necessary for the design, development, manufacture, marketing, servicing, distribution, repair, and/or sale of aircraft electrical generation systems and electrical distribution systems sufficient to meet the needs identified by the Acquirer of the Electrical Power Divestiture Assets. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for these products. The terms and conditions of any such supply agreement shall be subject to the approval of the United States, in its sole discretion. The duration of this supply agreement shall not be longer than one year. The United States, in its sole discretion, may approve an extension of the term of this supply agreement for a period of up to one year. If the Acquirer of the Electrical Power Divestiture Assets seeks an extension of the term of this supply agreement, it shall so notify the United States in writing at least four months prior to the date the supply agreement expires. If the United States approves such an extension, it shall so notify the Acquirer of the Engine Control Divestiture Assets in writing at least three months prior to the date the supply agreement expires.

N. At the option of the Acquirer of the Electrical Power Divestiture Assets, UTC shall enter into a supply agreement to supply machined parts, including machined housings for AC generators and accessory gearboxes for the SAAB Gripen (JAS 39), sufficient to meet the needs identified by the Acquirer of the Electrical Power Divestiture Assets. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for these products. The terms and conditions of any such supply agreement shall be subject to the approval of the United States, in its sole discretion. At the option of the Acquirer of the Electrical Power Divestiture Assets, the portion of this supply agreement relating to the accessory gearboxes may remain in effect so long as any SAAB Gripen (JAS 39) is in service. The portion of this supply agreement relating to the machined housings for the AC generators and any other products covered shall not be longer than one year. The United States, in its sole discretion, may approve an extension of the term of the portion of this supply agreement relating the machined housings for the AC generators and any other products covered to for a period of up to one year. If the Acquirer of the Electrical Power Divestiture Assets seeks an extension of the term of this supply agreement, it shall so notify the United States in writing at least four months prior to the date the supply agreement expires. If the United States approves such an extension, it shall so notify the Acquirer of the Electrical Power Divestiture Assets in writing at least three months prior to the date the supply agreement expires. In the alternative, at the option of the Acquirer of the Electrical Power Divestiture Assets, UTC shall provide the Acquirer of the Electrical Power Divestiture Assets the manufacturing know-how sufficient to enable the Acquirer of the Electrical Power Divestiture Assets to manufacture the machined parts necessary to fulfill the contractual obligations of the Acquirer of the Electrical Power Divestiture Assets that exist on the date the Electrical Power Divestiture Assets are divested.

O. At the option of the Acquirer of the Electrical Power Divestiture Assets, UTC shall enter into an agreement to supply maintenance services for the Tornado aircraft secondary power system equipment sufficient to meet the needs identified by the Acquirer of the

Electrical Power Divestiture Assets. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for these products. The terms and conditions of any such supply agreement shall be subject to the approval of the United States, in its sole discretion. At the option of the Acquirer of the Electrical Power Divestiture Assets, this supply agreement may remain in effect until December 31, 2013.

P. At the option of UTC, the Acquirer of the Electrical Power Divestiture Assets shall enter into an agreement to supply maintenance, repair, and overhaul services to UTC to enable UTC to provide and support the engine starter motor on the Rolls-Royce Gnome turboshaft engine. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for these products. The terms and conditions of any such supply agreement shall be subject to the approval of the United States, in its sole discretion. At the option of UTC, this agreement may remain in effect so long as five or more aircraft equipped with a Rolls-Royce Gnome turboshaft engine are in service.

Q. At the option of UTC, the Acquirer of the Electrical Power Divestiture Assets shall provide UTC with a non-exclusive license for intellectual property that is included in the Electrical Power Divestiture Assets but also is used for both aircraft electrical generation systems and electrical distribution systems and other Goodrich products not being divested pursuant to this Final Judgment. UTC shall not transfer the license described in this paragraph except as part of a sale of the business in which the license is used. UTC shall not use the license described in this paragraph for aircraft electrical generation systems and electrical distribution systems. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for these products. The terms and conditions of any such license shall be subject to the approval of the United States, in its sole discretion.

R. Unless the United States otherwise consents in writing, the divestiture of the Electrical Power Divestiture Assets pursuant to Section V or by the Divestiture Trustee appointed pursuant to Section VII of this Final Judgment shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Electrical Power Divestiture Assets can and will be used by the Acquirer of the Electrical Power Divestiture Assets as part of a viable, ongoing business that is engaged in the design, development, manufacture, marketing, servicing, distribution, repair, and sale of aircraft electrical generation systems and that the divestiture of the Electrical Power Divestiture Assets will remedy the competitive harm alleged in the Complaint. The divestiture of the Electrical Power Divestiture Assets, whether pursuant to Section V or Section VII of this Final Judgment, shall be made to an Acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the design, development, manufacture, marketing, servicing, distribution, repair, and sale of aircraft electrical generation systems. The divestiture of the Electrical Power Divestiture Assets shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer of the Electrical Power Divestiture Assets and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

S. Unless Thales acquires the Aerolec Shares pursuant to the Aerolec Shareholders Agreement, the Electrical Power Divestiture Assets and the Aerolec Shares must be divested to the same Acquirer.

VI. Divestiture of the AEC Shares and Obligations Relating to AEC

A. Defendants are ordered and directed, within one hundred eighty calendar days after the filing of the Complaint in this matter, or five calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the AEC Shares in a manner consistent with this Final Judgment to Rolls-Royce. If, however, applications seeking approval to assign or transfer the AEC Shares to Rolls-Royce have been filed within the period permitted for the divestiture of the AEC Shares to Rolls-Royce with authorities from which approval for the divestiture of the AEC Shares is required by Rolls-Royce as a condition of closing, but orders or other dispositive actions by such authorities on such applications have not been issued before the end of the period permitted for this divestiture, the period shall be extended with respect to the divestiture of the AEC Shares to Rolls-Royce until ten calendar days after such approvals are received. Defendants agree to use their best efforts to accomplish the divestiture of the AEC Shares to Rolls-Royce and to seek all necessary approvals as expeditiously as possible.

B. In the event the AEC Shares are not divested to Rolls-Royce pursuant to paragraph VI(A) of this Final Judgment, Defendants are ordered and directed, within one hundred eighty calendar days after the date that Rolls-Royce waives its option to acquire the AEC Shares pursuant to Clause 9 of the AEC Joint Venture Agreement, or that option lapses or expires, to divest the AEC Shares in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed ninety calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the AEC Shares as expeditiously as possible.

C. Defendants shall offer to Rolls-Royce a new right for a new period in which Rolls-Royce may purchase or acquire the ''AM Package'' as defined in the ''Put and Call Option Agreement relating to the Goodrich engine control systems aftermarket business'' dated December 31, 2008, between Rolls-Royce and Goodrich (''Put and Call Option Agreement'') at the price determined using the formula set forth in clause (b) of the definition of the ''Call Option Price'' in the Put and Call Option Agreement, until the earlier of: (1) December 31, 2023; or (2) the date on which UTC no longer owns or controls substantially all of the Goodrich Aftermarket Business (''Right to Purchase''). Nothing in this Final Judgment shall be construed to: (1) Affect any agreements between UTC and/or Goodrich, on the one hand, and Rolls-Royce, on the other, relating to the option to purchase or acquire the Goodrich Aftermarket Business; (2) impose any obligation on UTC to provide Rolls-Royce any extended payments terms with respect to the Right to Purchase; or (3) restrict in any way UTC's ability to sell the Goodrich Aftermarket Business (in whole or significant part) to a party other than Rolls-Royce. If at any time during which Rolls-Royce may exercise its Right to Purchase, UTC determines to commence a process to sell all or a significant part of the Goodrich Aftermarket Business to a party other than Rolls-Royce, UTC shall first notify Rolls-Royce of UTC's determination and provide Rolls-Royce with no less than sixty days to exercise its Right to Purchase. If Rolls-Royce

does not exercise its Right to Purchase during such sixty-day period, UTC may agree to and complete such a sale, and the Right to Purchase will be suspended for a period of one year from the date the sixty-day period expires to allow the completion of such sale. If UTC ceases its efforts to sell the Goodrich Aftermarket Business at any time during the one-year period when the Right to Purchase is suspended, the Right to Purchase ceases to be suspended when UTC ceases its efforts to sell the Goodrich Aftermarket Business. If such one-year period expires without UTC having completed such a sale, then UTC may not again attempt to sell the Goodrich Aftermarket Business to a party other than Rolls-Royce without first complying with the procedures set forth in this paragraph.

D. Unless the United States otherwise consents in writing, the divestiture of the AEC Shares pursuant to Section VI or by the Divestiture Trustee appointed pursuant to Section VII of this Final Judgment shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the AEC Shares can and will be used by the Acquirer of the AEC Shares to carry out the purpose of AEC in an ongoing and viable manner and the divestiture of the AEC Shares will remedy the competitive harm alleged in the Complaint. The divestiture of the AEC Shares, whether pursuant to Section VI or Section VII of this Final Judgment, shall be made to an Acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of effectively carrying out the purpose of AEC. The divestiture of the AEC Shares shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer of the AEC Shares and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

VII. Appointment of Divestiture Trustee

A. If Defendants have not divested all of the Divestiture Assets within any of the respective time periods specified in Section IV(A), V(A), and VI(A), they shall notify the United States of that fact in writing at the time the period for the relevant divestiture expires and identify the assets that have not been divested. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of any of the Divestiture Assets that have not been sold during the time periods specified in Section IV(A), V(A), and VI(A).

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell those Divestiture Assets that the Divestiture Trustee has been appointed to sell. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer or Acquirers acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Section IV, Section V, Section VI, Section VII, and Section VIII of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section VII(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of UTC any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in any required divestiture.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten calendar days after the Divestiture Trustee has provided the notice required under Section VIII.

D. The Divestiture Trustee shall serve at the cost and expense of UTC, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of any of the Divestiture Assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets that are being sold by the Divestiture Trustee and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing any required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other persons retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information and compliance with all export control laws and regulations. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of any required divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and the Court setting forth the Divestiture Trustee's efforts to accomplish any divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets being sold by the Divestiture Trustee, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest any of the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished any divestiture ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth: (1) The Divestiture Trustee's efforts to accomplish the required divestiture; (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished; and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary,

include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

VIII. Notice of Proposed Divestiture

A. Within two business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States and any Monitoring Trustee of any proposed divestiture required by Section IV, Section V, or Section VI of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants and the Monitoring Trustee. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in any of the Divestiture Assets, together with full details of the same.

B. Within fifteen calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer or Acquirers, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer or Acquirers, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty calendar days after receipt of the notice, or within twenty calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer or Acquirers, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to UTC's limited right to object to the sale under Section VII(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or Acquirers or upon objection by the United States, a divestiture proposed under Section IV, Section V, Section VI, or Section VII shall not be consummated. Upon objection by UTC under Section VII(C), a divestiture proposed under Section VII shall not be consummated unless approved by the Court.

IX. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV, Section V, Section VI, or Section VII of this Final Judgment.

X. Hold Separate

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

XI. Appointment of Monitoring Trustee

A. Upon the filing of this Final Judgment, the United States may, in its sole discretion, appoint a Monitoring Trustee for the Electrical Power Divestiture Assets, the Aerolec Shares, and/or the AEC Shares, subject to approval by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Hold Separate Stipulation and Order entered by this Court and shall have such powers as this Court deems appropriate. Subject to paragraph XI(D) of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of Defendants any consultants, accountants, attorneys, or other persons reasonably necessary in the Monitoring Trustee's judgment. These individuals shall be solely accountable to the Monitoring Trustee.

C. Defendants shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under any Order of this Court on any ground other than the Monitoring Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Monitoring Trustee within ten calendar days after the action taken by the Monitoring Trustee giving rise to the Defendants' objection.

D. The Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall serve, without bond or other security, at the cost and expense of Defendants, on such terms and conditions as the United States approves. The compensation of the Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities.

E. The Monitoring Trustee shall have no responsibility or obligation for the operation of Defendants' businesses.

F. Defendants shall assist the Monitoring Trustee in monitoring Defendants' compliance with their individual obligations under this Final Judgment and under the Hold Separate Stipulation and Order. The Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to the Electrical Power Divestiture Assets, the Aerolec Shares, and the AEC Shares, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Monitoring Trustee's accomplishment of its responsibilities.

G. After its appointment, the Monitoring Trustee shall file monthly reports with the United States and the Court setting forth the Defendants' efforts to comply with their individual obligations under this Final Judgment and under the Hold Separate Stipulation and Order. To the extent such reports contain information that the Monitoring Trustee deems confidential, such reports shall not be filed in the public docket of the Court.

H. The Monitoring Trustee shall serve until the divestitures pursuant to Section V, Section VI, or Section VII of this Final Judgment are finalized.

I. If the United States determines that the Monitoring Trustee has ceased to act or failed to act diligently, the United States may appoint a substitute Monitoring Trustee in the same manner as provided in this Section.

XII. Affidavits

A. Within twenty calendar days of the filing of the Complaint in this matter, and every thirty calendar days thereafter until the divestitures have been completed under Section IV, Section V, and Section VI, or Section VII, Defendants shall deliver to the United States and any Monitoring Trustee an affidavit as to the fact and manner of their compliance with Section IV, Section V, and Section VI, or Section VII, of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or

was contacted or made an inquiry about acquiring, any interest in any of the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen calendar days of receipt of such affidavit.

B. Within twenty calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States and any Monitoring Trustee an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section X of this Final Judgment. Defendants shall deliver to the United States and any Monitoring Trustee an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

XIII. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division (''Antitrust Division''), including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XIV. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XV. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XVI. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire on December 31, 2023.

XVII. Notice to the United States

All notifications to the United States required pursuant to this Final Judgment shall be made to the United States Department of Justice, Antitrust Division, Litigation II Section.

XVIII. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge.

[FR Doc. 2012–18767 Filed 8–1–12; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 77 Thursday,

No. 149 August 2, 2012

Part IV

Department of Health and Human Services

Center for Medicare & Medicaid Services

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2013; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1432–N]

RIN 0938–AR20

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2013

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice updates the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year (FY) 2013.

DATES: *Effective Date:* This notice is effective on October 1, 2012.

FOR FURTHER INFORMATION CONTACT: Penny Gershman, (410) 786–6643 (for information related to clinical issues).

John Kane, (410) 786–0557 (for information related to the development of the payment rates and case-mix indexes).

Kia Sidbury, (410) 786–7816 (for information related to the wage index).

Bill Ullman, (410) 786–5667 (for information related to level of care determinations, consolidated billing, and general information).

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

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Acronyms

In addition, because of the many terms to which we refer by acronym in this notice, we are listing these abbreviations and their corresponding terms in alphabetical order below:

AIDS Acquired Immune Deficiency Syndrome
ARD Assessment Reference Date
BBA Balanced Budget Act of 1997, Public Law 105–33
BBRA Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, Public Law 106–113
BIPA Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Public Law 106–554
CAH Critical Access Hospital
CBSA Core-Based Statistical Area
CFR Code of Federal Regulations
CMI Case-Mix Index
CMS Centers for Medicare & Medicaid Services
COT Change of Therapy
EOT End of Therapy
EOT–R End of Therapy—Resumption
FQHC Federally Qualified Health Center
FR **Federal Register**
FY Fiscal Year
GAO Government Accountability Office
HCPCS Healthcare Common Procedure Coding System
HR–III Hybrid Resource Utilization Groups, Version 3
IHS IGI (Information Handling Services) Global Insight, Inc.
MDS Minimum Data Set
MFP Multifactor Productivity
MIPPA Medicare Improvements for Patients and Providers Act of 2008, Public Law 110–275
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173
MMSEA Medicare, Medicaid, and SCHIP Extension Act of 2007, Public Law 110–173
MPAF Medicare PPS Assessment Form
MSA Metropolitan Statistical Area
OCN OMB Control Number
OMB Office of Management and Budget
OMRA Other Medicare-Required Assessment
PPS Prospective Payment System
RAI Resident Assessment Instrument
RAVEN Resident Assessment Validation Entry
RFA Regulatory Flexibility Act, Public Law 96–354
RHC Rural Health Clinic
RIA Regulatory Impact Analysis
RUG–III Resource Utilization Groups, Version 3
RUG–IV Resource Utilization Groups, Version 4
RUG–53 Refined 53–Group RUG–III Case-Mix Classification System
SCHIP State Children's Health Insurance Program
SNF Skilled Nursing Facility
STM Staff Time Measurement
STRIVE Staff Time and Resource Intensity Verification
UMRA Unfunded Mandates Reform Act, Public Law 104–4

I. Executive Summary

A. Purpose

This notice updates the SNF prospective payment rates for FY 2013 as required under section 1888(e)(4)(E) of the Act. It also responds to section 1888(e)(4)(H) of the Act, which requires the Secretary to ''provide for publication in the **Federal Register**'' before the August 1 that precedes the start of each fiscal year, the unadjusted Federal per diem rates, the case-mix classification system, and the factors to be applied in making the area wage adjustment used in computing the prospective payment rates for that fiscal year.

B. Summary of Major Provisions

This notice does not contain any proposals for new policies applicable to the SNF PPS. In accordance with sections 1888(e)(4)(E)(ii)(IV) and (e)(5) of the Act, the Federal rates in this notice reflect an update to the rates that we published in the final rule for FY 2012 (76 FR 48486, August 8, 2011) and the associated correction notice (76 FR 59265, September 26, 2011), equal to the full change in the SNF market basket index, adjusted by the forecast error correction, if applicable, and the Multifactor Productivity adjustment for FY 2013.

C. Summary of Cost and Benefits

Provision description	Total costs	Total benefits
FY 2013 SNF PPS payment rate update.	The overall economic impact of this notice is an estimated $670 million in increased payments to SNFs during FY 2013.	This notice accomplishes the required update of the SNF PPS payment rates for FY 2013 in accordance with the formula prescribed by law.

II. Background

Annual updates to the prospective payment system (PPS) rates for skilled nursing facilities (SNFs) are required by section 1888(e) of the Social Security Act (the Act), as added by section 4432 of the Balanced Budget Act of 1997 (BBA, Pub. L. 105–33, enacted on August 5, 1997), and amended by subsequent legislation as discussed elsewhere in this preamble. Our most recent annual update occurred in a final rule (76 FR 48486, August 8, 2011) that set forth updates to the SNF PPS payment rates for FY 2012. We subsequently published a correction notice (76 FR 59265, September 26, 2011) with respect to those payment rate updates.

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Section 4432 of the BBA amended section 1888 of the Act to provide for the implementation of a per diem PPS for SNFs, covering all costs (routine, ancillary, and capital-related) of covered SNF services furnished to beneficiaries under Part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. In this notice, we update the per diem payment rates for SNFs for FY 2013. Major elements of the SNF PPS include:

• *Rates.* As discussed in section II.G.1. of this notice, we established per diem Federal rates for urban and rural areas using allowable costs from FY 1995 cost reports. These rates also included a ''Part B add-on'' (an estimate of the cost of those services that, before July 1, 1998, were paid under Part B, but furnished to Medicare beneficiaries in a SNF during a Part A covered stay). We adjust the rates annually using a SNF market basket index, and we adjust them by the hospital inpatient wage index to account for geographic variation in wages. We also apply a case-mix adjustment to account for the relative resource utilization of different patient types. As further discussed in section II.G.1. of this notice, for FY 2013 this adjustment will utilize the Resource Utilization Groups, version 4 (RUG–IV) case-mix classification system, and will use information obtained from the required resident assessments using version 3.0 of the Minimum Data Set (MDS 3.0). (The Office of Management and Budget (OMB) has approved the resident assessment under OMB Control Number (OCN) 0938–0739.) Additionally, as noted elsewhere in this preamble, the payment rates at various times have also reflected specific legislative provisions for certain temporary adjustments.

• *Transition.* Under sections 1888(e)(1)(A) and (e)(11) of the Act, the SNF PPS included an initial, three-phase transition that blended a facility-specific rate (reflecting the individual facility's historical cost experience) with the Federal case-mix adjusted rate. The transition extended through the facility's first three cost reporting periods under the PPS, up to and including the one that began in FY 2001. Thus, the SNF PPS is no longer operating under the transition, as all facilities have been paid at the full Federal rate effective with cost reporting periods beginning in FY 2002. As we now base payments entirely on the adjusted Federal per diem rates, we no longer include adjustment factors related to facility-specific rates for the coming FY.

• *Coverage.* The establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage. However, because the case-mix classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures with the existing resident assessment process and case-mix classification system. As further discussed in section III.E. of this notice, in FY 2013, this approach includes an administrative presumption that utilizes a beneficiary's initial classification in one of the upper 52 RUGs of the 66-group RUG–IV case-mix classification system to assist in making certain SNF level of care determinations. In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the case-mix classification structure (see section III.E. of this notice for a more detailed discussion of the relationship between the case-mix classification system and SNF level of care determinations).

• *Consolidated Billing.* The SNF PPS includes a consolidated billing provision that requires a SNF to submit consolidated Medicare bills to its fiscal intermediary or Medicare Administrative Contractor for almost all of the services that its residents receive during the course of a covered Part A stay. In addition, this provision places with the SNF the Medicare billing responsibility for physical therapy, occupational therapy, and speech-language pathology services that the resident receives during a noncovered stay. The statute excludes a small list of services from the consolidated billing provision (primarily those of physicians and certain other types of practitioners), which remain separately billable under Part B when furnished to a SNF's Part A resident. A more detailed discussion of this provision appears in section VI. of this notice.

• *Application of the SNF PPS to SNF services furnished by swing-bed hospitals.* Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute or SNF care, as needed. For critical access hospitals (CAHs), Part A pays on a reasonable cost basis for SNF services furnished under a swing-bed agreement. However, in accordance with section 1888(e)(7) of the Act, these services furnished by non-CAH rural hospitals are paid under the SNF PPS, effective with cost reporting periods beginning on or after July 1, 2002. A more detailed discussion of this provision appears in section VII. of this notice.

B. Requirements of the Balanced Budget Act of 1997 (BBA) for Updating the Prospective Payment System for Skilled Nursing Facilities

As added by section 4432(a) of the BBA, section 1888(e)(4)(H) of the Act requires that we provide for publication annually in the **Federal Register**:

1. The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the upcoming FY.
2. The case-mix classification system to be applied with respect to these services during the upcoming FY.
3. The factors to be applied in making the area wage adjustment with respect to these services.

This notice provides these required annual updates to the Federal rates.

C. The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA)

There were several provisions in the BBRA (Pub. L. 106–113, enacted on November 29, 1999) that resulted in adjustments to the SNF PPS. We described these provisions in detail in the SNF PPS final rule for FY 2001 (65 FR 46770, July 31, 2000). In particular, section 101(a) of the BBRA provided for a temporary 20 percent increase in the per diem adjusted payment rates for 15 specified groups in the original, 44-group Resource Utilization Groups, version 3 (RUG–III) case-mix classification system. In accordance with section 101(c)(2) of the BBRA, this temporary payment adjustment expired on January 1, 2006, upon the implementation of a refined, 53-group version of the RUG–III system, RUG–53 (see section II.G.1. of this notice). We included further information on BBRA provisions that affected the SNF PPS in Program Memoranda A–99–53 and A–99–61 (December 1999).

Also, section 103 of the BBRA designated certain additional services for exclusion from the consolidated billing requirement, as discussed in section VI. of this notice. Further, for swing-bed hospitals with more than 49 (but less than 100) beds, section 408 of the BBRA provided for the repeal of certain statutory restrictions on length of stay and aggregate payment for patient days, effective with the end of the SNF PPS transition period described in section 1888(e)(2)(E) of the Act. In the final rule for FY 2002 (66 FR 39562, July 31, 2001), we made conforming changes to the regulations at § 413.114(d), effective for services furnished in cost reporting periods beginning on or after July 1, 2002, to reflect section 408 of the BBRA.

D. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA)

The BIPA (Pub. L. 106–554, enacted December 21, 2000) also included several provisions that resulted in adjustments to the SNF PPS. We described these provisions in detail in the final rule for FY 2002 (66 FR 39562, July 31, 2001). In particular:

- Section 203 of the BIPA exempted CAH swing beds from the SNF PPS. We included further information on this provision in Program Memorandum A–01–09 (Change Request #1509), issued January 16, 2001, which is available online at *www.cms.gov/transmittals/downloads/a0109.pdf*.
- Section 311 of the BIPA revised the statutory update formula for the SNF market basket, and also directed us to conduct a study of alternative case-mix classification systems for the SNF PPS. In 2006, we submitted a report to the Congress on this study, which is available online at *www.cms.gov/SNFPPS/Downloads/RC_2006_PC-PPSSNF.pdf*.
- Section 312 of the BIPA provided for a temporary increase of 16.66 percent in the nursing component of the case-mix adjusted Federal rate for services furnished on or after April 1, 2001, and before October 1, 2002; accordingly, this add-on is no longer in effect. This section also directed the Government Accountability Office (GAO) to conduct an audit of SNF nursing staff ratios and submit a report to the Congress on whether the temporary increase in the nursing component should be continued. The report (GAO–03–176), which GAO issued in November 2002, is available online at *www.gao.gov/new.items/d03176.pdf*.
- Section 313 of the BIPA repealed the consolidated billing requirement for services (other than physical therapy, occupational therapy, and speech-language pathology services) furnished to SNF residents during noncovered stays, effective January 1, 2001. (A more detailed discussion of this provision appears in section VI. of this notice.)
- Section 314 of the BIPA corrected an anomaly involving three of the RUGs that section 101(a) of the BBRA had designated to receive the temporary payment adjustment discussed above in section I.C. of this notice. (As noted previously, in accordance with section 101(c)(2) of the BBRA, this temporary payment adjustment expired upon the implementation of case-mix refinements on January 1, 2006.)
- Section 315 of the BIPA authorized us to establish a geographic reclassification procedure that is specific to SNFs, but only after collecting the data necessary to establish a SNF wage index that is based on wage data from nursing homes. To date, this has proven to be unfeasible due to the volatility of existing SNF wage data and the significant amount of resources that would be required to improve the quality of that data.

We included further information on several of the BIPA provisions in Program Memorandum A–01–08 (Change Request #1510), issued January 16, 2001, which is available online at *www.cms.gov/transmittals/downloads/a0108.pdf*.

E. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA)

The MMA (Pub. L. 108–173, enacted on December 8, 2003) included a provision that resulted in a further adjustment to the SNF PPS. Specifically, section 511 of the MMA amended section 1888(e)(12) of the Act, to provide for a temporary increase of 128 percent in the PPS per diem payment for any SNF residents with Acquired Immune Deficiency Syndrome (AIDS), effective with services furnished on or after October 1, 2004. This special AIDS add-on was to remain in effect until ''* * * the Secretary certifies that there is an appropriate adjustment in the case mix * * * to compensate for the increased costs associated with [such] residents * * *.'' The AIDS add-on is also discussed in Program Transmittal #160 (Change Request #3291), issued on April 30, 2004, which is available online at *www.cms.gov/transmittals/downloads/r160cp.pdf*. In the SNF PPS final rule for FY 2010 (74 FR 40288, August 11, 2009), we did not address the certification of the AIDS add-on in that final rule's implementation of the case-mix refinements for RUG–IV, thus allowing the temporary add-on payment created by section 511 of the MMA to remain in effect.

For the limited number of SNF residents that qualify for the AIDS add-on, implementation of this provision results in a significant increase in payment. For example, using FY 2010 data, we identified less than 3,800 SNF residents with a diagnosis code of 042 (Human Immunodeficiency Virus (HIV) Infection). For FY 2013, an urban facility with a resident with AIDS in RUG–IV group ''HC2'' would have a case-mix adjusted payment of $408.88 (see Table 4) before the application of the MMA adjustment. After an increase of 128 percent, this urban facility would receive a case-mix adjusted payment of approximately $932.25.

In addition, section 410 of the MMA contained a provision that excluded from consolidated billing certain services furnished to SNF residents by rural health clinics (RHCs) and Federally Qualified Health Centers (FQHCs). (Further information on this provision appears in section VI. of this notice.)

F. The Affordable Care Act

On March 23, 2010, the Patient Protection and Affordable Care Act, Pub. L. 111–148, was enacted. Following the enactment of Public Law 111–148, the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–

152, enacted on March 30, 2010) amended certain provisions of Public Law 111–148 and certain sections of the statute and, in certain instances, included ''freestanding'' provisions (Pub. L. 111–148 and Pub. L. 111–152 are collectively referred to in this notice as the ''Affordable Care Act''). Section 10325 of the Affordable Care Act included a provision involving the SNF PPS. Section 10325 of the Affordable Care Act postponed the implementation of the RUG–IV case-mix classification system published in the FY 2010 SNF PPS final rule (74 FR 40288, August 11, 2009), requiring that the Secretary not implement the RUG–IV case-mix classification system before October 1, 2011. Notwithstanding this postponement of overall RUG–IV implementation, section 10325 of the Affordable Care Act further specified that the Secretary implement, effective October 1 2010, the changes related to concurrent therapy and the look-back period that were finalized as components of RUG–IV (see 74 FR 40315–19, 40322–24, August 11, 2009). As we noted in the FY 2011 SNF PPS notice with comment period (75 FR 42889), implementing the particular combination of RUG–III and RUG–IV features specified in section 10325 of the Affordable Care Act would require developing a revised grouper, something that could not be accomplished by that provision's effective date (October 1, 2010) without risking serious disruption to providers, suppliers, and State agencies. Accordingly, in the FY 2011 notice with comment period (75 FR 42889), we announced our intention to proceed on an interim basis with implementation of the full RUG–IV case-mix classification system as of October 1, 2010, followed by a retroactive claims adjustment, using a hybrid RUG–III (HR–III) system reflecting the Affordable Care Act configuration, once we had developed a revised grouper that could accommodate it.

However, section 202 of the Medicare and Medicaid Extenders Act of 2010 (Pub. L. 111–309, enacted on December 15, 2010) subsequently repealed section 10325 of the Affordable Care Act. We have, therefore, left in place permanently the implementation of the full RUG–IV system as of FY 2011, as finalized in the FY 2010 SNF PPS final rule (74 FR 40288). In addition, we note that implementation of version 3.0 of the Minimum Data Set (MDS 3.0) proceeded as originally scheduled, with an effective date of October 1, 2010. The MDS 3.0 RAI Manual and MDS 3.0 Item Set are published on the MDS 3.0 Training Materials Web site, at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/MDS30RAIManual.html*. Accordingly, as discussed above, effective October 1, 2010, we implemented and began paying claims under the RUG–IV system that was finalized in the FY 2010 SNF PPS final rule.

We note that a parity adjustment was applied to the RUG–53 nursing case-mix weights when the RUG–III system was initially refined in 2006, in order to ensure that the implementation of the refinements would not cause any change in overall payment levels (70 FR 45031, August 4, 2005). Similarly, a parity adjustment was applied to the RUG–IV nursing case-mix weights for FY 2011 when the new classification system was implemented. A detailed discussion of the parity adjustment in the specific context of the RUG–IV payment rates appears in the FY 2010 SNF PPS proposed rule (74 FR 22236–38, May 12, 2009) and final rule (74 FR 40338–40339, August 11, 2009), and in the FY 2011 notice with comment period (75 FR 42892–42893).

For FY 2012, the RUG–IV parity adjustment was recalibrated in order to restore the intended parity in overall payments between the RUG–IV and RUG–53 case mix classification systems, as discussed in the FY 2012 SNF PPS proposed rule (76 FR 26370–26373, May 6, 2011) and final rule (76 FR 48492–48500, 48537–48538 August 8, 2011).

G. Skilled Nursing Facility Prospective Payment—General Overview

We implemented the Medicare SNF PPS effective with cost reporting periods beginning on or after July 1, 1998. This methodology uses prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services. These payment rates cover all costs of furnishing covered SNF services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities and bad debts. Covered SNF services include post-hospital services for which benefits are provided under Part A, as well as those items and services (other than physician and certain other services specifically excluded under the BBA) which, before July 1, 1998, had been paid under Part B but furnished to Medicare beneficiaries in a SNF during a covered Part A stay. A comprehensive discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252).

1. Payment Provisions—Federal Rate

The PPS uses per diem Federal payment rates based on mean SNF costs in a base year (FY 1995) updated for inflation to the first effective period of the PPS. We developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporated an estimate of the amounts that would be payable under Part B for covered SNF services furnished to individuals during the course of a covered Part A stay in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of the PPS (the 15-month period beginning July 1, 1998) using a SNF market basket index, and then standardized for the costs of facility differences in case mix and for geographic variations in wages. In compiling the database used to compute the Federal payment rates, we excluded those providers that received new provider exemptions from the routine cost limits, as well as costs related to payments for exceptions to the routine cost limits. Using the formula that the BBA prescribed, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas. In addition, we adjusted the portion of the Federal rate attributable to wage-related costs by a wage index.

The Federal rate also incorporates adjustments to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. The RUG–IV classification system uses beneficiary assessment data from the MDS 3.0 completed by SNFs to assign beneficiaries to one of 66 RUG–IV groups. The original RUG–III case-mix classification system used beneficiary assessment data from the MDS, version 2.0 (MDS 2.0) completed by SNFs to assign beneficiaries to one of 44 RUG–III groups. Then, under incremental refinements that became effective on January 1, 2006, we added nine new groups—comprising a new Rehabilitation plus Extensive Services category—at the top of the RUG–III hierarchy. The May 12, 1998 interim final rule (63 FR 26252) included a detailed description of the original 44-group RUG–III case-mix classification system. A comprehensive description of

the refined RUG–53 system appeared in the proposed and final rules for FY 2006 (70 FR 29070, May 19, 2005, and 70 FR 45026, August 4, 2005), and a detailed description of the current 66-group RUG–IV system appeared in the proposed and final rules for FY 2010 (74 FR 22208, May 12, 2009, and 74 FR 40288, August 11, 2009).

Further, in accordance with sections 1888(e)(4)(E)(ii)(IV) and (e)(5) of the Act, the Federal rates in this notice reflect an update to the rates that we published in the final rule for FY 2012 (76 FR 48486, August 8, 2011) and the associated correction notice (76 FR 59265, September 26, 2011), equal to the full change in the SNF market basket index, adjusted by the forecast error correction, if applicable, and the Multifactor Productivity (MFP) adjustment for FY 2013. A more detailed discussion of the SNF market basket index and related issues appears in sections II.G.2. and V. of this notice.

2. FY 2013 Rate Updates Using the Skilled Nursing Facility Market Basket Index

Section 1888(e)(5) of the Act requires us to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. We use the SNF market basket index, adjusted in the manner described below, to update the Federal rates on an annual basis. In the SNF PPS final rule for FY 2008 (72 FR 43425 through 43430, August 3, 2007), we revised and rebased the market basket, which included updating the base year from FY 1997 to FY 2004. The FY 2013 market basket increase is 2.5 percent, which is based on IHS Global Insight, Inc. (IGI) second quarter 2012 forecast with historical data through first quarter 2012.

In addition, as explained in the final rule for FY 2004 (66 FR 46058, August 4, 2003) and in section V.B. of this notice, the annual update of the payment rates includes, as appropriate, an adjustment to account for market basket forecast error. As described in the final rule for FY 2008, the threshold percentage that serves to trigger an adjustment to account for market basket forecast error is 0.5 percentage point effective for FY 2008 and subsequent years. This adjustment takes into account the forecast error from the most recently available FY for which there is final data, and applies whenever the difference between the forecasted and actual change in the market basket exceeds a 0.5 percentage point threshold. For FY 2011 (the most recently available FY for which there is final data), the estimated increase in the market basket index was 2.3 percentage points, while the actual increase was 2.2 percentage points, resulting in the actual increase being 0.1 percentage point lower than the estimated increase. Accordingly, as the difference between the estimated and actual amount of change does not exceed the 0.5 percentage point threshold, the payment rates for FY 2013 do not include a forecast error adjustment. As we stated in the final rule for FY 2004 that first promulgated the forecast error adjustment (68 FR 46058, August 4, 2003), the adjustment will ''* * * reflect both upward and downward adjustments, as appropriate.'' Table 1 shows the forecasted and actual market basket amounts for FY 2011.

TABLE 1—DIFFERENCE BETWEEN THE FORECASTED AND ACTUAL MARKET BASKET INCREASES FOR FY 2011

Index	Forecasted FY 2011 increase *	Actual FY 2011 increase **	FY 2011 difference
SNF	2.3	2.2	−0.1

* Published in **Federal Register**; based on second quarter 2010 IGI forecast (2004-based index).
** Based on the second quarter 2012 IGI forecast, with historical data through the first quarter 2012 (2004-based index).

Furthermore, effective FY 2012, as required by section 3401(b) of the Affordable Care Act, the market basket percentage is reduced by a productivity adjustment equal to ''the 10-year moving average of changes in annual economy-wide private nonfarm business multi-factor productivity (as projected by the Secretary for the 10-year period ending with the applicable fiscal year, year, cost-reporting period or other annual period)'' (the MFP adjustment). As discussed in greater detail in section V.C of this notice, the MFP adjustment for FY 2013 is 0.7 percent.

III. FY 2013 Annual Update of Payment Rates Under the Prospective Payment System for Skilled Nursing Facilities

A. Federal Prospective Payment System

This notice sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2012. The schedule incorporates per diem Federal rates that provide Part A payment for almost all costs of services furnished to a beneficiary in a SNF during a Part A Medicare-covered stay.

1. Costs and Services Covered by the Federal Rates

In accordance with section 1888(e)(2)(B) of the Act, the Federal rates apply to all costs (routine, ancillary, and capital-related) of covered SNF services other than costs associated with approved educational activities as defined in § 413.85. Under section 1888(e)(2)(A)(i) of the Act, covered SNF services include post-hospital SNF services for which benefits are provided under Part A (the hospital insurance program), as well as all items and services (other than those services excluded by statute) that, before July 1, 1998, were paid under Part B (the supplementary medical insurance program) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. (These excluded service categories are discussed in greater detail in section V.B.2 of the May 12, 1998 interim final rule (63 FR 26295 through 26297)).

2. Methodology Used for the Calculation of the Federal Rates

The FY 2013 rates reflect an update using the latest market basket index, reduced by the MFP adjustment. The FY 2013 market basket increase factor is 2.5 percent, which as discussed in section V.C of this notice, is reduced by a 0.7 percent MFP adjustment. A complete description of the multi-step process used to calculate Federal rates initially appeared in the May 12, 1998 interim final rule (63 FR 26252), as further revised in subsequent rules. As explained above in section II.C of this notice, under section 101(c)(2) of the BBRA, the previous temporary increases in the per diem adjusted payment rates for certain designated RUGs (as specified in section 101(a) of the BBRA and section 314 of the BIPA) are no longer in effect due to the implementation of case-mix refinements as of January 1, 2006. However, the

temporary increase of 128 percent in the per diem adjusted payment rates for SNF residents with AIDS, enacted by section 511 of the MMA, remains in effect.

We used the SNF market basket to adjust each per diem component of the Federal rates forward to reflect cost increases occurring between the midpoint of the Federal FY beginning October 1, 2011, and ending September 30, 2012, and the midpoint of the Federal FY beginning October 1, 2012, and ending September 30, 2013, to which the payment rates apply. In accordance with sections 1888(e)(4)(E)(ii)(IV) and (e)(5) of the Act, we update the payment rates for FY 2013 by a factor equal to the market basket index percentage change, as discussed in sections II.G.2 and V. of this notice. As further explained in sections II.G.2 and V. of this notice, as applicable, we adjust the market basket index by the forecast error from the most recently available FY for which there is final data and apply this adjustment whenever the difference between the forecasted and actual change in the market basket exceeds a 0.5 percentage point threshold. In addition, as further explained in sections II.G.2 and V. of this notice, effective FY 2012 and each subsequent fiscal year, we are required to reduce the market basket percentage by the MFP adjustment. We further adjust the rates by a wage index budget neutrality factor, described later in this section. Tables 2 and 3 reflect the updated components of the unadjusted Federal rates for FY 2013, prior to adjustment for case-mix.

TABLE 2—FY 2013 UNADJUSTED FEDERAL RATE PER DIEM URBAN

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—Non-case-mix	Non-case-mix
Per Diem Amount	$163.58	$123.22	$16.23	$83.48

TABLE 3—FY 2013 UNADJUSTED FEDERAL RATE PER DIEM RURAL

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per Diem Amount	$156.28	$142.08	$17.33	$85.03

B. Case-Mix Adjustments

1. Background

Section 1888(e)(4)(G)(i) of the Act requires the Secretary to make an adjustment to account for case mix. The statute specifies that the adjustment is to reflect both a resident classification system that the Secretary establishes to account for the relative resource use of different patient types, as well as resident assessment and other data that the Secretary considers appropriate. In first implementing the SNF PPS (63 FR 26252, May 12, 1998), we developed the RUG–III case-mix classification system, which tied the amount of payment to resident resource use in combination with resident characteristic information. Staff time measurement (STM) studies conducted in 1990, 1995, and 1997 provided information on resource use (time spent by staff members on residents) and resident characteristics that enabled us not only to establish RUG–III, but also to create case-mix indexes (CMIs).

Although the establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage, there is a correlation between level of care and provider payment. One of the elements affecting the SNF PPS per diem rates is the case-mix adjustment derived from a classification system based on comprehensive resident assessments using the MDS. Case-mix classification is based, in part, on the beneficiary's need for skilled nursing care and therapy. The case-mix classification system uses clinical data from the MDS, and wage-adjusted staff time measurement data, to assign a case-mix group to each patient record that is then used to calculate a per diem payment under the SNF PPS. Because the MDS is used as basis for payment as well as a clinical document, we have provided extensive training on proper coding and the time frames for MDS completion in our Resident Assessment Instrument (RAI) Manual. For an MDS to be considered valid for use in determining payment, the MDS assessment must be completed in compliance with the instructions in the RAI Manual in effect at the time the assessment is completed. For payment and quality monitoring purposes, the RAI Manual consists of both the Manual instructions and the interpretive guidance and policy clarifications posted on the appropriate MDS Web site at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/MDS30RAIManual.html*.

The original RUG–III grouper logic was based on clinical data collected in 1990, 1995, and 1997. As discussed in the SNF PPS proposed rule for FY 2010 (74 FR 22208, May 12, 2009), we subsequently conducted a multi-year data collection and analysis under the Staff Time and Resource Intensity Verification (STRIVE) project to update the case-mix classification system for FY 2011. The resulting RUG–IV case-mix classification system reflected the data collected in 2006–2007 during the STRIVE project, and was finalized in the FY 2010 SNF PPS final rule (74 FR 40288, August 11, 2009) to take effect in FY 2011 concurrently with an updated new resident assessment instrument, the MDS 3.0, which collects the clinical data used for case-mix classification under RUG–IV.

Under the BBA, each update of the SNF PPS payment rates must include the case-mix classification methodology applicable for the coming Federal FY. As indicated in section II.G of this notice, the payment rates set forth herein reflect the use of the RUG–IV case-mix classification system from October 1, 2012, through September 30, 2013.

We list the case-mix adjusted RUG–IV payment rates, provided separately for urban and rural SNFs, in Tables 4 and 5 with corresponding case-mix values. These tables do not reflect the AIDS add-on enacted by section 511 of the MMA, which we apply only after making all other adjustments (such as wage and case-mix).

TABLE 4—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES URBAN

RUG-IV category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
RUX	2.67	1.87	$436.76	$230.42		$83.48	$750.66
RUL	2.57	1.87	420.40	230.42		83.48	734.30
RVX	2.61	1.28	426.94	157.72		83.48	668.14
RVL	2.19	1.28	358.24	157.72		83.48	599.44
RHX	2.55	0.85	417.13	104.74		83.48	605.35
RHL	2.15	0.85	351.70	104.74		83.48	539.92
RMX	2.47	0.55	404.04	67.77		83.48	555.29
RML	2.19	0.55	358.24	67.77		83.48	509.49
RLX	2.26	0.28	369.69	34.50		83.48	487.67
RUC	1.56	1.87	255.18	230.42		83.48	569.08
RUB	1.56	1.87	255.18	230.42		83.48	569.08
RUA	0.99	1.87	161.94	230.42		83.48	475.84
RVC	1.51	1.28	247.01	157.72		83.48	488.21
RVB	1.11	1.28	181.57	157.72		83.48	422.77
RVA	1.10	1.28	179.94	157.72		83.48	421.14
RHC	1.45	0.85	237.19	104.74		83.48	425.41
RHB	1.19	0.85	194.66	104.74		83.48	382.88
RHA	0.91	0.85	148.86	104.74		83.48	337.08
RMC	1.36	0.55	222.47	67.77		83.48	373.72
RMB	1.22	0.55	199.57	67.77		83.48	350.82
RMA	0.84	0.55	137.41	67.77		83.48	288.66
RLB	1.50	0.28	245.37	34.50		83.48	363.35
RLA	0.71	0.28	116.14	34.50		83.48	234.12
ES3	3.58		585.62		16.23	83.48	685.33
ES2	2.67		436.76		16.23	83.48	536.47
ES1	2.32		379.51		16.23	83.48	479.22
HE2	2.22		363.15		16.23	83.48	462.86
HE1	1.74		284.63		16.23	83.48	384.34
HD2	2.04		333.70		16.23	83.48	433.41
HD1	1.60		261.73		16.23	83.48	361.44
HC2	1.89		309.17		16.23	83.48	408.88
HC1	1.48		242.10		16.23	83.48	341.81
HB2	1.86		304.26		16.23	83.48	403.97
HB1	1.46		238.83		16.23	83.48	338.54
LE2	1.96		320.62		16.23	83.48	420.33
LE1	1.54		251.91		16.23	83.48	351.62
LD2	1.86		304.26		16.23	83.48	403.97
LD1	1.46		238.83		16.23	83.48	338.54
LC2	1.56		255.18		16.23	83.48	354.89
LC1	1.22		199.57		16.23	83.48	299.28
LB2	1.45		237.19		16.23	83.48	336.90
LB1	1.14		186.48		16.23	83.48	286.19
CE2	1.68		274.81		16.23	83.48	374.52
CE1	1.50		245.37		16.23	83.48	345.08
CD2	1.56		255.18		16.23	83.48	354.89
CD1	1.38		225.74		16.23	83.48	325.45
CC2	1.29		211.02		16.23	83.48	310.73
CC1	1.15		188.12		16.23	83.48	287.83
CB2	1.15		188.12		16.23	83.48	287.83
CB1	1.02		166.85		16.23	83.48	266.56
CA2	0.88		143.95		16.23	83.48	243.66
CA1	0.78		127.59		16.23	83.48	227.30
BB2	0.97		158.67		16.23	83.48	258.38
BB1	0.90		147.22		16.23	83.48	246.93
BA2	0.70		114.51		16.23	83.48	214.22
BA1	0.64		104.69		16.23	83.48	204.40
PE2	1.50		245.37		16.23	83.48	345.08
PE1	1.40		229.01		16.23	83.48	328.72
PD2	1.38		225.74		16.23	83.48	325.45
PD1	1.28		209.38		16.23	83.48	309.09
PC2	1.10		179.94		16.23	83.48	279.65
PC1	1.02		166.85		16.23	83.48	266.56
PB2	0.84		137.41		16.23	83.48	237.12
PB1	0.78		127.59		16.23	83.48	227.30
PA2	0.59		96.51		16.23	83.48	196.22
PA1	0.54		88.33		16.23	83.48	188.04

TABLE 5—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES RURAL

RUG–IV category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
RUX	2.67	1.87	$417.27	$265.69		$85.03	$767.99
RUL	2.57	1.87	401.64	265.69		85.03	752.36
RVX	2.61	1.28	407.89	181.86		85.03	674.78
RVL	2.19	1.28	342.25	181.86		85.03	609.14
RHX	2.55	0.85	398.51	120.77		85.03	604.31
RHL	2.15	0.85	336.00	120.77		85.03	541.80
RMX	2.47	0.55	386.01	78.14		85.03	549.18
RML	2.19	0.55	342.25	78.14		85.03	505.42
RLX	2.26	0.28	353.19	39.78		85.03	478.00
RUC	1.56	1.87	243.80	265.69		85.03	594.52
RUB	1.56	1.87	243.80	265.69		85.03	594.52
RUA	0.99	1.87	154.72	265.69		85.03	505.44
RVC	1.51	1.28	235.98	181.86		85.03	502.87
RVB	1.11	1.28	173.47	181.86		85.03	440.36
RVA	1.10	1.28	171.91	181.86		85.03	438.80
RHC	1.45	0.85	226.61	120.77		85.03	432.41
RHB	1.19	0.85	185.97	120.77		85.03	391.77
RHA	0.91	0.85	142.21	120.77		85.03	348.01
RMC	1.36	0.55	212.54	78.14		85.03	375.71
RMB	1.22	0.55	190.66	78.14		85.03	353.83
RMA	0.84	0.55	131.28	78.14		85.03	294.45
RLB	1.50	0.28	234.42	39.78		85.03	359.23
RLA	0.71	0.28	110.96	39.78		85.03	235.77
ES3	3.58		559.48		17.33	85.03	661.84
ES2	2.67		417.27		17.33	85.03	519.63
ES1	2.32		362.57		17.33	85.03	464.93
HE2	2.22		346.94		17.33	85.03	449.30
HE1	1.74		271.93		17.33	85.03	374.29
HD2	2.04		318.81		17.33	85.03	421.17
HD1	1.60		250.05		17.33	85.03	352.41
HC2	1.89		295.37		17.33	85.03	397.73
HC1	1.48		231.29		17.33	85.03	333.65
HB2	1.86		290.68		17.33	85.03	393.04
HB1	1.46		228.17		17.33	85.03	330.53
LE2	1.96		306.31		17.33	85.03	408.67
LE1	1.54		240.67		17.33	85.03	343.03
LD2	1.86		290.68		17.33	85.03	393.04
LD1	1.46		228.17		17.33	85.03	330.53
LC2	1.56		243.80		17.33	85.03	346.16
LC1	1.22		190.66		17.33	85.03	293.02
LB2	1.45		226.61		17.33	85.03	328.97
LB1	1.14		178.16		17.33	85.03	280.52
CE2	1.68		262.55		17.33	85.03	364.91
CE1	1.50		234.42		17.33	85.03	336.78
CD2	1.56		243.80		17.33	85.03	346.16
CD1	1.38		215.67		17.33	85.03	318.03
CC2	1.29		201.60		17.33	85.03	303.96
CC1	1.15		179.72		17.33	85.03	282.08
CB2	1.15		179.72		17.33	85.03	282.08
CB1	1.02		159.41		17.33	85.03	261.77
CA2	0.88		137.53		17.33	85.03	239.89
CA1	0.78		121.90		17.33	85.03	224.26
BB2	0.97		151.59		17.33	85.03	253.95
BB1	0.90		140.65		17.33	85.03	243.01
BA2	0.70		109.40		17.33	85.03	211.76
BA1	0.64		100.02		17.33	85.03	202.38
PE2	1.50		234.42		17.33	85.03	336.78
PE1	1.40		218.79		17.33	85.03	321.15
PD2	1.38		215.67		17.33	85.03	318.03
PD1	1.28		200.04		17.33	85.03	302.40
PC2	1.10		171.91		17.33	85.03	274.27
PC1	1.02		159.41		17.33	85.03	261.77
PB2	0.84		131.28		17.33	85.03	233.64
PB1	0.78		121.90		17.33	85.03	224.26
PA2	0.59		92.21		17.33	85.03	194.57
PA1	0.54		84.39		17.33	85.03	186.75

C. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the Federal rates to account for differences in area wage levels, using a wage index that we find appropriate. Since the inception of a PPS for SNFs, we have used hospital wage data in developing a wage index to be applied to SNFs. We are maintaining that practice for FY 2013, as we continue to believe that in the absence of SNF-specific wage data, using the hospital inpatient wage index is appropriate and reasonable for the SNF PPS. As explained in the update notice for FY 2005 (69 FR 45786, July 30, 2004), the SNF PPS does not use the hospital area wage index's occupational mix adjustment, as this adjustment serves specifically to define the occupational categories more clearly in a hospital setting; moreover, the collection of the occupational wage data also excludes any wage data related to SNFs. Therefore, we believe that using the updated wage data exclusive of the occupational mix adjustment continues to be appropriate for SNF payments.

Finally, we continue to use the same methodology discussed in the SNF PPS final rule for FY 2008 (72 FR 43423) to address those geographic areas in which there are no hospitals and, thus, no hospital wage index data on which to base the calculation of the FY 2013 SNF PPS wage index. For rural geographic areas that do not have hospitals and, therefore, lack hospital wage data on which to base an area wage adjustment, we use the average wage index from all contiguous Core-Based Statistical Areas (CBSAs) as a reasonable proxy. For FY 2013, there are no rural geographic areas that do not have hospitals, and thus this methodology will not be applied. For rural Puerto Rico, we do not apply this methodology due to the distinct economic circumstances that exist there, but instead continue using the most recent wage index previously available for that area. For urban areas without specific hospital wage index data, we use the average wage indexes of all of the urban areas within the State to serve as a reasonable proxy for the wage index of that urban CBSA. For FY 2013, the only urban area without wage index data available is CBSA 25980, Hinesville-Fort Stewart, GA.

To calculate the SNF PPS wage index adjustment, we apply the wage index adjustment to the labor-related portion of the Federal rate, which is 68.383 percent of the total rate. This percentage reflects the labor-related relative importance for FY 2013, using the revised and rebased FY 2004-based market basket. The labor-related relative importance for FY 2012 was 68.693, as shown in Table 13. We calculate the labor-related relative importance from the SNF market basket, and it approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2013. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2013 than the base year weights from the SNF market basket.

We calculate the labor-related relative importance for FY 2013 in four steps. First, we compute the FY 2013 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY 2013 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2013 relative importance for each cost category by multiplying this ratio by the base year (FY 2004) weight. Finally, we add the FY 2013 relative importance for each of the labor-related cost categories (wages and salaries, employee benefits, non-medical professional fees, labor-intensive services, and a portion of capital-related expenses) to produce the FY 2013 labor-related relative importance. Tables 6 and 7 below show the RUG–IV case-mix adjusted Federal rates by labor-related and non-labor-related components.

TABLE 6—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT

RUG–IV category	Total rate	Labor portion	Non-labor portion
RUX	$750.66	$513.32	$237.34
RUL	734.30	502.14	232.16
RVX	668.14	456.89	211.25
RVL	599.44	409.92	189.52
RHX	605.35	413.96	191.39
RHL	539.92	369.21	170.71
RMX	555.29	379.72	175.57
RML	509.49	348.40	161.09
RLX	487.67	333.48	154.19
RUC	569.08	389.15	179.93
RUB	569.08	389.15	179.93
RUA	475.84	325.39	150.45
RVC	488.21	333.85	154.36
RVB	422.77	289.10	133.67
RVA	421.14	287.99	133.15
RHC	425.41	290.91	134.50
RHB	382.88	261.82	121.06
RHA	337.08	230.51	106.57
RMC	373.72	255.56	118.16

TABLE 6—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUG–IV category	Total rate	Labor portion	Non-labor portion
RMB	350.82	239.90	110.92
RMA	288.66	197.39	91.27
RLB	363.35	248.47	114.88
RLA	234.12	160.10	74.02
ES3	685.33	468.65	216.68
ES2	536.47	366.85	169.62
ES1	479.22	327.71	151.51
HE2	462.86	316.52	146.34
HE1	384.34	262.82	121.52
HD2	433.41	296.38	137.03
HD1	361.44	247.16	114.28
HC2	408.88	279.60	129.28
HC1	341.81	233.74	108.07
HB2	403.97	276.25	127.72
HB1	338.54	231.50	107.04
LE2	420.33	287.43	132.90
LE1	351.62	240.45	111.17
LD2	403.97	276.25	127.72
LD1	338.54	231.50	107.04
LC2	354.89	242.68	112.21
LC1	299.28	204.66	94.62
LB2	336.90	230.38	106.52
LB1	286.19	195.71	90.48
CE2	374.52	256.11	118.41
CE1	345.08	235.98	109.10
CD2	354.89	242.68	112.21
CD1	325.45	222.55	102.90
CC2	310.73	212.49	98.24
CC1	287.83	196.83	91.00
CB2	287.83	196.83	91.00
CB1	266.56	182.28	84.28
CA2	243.66	166.62	77.04
CA1	227.30	155.43	71.87
BB2	258.38	176.69	81.69
BB1	246.93	168.86	78.07
BA2	214.22	146.49	67.73
BA1	204.40	139.77	64.63
PE2	345.08	235.98	109.10
PE1	328.72	224.79	103.93
PD2	325.45	222.55	102.90
PD1	309.09	211.37	97.72
PC2	279.65	191.23	88.42
PC1	266.56	182.28	84.28
PB2	237.12	162.15	74.97
PB1	227.30	155.43	71.87
PA2	196.22	134.18	62.04
PA1	188.04	128.59	59.45

TABLE 7—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT

RUG–IV category	Total rate	Labor portion	Non-labor portion
RUX	$767.99	$525.17	$242.82
RUL	752.36	514.49	237.87
RVX	674.78	461.43	213.35
RVL	609.14	416.55	192.59
RHX	604.31	413.25	191.06
RHL	541.80	370.50	171.30
RMX	549.18	375.55	173.63
RML	505.42	345.62	159.80

TABLE 7—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUG–IV category	Total rate	Labor portion	Non-labor portion
RLX	478.00	326.87	151.13
RUC	594.52	406.55	187.97
RUB	594.52	406.55	187.97
RUA	505.44	345.64	159.80
RVC	502.87	343.88	158.99
RVB	440.36	301.13	139.23
RVA	438.80	300.06	138.74
RHC	432.41	295.69	136.72
RHB	391.77	267.90	123.87
RHA	348.01	237.98	110.03
RMC	375.71	256.92	118.79
RMB	353.83	241.96	111.87
RMA	294.45	201.35	93.10
RLB	359.23	245.65	113.58
RLA	235.77	161.23	74.54
ES3	661.84	452.59	209.25
ES2	519.63	355.34	164.29
ES1	464.93	317.93	147.00
HE2	449.30	307.24	142.06
HE1	374.29	255.95	118.34
HD2	421.17	288.01	133.16
HD1	352.41	240.99	111.42
HC2	397.73	271.98	125.75
HC1	333.65	228.16	105.49
HB2	393.04	268.77	124.27
HB1	330.53	226.03	104.50
LE2	408.67	279.46	129.21
LE1	343.03	234.57	108.46
LD2	393.04	268.77	124.27
LD1	330.53	226.03	104.50
LC2	346.16	236.71	109.45
LC1	293.02	200.38	92.64
LB2	328.97	224.96	104.01
LB1	280.52	191.83	88.69
CE2	364.91	249.54	115.37
CE1	336.78	230.30	106.48
CD2	346.16	236.71	109.45
CD1	318.03	217.48	100.55
CC2	303.96	207.86	96.10
CC1	282.08	192.89	89.19
CB2	282.08	192.89	89.19
CB1	261.77	179.01	82.76
CA2	239.89	164.04	75.85
CA1	224.26	153.36	70.90
BB2	253.95	173.66	80.29
BB1	243.01	166.18	76.83
BA2	211.76	144.81	66.95
BA1	202.38	138.39	63.99
PE2	336.78	230.30	106.48
PE1	321.15	219.61	101.54
PD2	318.03	217.48	100.55
PD1	302.40	206.79	95.61
PC2	274.27	187.55	86.72
PC1	261.77	179.01	82.76
PB2	233.64	159.77	73.87
PB1	224.26	153.36	70.90
PA2	194.57	133.05	61.52
PA1	186.75	127.71	59.04

Section 1888(e)(4)(G)(ii) of the Act also requires that we apply this wage index in a manner that does not result in aggregate payments that are greater or less than would otherwise be made in the absence of the wage adjustment. For FY 2013 (Federal rates effective October 1, 2012), we apply an adjustment to fulfill the budget neutrality requirement. We meet this requirement by multiplying each of the components of the unadjusted Federal rates by a budget neutrality factor equal to the ratio of the weighted average wage adjustment factor for FY 2012 to the weighted average wage adjustment factor for FY 2013. For this calculation, we use the same 2011 claims utilization data for both the numerator and denominator of this ratio. We define the wage adjustment factor used in this calculation as the labor share of the rate component multiplied by the wage index plus the non-labor share of the rate component. The budget neutrality factor for this year is 1.0004. The wage index applicable to FY 2013 is set forth in Tables A and B, which appear in the Addendum of this notice, and is also available on the CMS Web site at *http://cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html*.

In the SNF PPS final rule for FY 2006 (70 FR 45026, August 4, 2005), we adopted the changes discussed in the OMB Bulletin No. 03–04 (June 6, 2003), available online at *www.whitehouse.gov/omb/bulletins/b03-04.html*, which announced revised definitions for Metropolitan Statistical Areas (MSAs), and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In addition, OMB published subsequent bulletins regarding CBSA changes, including changes in CBSA numbers and titles. As indicated in the FY 2008 SNF PPS final rule (72 FR 43423, August 3, 2007), this and all subsequent SNF PPS rules and notices are considered to incorporate the CBSA changes published in the most recent OMB bulletin that applies to the hospital wage data used to determine the current SNF PPS wage index. The OMB bulletins are available online at *http://www.whitehouse.gov/omb/bulletins/index.html.*

In adopting the OMB CBSA geographic designations, we provided for a 1-year transition with a blended wage index for all providers. For FY 2006, the wage index for each provider consisted of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index (both using FY 2002 hospital data). We referred to the blended wage index as the FY 2006 SNF PPS transition wage index. As discussed in the SNF PPS final rule for FY 2006 (70 FR 45041), subsequent to the expiration of this 1-year transition on September 30, 2006, we used the full CBSA-based wage index values, as now presented in Tables A and B in the Addendum of this notice.

D. Updates to the Federal Rates

In accordance with section 1888(e)(4)(E) of the Act as amended by section 311 of the BIPA, and section 1888(e)(5)(B) of the Act as amended by section 3401(b) of the Affordable Care Act, the payment rates in this notice reflect an update equal to the full SNF market basket, estimated at 2.5 percentage points, reduced by the MFP adjustment. As discussed in sections II.G.2 and V.C of this notice, the annual update for FY 2013 includes a 0.7 percentage point reduction to account for the MFP adjustment described in the latter section, for a net update of 1.8 percent.

E. Relationship of Case-Mix Classification System to Existing Skilled Nursing Facility Level-of-Care Criteria

As discussed in § 413.345, we include in each update of the Federal payment rates in the **Federal Register** the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. As set forth in the FY 2011 SNF PPS update notice (75 FR 42910, July 22, 2010), this designation reflects an administrative presumption under the 66-group RUG–IV system that beneficiaries who are correctly assigned to one of the upper 52 RUG–IV groups on the initial 5-day, Medicare-required assessment are automatically classified as meeting the SNF level of care definition up to and including the assessment reference date on the 5-day Medicare-required assessment.

A beneficiary assigned to any of the lower 14 RUG–IV groups is not automatically classified as either meeting or not meeting the definition, but instead receives an individual level of care determination using the existing administrative criteria. This presumption recognizes the strong likelihood that beneficiaries assigned to one of the upper 52 RUG–IV groups during the immediate post-hospital period require a covered level of care, which would be less likely for those beneficiaries assigned to one of the lower 14 RUG–IV groups.

In this notice, we continue to designate the upper 52 RUG–IV groups for purposes of this administrative presumption, consisting of all groups encompassed by the following RUG–IV categories:

- Rehabilitation plus Extensive Services;
- Ultra High Rehabilitation;
- Very High Rehabilitation;

- High Rehabilitation;
- Medium Rehabilitation;
- Low Rehabilitation;
- Extensive Services;
- Special Care High;
- Special Care Low; and,
- Clinically Complex.

However, we note that this administrative presumption policy does not supersede the SNF's responsibility to ensure that its decisions relating to level of care are appropriate and timely, including a review to confirm that the services prompting the beneficiary's assignment to one of the upper 52 RUG–IV groups (which, in turn, serves to trigger the administrative presumption) are themselves medically necessary. As we explained in the FY 2000 SNF PPS final rule (64 FR 41667, July 30, 1999), the administrative presumption:

> * * * is itself rebuttable in those individual cases in which the services actually received by the resident do not meet the basic statutory criterion of being reasonable and necessary to diagnose or treat a beneficiary's condition (according to section 1862(a)(1) of the Act). Accordingly, the presumption would not apply, for example, in those situations in which a resident's assignment to one of the upper * * * groups is itself based on the receipt of services that are subsequently determined to be not reasonable and necessary.

Moreover, we want to stress the importance of careful monitoring for changes in each patient's condition to determine the continuing need for Part A SNF benefits after the assessment reference date of the 5-day assessment.

F. Example of Computation of Adjusted PPS Rates and SNF Payment

Using the hypothetical SNF XYZ described below, Table 8 shows the adjustments made to the Federal per diem rates to compute the provider's actual per diem PPS payment under the described scenario. SNF XYZ's 12-month cost reporting period begins October 1, 2012. As illustrated in Table 8, SNF XYZ's total PPS payment would equal $41,149.70. We derive the Labor and Non-labor columns from Table 6.

TABLE 8—RUG–IV SNF XYZ: LOCATED IN CEDAR RAPIDS, IA (URBAN CBSA 16300) WAGE INDEX: 0.8944

RUG–IV group	Labor	Wage index	Adjusted labor	Non-labor	Adjusted rate	Percent adjustment	Medicare days	Payment
RVX	$456.89	0.8944	$408.64	$211.25	$619.89	$619.89	14	$8,678.46
ES2	366.85	0.8944	328.11	169.62	497.73	497.73	30	14,931.90
RHA	230.51	0.8944	206.17	106.57	312.74	312.74	16	5,003.84
CC2*	212.49	0.8944	190.05	98.24	288.29	657.30	10	6,573.00
BA2	146.49	0.8944	131.02	67.73	198.75	198.75	30	5,962.50
							100	41,149.70

* Reflects a 128 percent adjustment from section 511 of the MMA.

IV. Monitoring Impact of FY 2012 Policy Changes and Certain SNF Practices

In the FY 2012 SNF PPS final rule, we stated we would monitor the impact of certain FY 2012 policy changes on various aspects of the SNF PPS (76 FR 48498, August 8, 2011). Specifically, we have been monitoring the impact of the following FY 2012 policy changes:

- Recalibration of the FY 2011 SNF parity adjustment to align overall payments under RUG–IV with those under RUG–III.
- Allocation of group therapy time to pay more appropriately for group therapy services based on resource utilization and cost.
- Implementation of changes to the MDS 3.0 patient assessment instrument, most notably the introduction of the Change-of-Therapy (COT) Other Medicare Required Assessment (OMRA).

We have posted quarterly memos to the SNF PPS Web site which highlight some of the trends we have observed over a given time period. These memos may be accessed through the SNF PPS Web site at the following address: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Downloads/SNF_Monitoring.zip*.

Below, we provide a summary of the initial results derived from this monitoring effort.

A. RUG Distributions

As stated in the FY 2012 SNF PPS final rule (76 FR 48493), the recalibration of the FY 2011 parity adjustment used 8 months of FY 2011 data as the basis for the recalibration. We observed that case-mix utilization patterns continued to be consistent over the final 4 months of FY 2011 and would not have resulted in a significant difference in the calculated amount of the recalibrated parity adjustment. We have posted data illustrating the RUG–IV distribution of days for the entirety of FY 2011, as compared to the days distribution used to calculate the parity adjustment in the FY 2012 final rule, and the distribution of days for the first half of FY 2012, all of which may be found at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Downloads/SNF_Monitoring.zip*.

Additionally, case-mix utilization observed during FY 2012 has not shown unanticipated changes in patient classification. Overall patient case mix is not significantly different from that observed in FY 2011. Table 9 below illustrates a breakdown of the SNF case-mix distribution of service days by the major RUG classification categories for the full year of FY 2011 and for the first half of FY 2012.

TABLE 9—SNF CASE-MIX DISTRIBUTIONS BY MAJOR RUG–IV CATEGORY

	FY 2011 (percent)	Q1 & Q2 FY 2012 (percent)
Rehabilitation Plus Extensive Services	2.5	1.8
Rehabilitation	87.9	88.5
Extensive Services	0.6	0.7
Special Care	4.6	5.0
Clinically Complex	2.5	2.3

TABLE 9—SNF CASE-MIX DISTRIBUTIONS BY MAJOR RUG–IV CATEGORY—Continued

	FY 2011 (percent)	Q1 & Q2 FY 2012 (percent)
Behavioral Symptoms and Cognitive Performance	0.4	0.3
Reduced Physical Function	1.5	1.5

As illustrated in Table 9, there have been small decreases in both the Rehabilitation Plus Extensive Services category and in the overall percentage of service days in a rehabilitation group, and increases in some of the medically-based RUG categories, most notably Special Care.

It should be noted that the recalibration of the parity adjustment applied only to those RUG–IV groups connected to therapy (Rehabilitation Plus Extensive Services and Rehabilitation). This caused a shift in the hierarchy of nursing case-mix weights among the various RUG–IV groups. Since SNFs are permitted to ''index maximize'' when determining a resident's RUG classification (i.e., of those RUGs for which the resident qualifies, SNFs are permitted to choose the one with the highest per diem payment), it is possible that the aforementioned case-mix distribution shifts reflect residents that had previously been classified into therapy groups but now index maximize into nursing groups instead.

While the overall percentage of resident days that classify into therapy groups has decreased slightly during the first half of FY 2012 (possibly due in part to index maximization), the data show an increase in the percentage of service days at the highest therapy level (Ultra High Rehabilitation) in the first half of FY 2012. This is illustrated in Table 10 below.

TABLE 10—SNF CASE-MIX DISTRIBUTION FOR THERAPY RUG–IV GROUPS, BY MINOR RUG–IV THERAPY CATEGORIES

	FY 2011 (percent)	Q1 & Q2 FY 2012 (percent)
Ultra-High Rehabilitation (≥ 720 minutes of therapy per week)	44.9	46.2
Very-High Rehabilitation (500–719 minutes of therapy per week)	26.9	26.7
High Rehabilitation (325–499 minutes of therapy per week)	10.8	10.7
Medium Rehabilitation (150–324 minutes of therapy per week)	7.6	6.6
Low Rehabilitation (45–149 minutes of therapy per week)	0.1	0.1

≤Although there have been decreases in the percentage of service days which classify into the Very High, High and Medium therapy RUG–IV categories, some of the decrease may be due to index maximization into the Special Care category.

B. Group Therapy Allocation

To account more accurately for resource utilization and cost and to equalize the payment incentives across therapy modes, we allocated group therapy time beginning in FY 2012. We anticipated that this policy would result in some change to the type of therapy mode used for SNF residents. As noted in the section above, we have not observed any significant difference in patient case mix. However, as illustrated below in Table 11, providers have significantly changed the mode of therapy since our STRIVE study (2006–2007).

TABLE 11—MODE OF THERAPY PROVISION

	STRIVE (percent)	FY 2011 (percent)	Q1 & Q2 FY 2012 (percent)
Individual	74	91.8	99.5
Concurrent	25	0.8	0.4
Group	<1	7.4	0.1

During FY 2011, we implemented the allocation of concurrent therapy without the allocation of group therapy and providers shifted from concurrent therapy to group therapy. During FY 2012, we implemented the allocation of group therapy, and data from the first and second quarters of FY 2012 indicate that facilities are providing individual therapy almost exclusively.

C. COT OMRA

In FY 2012, we introduced a new assessment called the COT OMRA to capture more accurately the therapy services provided to SNF residents. Effective for services provided on or after October 1, 2011, SNFs are required to complete a COT OMRA for patients classified into a RUG–IV therapy category (and for patients receiving therapy services who are classified into a nursing RUG because of index maximization), whenever the intensity of therapy changes to such a degree that it would no longer reflect the RUG–IV classification and payment assigned for the patient based on the most recent assessment used for Medicare payment (76 FR 48525). An evaluation of the

necessity for a COT OMRA must be completed at the end of each COT observation period, which is a successive 7-day window beginning on the day following the ARD set for the most recent scheduled or unscheduled PPS assessment (or beginning the day therapy resumes in cases where an EOT–R OMRA is completed), and ending every seven calendar days thereafter. In cases where the resident's therapy has changed to such a degree that it is no longer consistent with the resident's current RUG–IV classification, then the SNF must complete a COT OMRA to reclassify the resident into the appropriate RUG–IV category. The new RUG–IV group resulting from the COT OMRA is billed starting the first day of the 7-day COT observation period for which the COT OMRA was completed and remains at this level until a new assessment is done that changes the patient's RUG–IV classification.

Table 12 below shows the distribution of all MDS assessment types as a percentage of all MDS assessments. We note that the first half of FY 2012 included a transition period for the new policies and, therefore, may not be entirely representative of all of FY 2012.

TABLE 12—DISTRIBUTION OF MDS ASSESSMENT TYPES

	FY 2011 (percent)	Q1 & Q2 FY 2012 (percent)
Scheduled PPS assessment	95	84
Start-of-Therapy (SOT) OMRA	2	2
End-of-Therapy (EOT) OMRA (w/o Resumption)	3	3
Combined SOT/EOT OMRA	0	0
End-of-Therapy OMRA (w/Resumption) (EOT–R OMRA)	N/A	0
Combined SOT/EOT–R OMRA	N/A	0
Change-of-Therapy (COT) OMRA	N/A	11

Prior to the implementation of the COT OMRA, scheduled PPS assessments comprised the vast majority of completed assessments. With the implementation of the COT OMRA for FY 2012, scheduled PPS assessments still comprise the vast majority of completed MDS assessments, though the COT OMRA is the most frequently completed OMRA. Information related to our continuing monitoring activities will be posted on the SNF PPS Web site at the following address: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Downloads/SNF_Monitoring.zip*.

Finally, while not related to the above-cited FY 2012 policy changes, our ongoing monitoring of the quality of care in SNFs also causes us to have concerns that some SNFs are using the practice of asking patients to sign binding arbitration agreements that require as a condition of admission that a patient resolve disputes with the facility through binding arbitration. We plan to monitor this closely and take action consistent with current rules and guidelines (including CMS Survey & Certification Letter S&C–03–10 dated January 9, 2003, available online at *www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/SCletter03–10.pdf*), and consider rulemaking or any additional steps that may be appropriate.

V. The Skilled Nursing Facility Market Basket Index

Section 1888(e)(5)(A) of the Act requires us to establish a SNF market basket index (input price index), that reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. This notice incorporates the latest available projections of the SNF market basket index. Accordingly, we have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses.

Each year, we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the input price index. Table 13 summarizes the updated labor-related share for FY 2013.

TABLE 13—LABOR-RELATED RELATIVE IMPORTANCE, FY 2012 AND FY 2013

	Relative importance, labor-related, FY 2012 11:2 forecast *	Relative importance, labor-related, FY 2013 12:2 forecast **
Wages and salaries	50.129	49.847
Employee benefits	11.502	11.532
Nonmedical professional fees	1.31	1.307
Labor-intensive services	3.394	3.364
Capital-related (.391)	2.358	2.333
Total	68.693	68.383

* Published in the **Federal Register;** based on the second-quarter 2011 IHS Global Insight Inc. forecast.
** Based on the second-quarter 2012 IHS Global Insight forecast, with historical data through the first-quarter 2012.

A. Use of the Skilled Nursing Facility Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index from the midpoint of the previous FY to the midpoint of the current FY. For the Federal rates established in this notice, we use the percentage change in the SNF market basket index to compute the update factor for FY 2013. This is based

on the IGI (formerly DRI–WEFA) second quarter 2012 forecast (with historical data through the first quarter 2012) of the FY 2013 percentage increase in the FY 2004-based SNF market basket index for routine, ancillary, and capital-related expenses, which is used to compute the update factor in this notice. As discussed in section V.C of this notice, this market basket percentage change is reduced by the MFP adjustment as required by section 1888(e)(5)(B)(ii) of the Act. Finally, as discussed in section II.A of this notice, we no longer compute update factors to adjust a facility-specific portion of the SNF PPS rates, because the initial 3-phase transition period from facility-specific to full Federal rates that started with cost reporting periods beginning in July 1998 has expired.

B. Market Basket Forecast Error Adjustment

As discussed in the June 10, 2003, supplemental proposed rule (68 FR 34768) and finalized in the August 4, 2003, final rule (68 FR 46057 through 46059), the regulations at § 413.337(d)(2) provide for an adjustment to account for market basket forecast error. The initial adjustment applied to the update of the FY 2003 rate for FY 2004, and took into account the cumulative forecast error for the period from FY 2000 through FY 2002, resulting in an increase of 3.26 percent. Subsequent adjustments in succeeding FYs take into account the forecast error from the most recently available FY for which there is final data, and apply whenever the difference between the forecasted and actual change in the market basket exceeds a specified threshold. We originally used a 0.25 percentage point threshold for this purpose; however, for the reasons specified in the FY 2008 SNF PPS final rule (72 FR 43425, August 3, 2007), we adopted a 0.5 percentage point threshold effective with FY 2008. As discussed previously in section II.G.2 of this notice, as the difference between the estimated and actual amounts of increase in the market basket index for FY 2011 (the most recently available FY for which there is final data) does not exceed the 0.5 percentage point threshold, the payment rates for FY 2013 do not include a forecast error adjustment.

C. Multifactor Productivity Adjustment

Section 3401(b) of the Affordable Care Act requires that, in FY 2012 (and in subsequent FYs), the market basket percentage under the SNF payment system as described in section 1888(e)(5)(B)(i) is to be reduced annually by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Specifically, section 3401(a) of the Affordable Care Act amends section 1886(b)(3)(B) of the Act to add clause (xi)(II), which sets forth the definition of this productivity adjustment. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multi-factor productivity (MFP) (as projected by the Secretary for the 10-year period ending with the applicable fiscal year, year, cost reporting period, or other annual period) (the ''MFP adjustment''). The Bureau of Labor Statistics (BLS) is the agency that publishes the official measure of private nonfarm business MFP. Please see *http://www.bls.gov/mfp* to obtain the BLS historical published MFP data.

The projection of MFP is currently produced by IGI, an economic forecasting firm. In order to generate a forecast of MFP, IGI replicated the MFP measure calculated by the BLS, using a series of proxy variables derived from IGI's U.S. macroeconomic models. This process is described in greater detail in section III.F.3 of the FY 2012 SNF PPS final rule (76 FR 48527–48529, August 8, 2011).

1. Incorporating the Multifactor Productivity Adjustment Into the Market Basket Update

According to section 1888(e)(5)(A) of the Act, the Secretary ''shall establish a skilled nursing facility market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered skilled nursing facility services.'' As described in section II.G.2 of this notice, we estimate the SNF PPS market basket percentage for FY 2013 under section 1888(e)(5)(B)(i) of the Act based on the FY 2004-based SNF market basket. Section 3401(b) of the Affordable Care Act amends section 1888(e)(5)(B) of the Act, in part, by adding a new clause (ii), which requires that for FY 2012 and each subsequent FY, after determining the market basket percentage described in section 1888(e)(5)(B)(i) of the Act, ''the Secretary shall reduce such percentage by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II)'' (which we refer to as the MFP adjustment). Section 1888(e)(5)(B)(ii) of the Act further states that the reduction of the market basket percentage by the MFP adjustment may result in the market basket percentage being less than zero for a FY, and may result in payment rates under section 1888(e) of the Act for a FY being less than such payment rates for the preceding FY. Thus, if the application of the MFP adjustment to the market basket percentage calculated under section 1888(e)(5)(B)(i) results in an MFP-adjusted market basket percentage that is less than zero, then the annual update to the unadjusted Federal per diem rates under section 1888(e)(4)(E)(ii) would be negative, and such rates would decrease relative to the prior FY.

For the FY 2013 update, the MFP adjustment is calculated as the 10-year moving average of changes in MFP for the period ending September 30, 2013. In accordance with section 1888(e)(5)(B)(i) of the Act, the market basket percentage for FY 2013 for the SNF PPS is based on IGI's second quarter 2012 forecast of the FY 2004-based SNF market basket update, which is estimated to be 2.5 percent. In accordance with section 1888(e)(5)(B)(ii) of the Act (as added by section 3401(b) of the Affordable Care Act), this market basket percentage is then reduced by the MFP adjustment (the 10-year moving average of changes in MFP for the period ending September 30, 2013) of 0.7 percent, which is calculated as described above and based on IGI's second quarter 2012 forecast. The resulting MFP-adjusted market basket update is equal to 1.8 percent, or 2.5 percent less 0.7 percentage point.

D. Federal Rate Update Factor

Section 1888(e)(4)(E)(ii)(IV) of the Act requires that the update factor used to establish the FY 2013 unadjusted Federal rates be at a level equal to the market basket percentage change. Accordingly, to establish the update factor, we determined the total growth from the average market basket level for the period of October 1, 2011 through September 30, 2012 to the average market basket level for the period of October 1, 2012 through September 30, 2013. Using this process, the market basket update factor for FY 2013 SNF PPS unadjusted Federal rates is 2.5 percent. As required by section 1888(e)(5)(B) of the Act, this market basket percentage is then reduced by the MFP adjustment (the 10-year moving average of changes in MFP for the period ending September 30, 2013) of 0.7 percent as described in section V.C. The resulting MFP-adjusted market basket update is equal to 1.8 percent, or 2.5 percent less 0.7 percentage point. We used this MFP-adjusted market basket update factor to compute the SNF PPS rate shown in Tables 2 and 3.

VI. Consolidated Billing

Section 4432(b) of the BBA established a consolidated billing requirement that places with the SNF the Medicare billing responsibility for virtually all of the services that the SNF's residents receive, except for a small number of services that the statute specifically identifies as being excluded from this provision. As noted previously in section II of this notice, subsequent legislation enacted a number of modifications in the consolidated billing provision.

Specifically, section 103 of the BBRA amended this provision by further excluding a number of individual ''high-cost, low-probability'' services, identified by Healthcare Common Procedure Coding System (HCPCS) codes, within several broader categories (chemotherapy and its administration, radioisotope services, and customized prosthetic devices) that otherwise remained subject to the provision. We discuss this BBRA amendment in greater detail in the proposed and final rules for FY 2001 (65 FR 19231 through 19232, April 10, 2000, and 65 FR 46790 through 46795, July 31, 2000), as well as in Program Memorandum AB–00–18 (Change Request #1070), issued March 2000, which is available online at *www.cms.gov/transmittals/downloads/ab001860.pdf*.

Section 313 of the BIPA further amended this provision by repealing its Part B aspect; that is, its applicability to services furnished to a resident during a SNF stay that Medicare Part A does not cover. (However, physical therapy, occupational therapy, and speech-language pathology services remain subject to consolidated billing, regardless of whether the resident who receives these services is in a covered Part A stay.) We discuss this BIPA amendment in greater detail in the proposed and final rules for FY 2002 (66 FR 24020 through 24021, May 10, 2001, and 66 FR 39587 through 39588, July 31, 2001).

In addition, section 410 of the MMA amended this provision by excluding certain practitioner and other services furnished to SNF residents by RHCs and FQHCs. We discuss this MMA amendment in greater detail in the update notice for FY 2005 (69 FR 45818 through 45819, July 30, 2004), as well as in Medicare Learning Network (MLN) Matters article #MM3575, which is available online at *http://www.cms.gov/MLNMattersArticles/downloads/MM3575.pdf*.

Further, while not substantively revising the consolidated billing requirement itself, a related provision was enacted in the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA, Pub. L. 110–275). Specifically, section 149 of MIPPA amended section 1834(m)(4)(C)(ii) of the Act to add subclause (VII), which adds SNFs (as defined in section 1819(a) of the Act) to the list of entities that can serve as a telehealth ''originating site'' (that is, the location at which an eligible individual can receive, through a telecommunications system, services of a physician or other practitioner who is located elsewhere at a ''distant site'').

As explained in the Medicare Physician Fee Schedule (PFS) final rule for calendar year (CY) 2009 (73 FR 69726, 69879, November 19, 2008), a telehealth originating site receives a facility fee which is always separately payable under Part B outside of any other payment methodology. Section 149(b) of MIPPA amended section 1888(e)(2)(A)(ii) of the Act to exclude telehealth services furnished under section 1834(m)(4)(C)(ii)(VII) of the Act from the definition of ''covered skilled nursing facility services'' that are paid under the SNF PPS. Thus, a SNF '' * * * can receive separate payment for a telehealth originating site facility fee even in those instances where it also receives a bundled per diem payment under the SNF PPS for a resident's covered Part A stay'' (73 FR 69881). By contrast, under section 1834(m)(2)(A) of the Act, a telehealth distant site service is payable under Part B to an eligible physician or practitioner only to the same extent that it would have been so payable if furnished without the use of a telecommunications system. Thus, as explained in the CY 2009 Physician Fee Schedule final rule (73 FR 69726, 69880), eligible distant site physicians or practitioners can receive payment for a telehealth service that they furnish

> * * * only if the service is separately payable under the PFS when furnished in a face-to-face encounter at that location. For example, we pay distant site physicians or practitioners for furnishing services via telehealth only if such services are not included in a bundled payment to the facility that serves as the originating site (73 FR 69880).

This means that in those situations where a SNF serves as the telehealth originating site, the distant site professional services would be separately payable under Part B only to the extent that they are not already included in the SNF PPS bundled per diem payment and subject to consolidated billing. Thus, for a type of practitioner whose services are not otherwise excluded from consolidated billing when furnished during a face-to-face encounter, the use of a telehealth distant site would not serve to unbundle those services. In fact, consolidated billing does exclude the professional services of physicians, along with those of most of the other types of telehealth practitioners that the law specifies at section 1842(b)(18)(C) of the Act; that is, physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, certified nurse midwives, and clinical psychologists (see section 1888(e)(2)(A)(ii) of the Act and 42 CFR 411.15(p)(2)). However, the services of clinical social workers, registered dietitians and nutrition professionals remain subject to consolidated billing when furnished to a SNF's Part A resident and, thus, cannot qualify for separate Part B payment as telehealth distant site services in this situation. Additional information on this provision appears in MLN Matters article #MM6215, which is available online at *http://www.cms.gov/MLNMattersArticles/downloads/MM6215.pdf*. To date, the Congress has enacted no further legislation affecting the consolidated billing provision.

VII. Application of the SNF PPS to SNF Services Furnished by Swing-Bed Hospitals

In accordance with section 1888(e)(7) of the Act, as amended by section 203 of the BIPA, Part A pays critical access hospitals (CAHs) on a reasonable cost basis for SNF services furnished under a swing-bed agreement. However, effective with cost reporting periods beginning on or after July 1, 2002, the swing-bed services of non-CAH rural hospitals are paid under the SNF PPS. As explained in the final rule for FY 2002 (66 FR 39562, July 31, 2001), we selected this effective date consistent with the statutory provision to integrate swing-bed rural hospitals into the SNF PPS by the end of the SNF transition period, June 30, 2002.

Accordingly, all non-CAH swing-bed rural hospitals have come under the SNF PPS as of June 30, 2003. Therefore, all rates and wage indexes outlined in earlier sections of this notice for the SNF PPS also apply to all non-CAH swing-bed rural hospitals. A complete discussion of assessment schedules, the MDS and the transmission software (RAVEN–SB for Swing Beds) appears in the final rule for FY 2002 (66 FR 39562, July 31, 2001) and in the final rule for FY 2010 (74 FR 40288, August 11, 2009). As finalized in the FY 2010 SNF PPS final rule (74 FR 40356–57), effective October 1, 2010, non-CAH swing-bed rural hospitals are required to complete an MDS 3.0 swing-bed

assessment which is limited to the required demographic, payment, and quality items. The latest changes in the MDS for swing-bed rural hospitals appear on the SNF PPS Web site, *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/index.html.*

VIII. Collection of Information Requirements

This notice does not impose any new or revised information collection or recordkeeping requirements. The information collection requirements referenced in this notice with regard to resident assessment information used to determine facility payments are currently approved under OCN 0938–0739 (which relates to the Medicare PPS Assessment Form (MPAF) information collection) and OCN 0938–0872 (which relates to the Minimum Data Set for Swing-Bed Hospitals), neither of which is affected by this notice. This notice, OCN: 0938–0739, and OCN: 0938–0872 do not impose any burden requiring additional Office of Management and Budget review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IX. Waiver of Notice and Comment

We would ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment, followed by a final rule. However, we can waive this procedure if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and its reasons in the notice issued. In this instance, we have found good cause to waive notice and comment rulemaking and are issuing this update notice.

We believe it is unnecessary to undertake notice and comment rulemaking in this instance, as the statute requires annual updates to the SNF PPS rates, the methodologies used to update the rates in this notice have been previously subject to public comment and finalized, and this notice initiates no policy changes with regard to the SNF PPS, but simply reflects application of previously established methodologies. Therefore, we find good cause to waive notice and comment procedures.

X. Economic Analyses

A. Regulatory Impact Analysis

1. Introduction

We have examined the impacts of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA, March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This notice has been designated an economically significant rule, under section 3(f)(1) of Executive Order 12866. Accordingly, we have prepared a regulatory impact analysis (RIA) as further discussed below. Also, the rule has been reviewed by the Office of Management and Budget.

2. Statement of Need

This notice updates the SNF prospective payment rates for FY 2013 as required under section 1888(e)(4)(E) of the Act. It also responds to section 1888(e)(4)(H) of the Act, which requires the Secretary to ''provide for publication in the **Federal Register**'' before August 1 that precedes the start of each fiscal year, the unadjusted Federal per diem rates, the case-mix classification system, and the factors to be applied in making the area wage adjustment. As these statutory provisions prescribe a detailed methodology for calculating and disseminating payment rates under the SNF PPS, we do not have the discretion to adopt an alternative approach.

3. Overall Impacts

This notice sets forth updates of the SNF PPS rates contained in the final rule for FY 2012 (76 FR 48486, August 8, 2011). Based on the above, we estimate that the aggregate impact would be an increase of $670 million in payments to SNFs, resulting from the MFP-adjusted market basket update to the payment rates. The impact analysis of this notice represents the projected effects of the changes in the SNF PPS from FY 2012 to FY 2013. Although the best data available are utilized, there is no attempt to predict behavioral responses to these changes, or to make adjustments for future changes in such variables as days or case-mix.

Certain events may occur to limit the scope or accuracy of our impact analysis, as this analysis is future-oriented and, thus, very susceptible to forecasting errors due to certain events that may occur within the assessed impact time period. Some examples of possible events may include newly-legislated general Medicare program funding changes by the Congress, or changes specifically related to SNFs. In addition, changes to the Medicare program may continue to be made as a result of previously-enacted legislation, or new statutory provisions. Although these changes may not be specific to the SNF PPS, the nature of the Medicare program is such that the changes may interact and, thus, the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon SNFs.

In accordance with section 1888(e)(4)(E) and (e)(5) of the Act, we update the FY 2012 payment rates by a factor equal to the market basket index percentage change adjusted by the FY 2011 forecast error adjustment (if applicable) and the MFP adjustment to determine the payment rates for FY 2013. As discussed previously, for FY 2012 and each subsequent FY, as required by section 1888(e)(5)(B) of the Act as amended by section 3401(b) of the Affordable Care Act, the market basket percentage is reduced by the MFP adjustment. The special AIDS add-on established by section 511 of the MMA remains in effect until ''* * * such date as the Secretary certifies that there is an appropriate adjustment in the case mix * * *.'' We have not provided a separate impact analysis for the MMA provision. Our latest estimates indicate that there are fewer than 3,800 beneficiaries who qualify for the AIDS add-on payment. The impact to Medicare is included in the ''total'' column of Table 14. In updating the rates for FY 2013, we made a number of standard annual revisions and clarifications mentioned elsewhere in this notice (for example, the update to the wage and market basket indexes used for adjusting the Federal rates).

The update set forth in this notice applies to payments in FY 2013. Accordingly, the analysis that follows only describes the impact of this single year. In accordance with the requirements of the Act, we will publish a notice or rule for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

4. Detailed Economic Analysis

The FY 2013 impacts appear in Table 14. The breakdown of the various categories of data in the table follows.

The first column shows the breakdown of all SNFs by urban or rural status, hospital-based or freestanding status, census region, and ownership.

The first row of figures describes the estimated effects of the various changes on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban, and rural categories. The urban and rural designations are based on the location of the facility under the CBSA designation. The next nineteen rows show the effects on facilities by urban versus rural status by census region. The last three rows show the effects on facilities by ownership (i.e., government, profit, and non-profit status).

The second column in the table shows the number of facilities in the impact database.

The third column of the table shows the effect of the annual update to the wage index. This represents the effect of using the most recent wage data available. The total impact of this change is zero percent; however, there are distributional effects of the change.

The fourth column shows the effect of all of the changes on the FY 2013 payments. The update of 1.8 percent (consisting of the market basket increase of 2.5 percentage points, reduced by the 0.7 percentage point MFP adjustment) is constant for all providers and, though not shown individually, is included in the total column. It is projected that aggregate payments will increase by 1.8 percent, assuming facilities do not change their care delivery and billing practices in response.

As can be seen from Table 14, the combined effects of all of the changes vary by specific types of providers and by location. Though all facilities would experience payment increases, the amount of the overall increase varies due to the impact of the wage index update. The wage index change can adjust the overall impact of the 1.8 percent update upward or downward. For example, providers in the urban New England region would experience a 2.6 percent increase in FY 2013 total payments. The increase for this region differs from the aggregate 1.8 percent update due to the distributional effect of the wage index update as shown in the third column.

TABLE 14—RUG–IV PROJECTED IMPACT TO THE SNF PPS FOR FY 2013

	Number of facilities FY 2013	Update wage data (percent)	Total FY 2013 change (percent)
Group:			
Total	15,407	0.0	1.8
Urban	10,568	0.1	1.9
Rural	4,839	−0.3	1.5
Hospital based urban	761	−0.1	1.7
Freestanding urban	9,807	0.1	1.9
Hospital based rural	428	−0.1	1.7
Freestanding rural	4,411	−0.3	1.5
Urban by region:			
New England	811	0.8	2.6
Middle Atlantic	1,456	0.0	1.8
South Atlantic	1,747	−0.3	1.5
East North Central	2,043	0.2	2.0
East South Central	518	−1.0	0.8
West North Central	870	0.5	2.3
West South Central	1,224	−0.3	1.5
Mountain	482	−0.9	0.9
Pacific	1,411	0.9	2.7
Outlying	6	0.2	2.0
Rural by region:			
New England	152	−0.9	0.9
Middle Atlantic	262	−0.1	1.7
South Atlantic	611	−0.7	1.1
East North Central	935	0.3	2.1
East South Central	558	−0.4	1.4
West North Central	1,120	−0.9	0.9
West South Central	822	0.3	2.1
Mountain	250	0.3	2.1
Pacific	129	−1.4	0.3
Ownership:			
Government	805	0.1	1.9
Profit	10,742	0.0	1.8
Non-profit	3,860	0.1	1.9

Note: The Total column includes the 2.5 percent market basket increase, reduced by the 0.7 percentage point MFP adjustment. Additionally, we found no SNFs in rural outlying areas.

5. Alternatives Considered

As described above, we estimate that the aggregate impact for FY 2013 would be an increase of $670 million in payments to SNFs, resulting from the MFP-adjusted market basket update to the payment rates.

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section of the statute prescribes a detailed formula for calculating payment rates under the SNF PPS, and does not provide for the use of any alternative methodology. It specifies that the base year cost data to

be used for computing the SNF PPS payment rates must be from FY 1995 (October 1, 1994, through September 30, 1995). In accordance with the statute, we also incorporated a number of elements into the SNF PPS (for example, case-mix classification methodology, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the Federal rates). Further, section 1888(e)(4)(H) of the Act specifically requires us to disseminate the payment rates for each new FY through the **Federal Register**, and to do so before the August 1 that precedes the start of the new FY. Accordingly, we are not pursuing alternatives with respect to the payment methodology as discussed above.

6. Accounting Statement

As required by OMB Circular A–4 (available online at *www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf*), in Table 15, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this notice. Table 15 provides our best estimate of the possible changes in Medicare payments under the SNF PPS as a result of the policies in this notice, based on the data for 15,407 SNFs in our database. All expenditures are classified as transfers to Medicare providers (that is, SNFs).

TABLE 15—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2012 SNF PPS FISCAL YEAR TO THE 2013 SNF PPS FISCAL YEAR

Category	Transfers
Annualized Monetized Transfers	670 million.*
From Whom To Whom?	Federal Government to SNF Medicare Providers.

*The net increase of $670 million in transfer payments is a result of the MFP-adjusted market basket increase of $670 million.

7. Conclusion

This notice sets forth updates of the SNF PPS rates contained in the final rule for FY 2012 (76 FR 48486, August 8, 2011). Based on the above, we estimate the overall estimated payments for SNFs in FY 2013 are projected to increase by $670 million, or 1.8 percent, compared with those in FY 2012. We estimate that in FY 2013 under RUG–IV, SNFs in urban and rural areas would experience, on average, a 1.9 and 1.5 percent increase, respectively, in estimated payments compared with FY 2012. Providers in the urban Pacific region would experience the largest estimated increase in payments of approximately 2.7 percent. Rural Pacific providers would experience the smallest estimated increase in payments of 0.3 percent.

B. Regulatory Flexibility Act Analysis

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, non-profit organizations, and small governmental jurisdictions. Most SNFs and most other providers and suppliers are small entities, either by their non-profit status or by having revenues of $13.5 million or less in any 1 year. For purposes of the RFA, approximately 91 percent of SNFs are considered small businesses according to the Small Business Administration's latest size standards, with total revenues of $13.5 million or less in any 1 year. (For details, see the Small Business Administration's Web site at *http://www.sba.gov/category/navigation-structure/contracting/contracting-officials/eligibility-size-standards*). Individuals and States are not included in the definition of a small entity. In addition, approximately 25 percent of SNFs classified as small entities are non-profit organizations. Finally, the estimated number of small business entities does not distinguish provider establishments that are within a single firm and, therefore, the number of SNFs classified as small entities may be higher than the estimate above.

This notice sets forth updates of the SNF PPS rates contained in the final rule for FY 2012 (76 FR 48486, August 8, 2011). Based on the above, we estimate that the aggregate impact would be an increase of $670 million in payments to SNFs, resulting from the MFP-adjusted market basket update to the payment rates. While it is projected in Table 14 that all providers would experience a net increase in payments, we note that some individual providers may experience larger increases in payments than others due to the distributional impact of the FY 2013 wage indexes and the degree of Medicare utilization.

Guidance issued by the Department of Health and Human Services on the proper assessment of the impact on small entities in rulemakings, utilizes a cost or revenue impact of 3 to 5 percent as a significance threshold under the RFA. According to MedPAC, Medicare covers approximately 12 percent of total patient days in freestanding facilities and 23 percent of facility revenue (March 2012). However, it is worth noting that the distribution of days and payments is highly variable. That is, the majority of SNFs have significantly lower Medicare utilization. As a result, for most facilities, when all payers are included in the revenue stream, the overall impact on total revenues should be substantially less than those impacts presented in Table 14. As indicated in Table 14, the effect on facilities is projected to be an aggregate positive impact of 1.8 percent. Additionally, as discussed in the FY 2012 final rule (76 FR 48539), given the high proportion of SNFs that constitute small entities, any discussion of the impacts on the SNF industry as a whole may be directly characterized as an analysis of the impact of this notice on small entities. As the overall impact on the industry as a whole, and thus on small entities specifically, is less than the 3 to 5 percent threshold discussed above, the Secretary has determined that this notice would not have a significant impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This notice would affect small rural hospitals that (a) furnish SNF services under a swing-bed agreement or (b) have a hospital-based SNF. We anticipate that the impact on small rural hospitals would be similar to the impact on SNF providers overall. Moreover, as noted in the FY 2012 final rule (76 FR 48539), the category of small rural hospitals would be included within the analysis of the impact of this

notice on small entities in general. As indicated in Table 14, the effect on facilities is projected to be an aggregate positive impact of 1.8 percent. As a result, the Secretary has determined that this notice would not have a significant impact on a substantial number of small rural hospitals.

C. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold is approximately $139 million. This notice would not impose spending costs on State, local, or tribal governments in the aggregate, or by the private sector, of $139 million.

D. Federalism Analysis

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that impose substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice would have no substantial direct effect on State and local governments, preempt State law, or otherwise have Federalism implications.

Authority: Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.

Dated: April 17, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: July 24, 2012.

Kathleen Sebelius,

Secretary.

Addendum—FY 2013 CBSA Wage Index Tables

In this addendum, we provide the wage index tables referred to in the preamble to this notice. Tables A and B display the CBSA-based wage index values for urban and rural providers.

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS

CBSA code	Urban area (constituent counties)	Wage index
10180	Abilene, TX	0.8324
	Callahan County, TX	
	Jones County, TX	
	Taylor County, TX	
10380	Aguadilla-Isabela-San Sebastián, PR	0.3532
	Aguada Municipio, PR	
	Aguadilla Municipio, PR	
	Añasco Municipio, PR	
	Isabela Municipio, PR	
	Lares Municipio, PR	
	Moca Municipio, PR	
	Rincón Municipio, PR	
	San Sebastián Municipio, PR	
10420	Akron, OH	0.8729
	Portage County, OH	
	Summit County, OH	
10500	Albany, GA	0.8435
	Baker County, GA	
	Dougherty County, GA	
	Lee County, GA	
	Terrell County, GA	
	Worth County, GA	
10580	Albany-Schenectady-Troy, NY	0.8647
	Albany County, NY	
	Rensselaer County, NY	
	Saratoga County, NY	
	Schenectady County, NY	
	Schoharie County, NY	
10740	Albuquerque, NM	0.9542
	Bernalillo County, NM	
	Sandoval County, NM	
	Torrance County, NM	
	Valencia County, NM	
10780	Alexandria, LA	0.7857
	Grant Parish, LA	
	Rapides Parish, LA	
10900	Allentown-Bethlehem-Easton, PA-NJ	0.9084
	Warren County, NJ	
	Carbon County, PA	
	Lehigh County, PA	
	Northampton County, PA	
11020	Altoona, PA	0.8898
	Blair County, PA	
11100	Amarillo, TX	0.8506
	Armstrong County, TX	
	Carson County, TX	
	Potter County, TX	
	Randall County, TX	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
11180	Ames, IA	0.9595
	Story County, IA	
11260	Anchorage, AK	1.2147
	Anchorage Municipality, AK	
	Matanuska-Susitna Borough, AK	
11300	Anderson, IN	0.9547
	Madison County, IN	
11340	Anderson, SC	0.8929
	Anderson County, SC	
11460	Ann Arbor, MI	1.0115
	Washtenaw County, MI	
11500	Anniston-Oxford, AL	0.7539
	Calhoun County, AL	
11540	Appleton, WI	0.9268
	Calumet County, WI	
	Outagamie County, WI	
11700	Asheville, NC	0.8555
	Buncombe County, NC	
	Haywood County, NC	
	Henderson County, NC	
	Madison County, NC	
12020	Athens-Clarke County, GA	0.9488
	Clarke County, GA	
	Madison County, GA	
	Oconee County, GA	
	Oglethorpe County, GA	
12060	Atlanta-Sandy Springs-Marietta, GA	0.9517
	Barrow County, GA	
	Bartow County, GA	
	Butts County, GA	
	Carroll County, GA	
	Cherokee County, GA	
	Clayton County, GA	
	Cobb County, GA	
	Coweta County, GA	
	Dawson County, GA	
	DeKalb County, GA	
	Douglas County, GA	
	Fayette County, GA	
	Forsyth County, GA	
	Fulton County, GA	
	Gwinnett County, GA	
	Haralson County, GA	
	Heard County, GA	
	Henry County, GA	
	Jasper County, GA	
	Lamar County, GA	
	Meriwether County, GA	
	Newton County, GA	
	Paulding County, GA	
	Pickens County, GA	
	Pike County, GA	
	Rockdale County, GA	
	Spalding County, GA	
	Walton County, GA	
12100	Atlantic City-Hammonton, NJ	1.1977
	Atlantic County, NJ	
12220	Auburn-Opelika, AL	0.7437
	Lee County, AL	
12260	Augusta-Richmond County, GA-SC	0.9373
	Burke County, GA	
	Columbia County, GA	
	McDuffie County, GA	
	Richmond County, GA	
	Aiken County, SC	
	Edgefield County, SC	
12420	Austin-Round Rock, TX	0.9746
	Bastrop County, TX	
	Caldwell County, TX	
	Hays County, TX	
	Travis County, TX	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Williamson County, TX	
12540	Bakersfield, CA	1.1611
	Kern County, CA	
12580	Baltimore-Towson, MD	1.0147
	Anne Arundel County, MD	
	Baltimore County, MD	
	Carroll County, MD	
	Harford County, MD	
	Howard County, MD	
	Queen Anne's County, MD	
	Baltimore City, MD	
12620	Bangor, ME	1.0184
	Penobscot County, ME	
12700	Barnstable Town, MA	1.2843
	Barnstable County, MA	
12940	Baton Rouge, LA	0.8147
	Ascension Parish, LA	
	East Baton Rouge Parish, LA	
	East Feliciana Parish, LA	
	Iberville Parish, LA	
	Livingston Parish, LA	
	Pointe Coupee Parish, LA	
	St. Helena Parish, LA	
	West Baton Rouge Parish, LA	
	West Feliciana Parish, LA	
12980	Battle Creek, MI	0.9912
	Calhoun County, MI	
13020	Bay City, MI	0.9181
	Bay County, MI	
13140	Beaumont-Port Arthur, TX	0.8533
	Hardin County, TX	
	Jefferson County, TX	
	Orange County, TX	
13380	Bellingham, WA	1.1415
	Whatcom County, WA	
13460	Bend, OR	1.1119
	Deschutes County, OR	
13644	Bethesda-Frederick-Gaithersburg, MD	1.0374
	Frederick County, MD	
	Montgomery County, MD	
13740	Billings, MT	0.8737
	Carbon County, MT	
	Yellowstone County, MT	
13780	Binghamton, NY	0.8707
	Broome County, NY	
	Tioga County, NY	
13820	Birmingham-Hoover, AL	0.8516
	Bibb County, AL	
	Blount County, AL	
	Chilton County, AL	
	Jefferson County, AL	
	St. Clair County, AL	
	Shelby County, AL	
	Walker County, AL	
13900	Bismarck, ND	0.7261
	Burleigh County, ND	
	Morton County, ND	
13980	Blacksburg-Christiansburg-Radford, VA	0.8348
	Giles County, VA	
	Montgomery County, VA	
	Pulaski County, VA	
	Radford City, VA	
14020	Bloomington, IN	0.8752
	Greene County, IN	
	Monroe County, IN	
	Owen County, IN	
14060	Bloomington-Normal, IL	0.9502
	McLean County, IL	
14260	Boise City-Nampa, ID	0.8897
	Ada County, ID	
	Boise County, ID	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Canyon County, ID	
	Gem County, ID	
	Owyhee County, ID	
14484	Boston-Quincy, MA	1.2378
	Norfolk County, MA	
	Plymouth County, MA	
	Suffolk County, MA	
14500	Boulder, CO	1.0574
	Boulder County, CO	
14540	Bowling Green, KY	0.8665
	Edmonson County, KY	
	Warren County, KY	
14740	Bremerton-Silverdale, WA	1.0829
	Kitsap County, WA	
14860	Bridgeport-Stamford-Norwalk, CT	1.3170
	Fairfield County, CT	
15180	Brownsville-Harlingen, TX	0.8612
	Cameron County, TX	
15260	Brunswick, GA	0.8792
	Brantley County, GA	
	Glynn County, GA	
	McIntosh County, GA	
15380	Buffalo-Niagara Falls, NY	0.9999
	Erie County, NY	
	Niagara County, NY	
15500	Burlington, NC	0.8485
	Alamance County, NC	
15540	Burlington-South Burlington, VT	0.9997
	Chittenden County, VT	
	Franklin County, VT	
	Grand Isle County, VT	
15764	Cambridge-Newton-Framingham, MA	1.1262
	Middlesex County, MA	
15804	Camden, NJ	1.0474
	Burlington County, NJ	
	Camden County, NJ	
	Gloucester County, NJ	
15940	Canton-Massillon, OH	0.8834
	Carroll County, OH	
	Stark County, OH	
15980	Cape Coral-Fort Myers, FL	0.9153
	Lee County, FL	
16020	Cape Girardeau-Jackson, MO-IL	0.8860
	Alexander County, IL	
	Bollinger County, MO	
	Cape Girardeau County, MO	
16180	Carson City, NV	1.0559
	Carson City, NV	
16220	Casper, WY	1.0143
	Natrona County, WY	
16300	Cedar Rapids, IA	0.8944
	Benton County, IA	
	Jones County, IA	
	Linn County, IA	
16580	Champaign-Urbana, IL	0.9907
	Champaign County, IL	
	Ford County, IL	
	Piatt County, IL	
16620	Charleston, WV	0.8050
	Boone County, WV	
	Clay County, WV	
	Kanawha County, WV	
	Lincoln County, WV	
	Putnam County, WV	
16700	Charleston-North Charleston-Summerville, SC	0.8820
	Berkeley County, SC	
	Charleston County, SC	
	Dorchester County, SC	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
16740	Charlotte-Gastonia-Concord, NC-SC	0.9215
	Anson County, NC	
	Cabarrus County, NC	
	Gaston County, NC	
	Mecklenburg County, NC	
	Union County, NC	
	York County, SC	
16820	Charlottesville, VA	0.9195
	Albemarle County, VA	
	Fluvanna County, VA	
	Greene County, VA	
	Nelson County, VA	
	Charlottesville City, VA	
16860	Chattanooga, TN-GA	0.8678
	Catoosa County, GA	
	Dade County, GA	
	Walker County, GA	
	Hamilton County, TN	
	Marion County, TN	
	Sequatchie County, TN	
16940	Cheyenne, WY	0.9730
	Laramie County, WY	
16974	Chicago-Naperville-Joliet, IL	1.0600
	Cook County, IL	
	DeKalb County, IL	
	DuPage County, IL	
	Grundy County, IL	
	Kane County, IL	
	Kendall County, IL	
	McHenry County, IL	
	Will County, IL	
17020	Chico, CA	1.1197
	Butte County, CA	
17140	Cincinnati-Middletown, OH-KY-IN	0.9508
	Dearborn County, IN	
	Franklin County, IN	
	Ohio County, IN	
	Boone County, KY	
	Bracken County, KY	
	Campbell County, KY	
	Gallatin County, KY	
	Grant County, KY	
	Kenton County, KY	
	Pendleton County, KY	
	Brown County, OH	
	Butler County, OH	
	Clermont County, OH	
	Hamilton County, OH	
	Warren County, OH	
17300	Clarksville, TN-KY	0.8082
	Christian County, KY	
	Trigg County, KY	
	Montgomery County, TN	
	Stewart County, TN	
17420	Cleveland, TN	0.7592
	Bradley County, TN	
	Polk County, TN	
17460	Cleveland-Elyria-Mentor, OH	0.9082
	Cuyahoga County, OH	
	Geauga County, OH	
	Lake County, OH	
	Lorain County, OH	
	Medina County, OH	
17660	Coeur d'Alene, ID	0.9218
	Kootenai County, ID	
17780	College Station-Bryan, TX	0.9584
	Brazos County, TX	
	Burleson County, TX	
	Robertson County, TX	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
17820	Colorado Springs, CO	0.9364
	El Paso County, CO	
	Teller County, CO	
17860	Columbia, MO	0.8339
	Boone County, MO	
	Howard County, MO	
17900	Columbia, SC	0.8560
	Calhoun County, SC	
	Fairfield County, SC	
	Kershaw County, SC	
	Lexington County, SC	
	Richland County, SC	
	Saluda County, SC	
17980	Columbus, GA-AL	0.8857
	Russell County, AL	
	Chattahoochee County, GA	
	Harris County, GA	
	Marion County, GA	
	Muscogee County, GA	
18020	Columbus, IN	0.9564
	Bartholomew County, IN	
18140	Columbus, OH	0.9763
	Delaware County, OH	
	Fairfield County, OH	
	Franklin County, OH	
	Licking County, OH	
	Madison County, OH	
	Morrow County, OH	
	Pickaway County, OH	
	Union County, OH	
18580	Corpus Christi, TX	0.8591
	Aransas County, TX	
	Nueces County, TX	
	San Patricio County, TX	
18700	Corvallis, OR	1.0715
	Benton County, OR	
18880	Crestview-Fort Walton Beach-Destin, FL	0.8916
	Okaloosa County, FL	
19060	Cumberland, MD-WV	0.8836
	Allegany County, MD	
	Mineral County, WV	
19124	Dallas-Plano-Irving, TX	0.9835
	Collin County, TX	
	Dallas County, TX	
	Delta County, TX	
	Denton County, TX	
	Ellis County, TX	
	Hunt County, TX	
	Kaufman County, TX	
	Rockwall County, TX	
19140	Dalton, GA	0.8828
	Murray County, GA	
	Whitfield County, GA	
19180	Danville, IL	0.9977
	Vermilion County, IL	
19260	Danville, VA	0.8218
	Pittsylvania County, VA	
	Danville City, VA	
19340	Davenport-Moline-Rock Island, IA-IL	0.9145
	Henry County, IL	
	Mercer County, IL	
	Rock Island County, IL	
	Scott County, IA	
19380	Dayton, OH	0.9136
	Greene County, OH	
	Miami County, OH	
	Montgomery County, OH	
	Preble County, OH	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
19460	Decatur, AL	0.7261
	Lawrence County, AL	
	Morgan County, AL	
19500	Decatur, IL	0.7993
	Macon County, IL	
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.8716
	Volusia County, FL	
19740	Denver-Aurora-Broomfield, CO	1.0469
	Adams County, CO	
	Arapahoe County, CO	
	Broomfield County, CO	
	Clear Creek County, CO	
	Denver County, CO	
	Douglas County, CO	
	Elbert County, CO	
	Gilpin County, CO	
	Jefferson County, CO	
	Park County, CO	
19780	Des Moines-West Des Moines, IA	0.9616
	Dallas County, IA	
	Guthrie County, IA	
	Madison County, IA	
	Polk County, IA	
	Warren County, IA	
19804	Detroit-Livonia-Dearborn, MI	0.9361
	Wayne County, MI	
20020	Dothan, AL	0.7398
	Geneva County, AL	
	Henry County, AL	
	Houston County, AL	
20100	Dover, DE	0.9893
	Kent County, DE	
20220	Dubuque, IA	0.8662
	Dubuque County, IA	
20260	Duluth, MN-WI	1.0741
	Carlton County, MN	
	St. Louis County, MN	
	Douglas County, WI	
20500	Durham-Chapel Hill, NC	0.9525
	Chatham County, NC	
	Durham County, NC	
	Orange County, NC	
	Person County, NC	
20740	Eau Claire, WI	0.9705
	Chippewa County, WI	
	Eau Claire County, WI	
20764	Edison-New Brunswick, NJ	1.0806
	Middlesex County, NJ	
	Monmouth County, NJ	
	Ocean County, NJ	
	Somerset County, NJ	
20940	El Centro, CA	0.8602
	Imperial County, CA	
21060	Elizabethtown, KY	0.8294
	Hardin County, KY	
	Larue County, KY	
21140	Elkhart-Goshen, IN	0.9097
	Elkhart County, IN	
21300	Elmira, NY	0.8205
	Chemung County, NY	
21340	El Paso, TX	0.8426
	El Paso County, TX	
21500	Erie, PA	0.7823
	Erie County, PA	
21660	Eugene-Springfield, OR	1.1454
	Lane County, OR	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
21780	Evansville, IN-KY	0.8401
	Gibson County, IN	
	Posey County, IN	
	Vanderburgh County, IN	
	Warrick County, IN	
	Henderson County, KY	
	Webster County, KY	
21820	Fairbanks, AK	1.0816
	Fairbanks North Star Borough, AK	
21940	Fajardo, PR	0.3663
	Ceiba Municipio, PR	
	Fajardo Municipio, PR	
	Luquillo Municipio, PR	
22020	Fargo, ND-MN	0.8108
	Cass County, ND	
	Clay County, MN	
22140	Farmington, NM	0.9323
	San Juan County, NM	
22180	Fayetteville, NC	0.8971
	Cumberland County, NC	
	Hoke County, NC	
22220	Fayetteville-Springdale-Rogers, AR-MO	0.9288
	Benton County, AR	
	Madison County, AR	
	Washington County, AR	
	McDonald County, MO	
22380	Flagstaff, AZ	1.2369
	Coconino County, AZ	
22420	Flint, MI	1.1257
	Genesee County, MI	
22500	Florence, SC	0.8087
	Darlington County, SC	
	Florence County, SC	
22520	Florence-Muscle Shoals, AL	0.7679
	Colbert County, AL	
	Lauderdale County, AL	
22540	Fond du Lac, WI	0.9158
	Fond du Lac County, WI	
22660	Fort Collins-Loveland, CO	0.9833
	Larimer County, CO	
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	1.0363
	Broward County, FL	
22900	Fort Smith, AR-OK	0.7848
	Crawford County, AR	
	Franklin County, AR	
	Sebastian County, AR	
	Le Flore County, OK	
	Sequoyah County, OK	
23060	Fort Wayne, IN	0.9633
	Allen County, IN	
	Wells County, IN	
	Whitley County, IN	
23104	Fort Worth-Arlington, TX	0.9516
	Johnson County, TX	
	Parker County, TX	
	Tarrant County, TX	
	Wise County, TX	
23420	Fresno, CA	1.1593
	Fresno County, CA	
23460	Gadsden, AL	0.7697
	Etowah County, AL	
23540	Gainesville, FL	0.9631
	Alachua County, FL	
	Gilchrist County, FL	
23580	Gainesville, GA	0.9327
	Hall County, GA	
23844	Gary, IN	0.9259
	Jasper County, IN	
	Lake County, IN	
	Newton County, IN	
	Porter County, IN	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
24020	Glens Falls, NY	0.8340
	Warren County, NY	
	Washington County, NY	
24140	Goldsboro, NC	0.8560
	Wayne County, NC	
24220	Grand Forks, ND-MN	0.7250
	Polk County, MN	
	Grand Forks County, ND	
24300	Grand Junction, CO	0.9415
	Mesa County, CO	
24340	Grand Rapids-Wyoming, MI	0.9125
	Barry County, MI	
	Ionia County, MI	
	Kent County, MI	
	Newaygo County, MI	
24500	Great Falls, MT	0.7927
	Cascade County, MT	
24540	Greeley, CO	0.9593
	Weld County, CO	
24580	Green Bay, WI	0.9793
	Brown County, WI	
	Kewaunee County, WI	
	Oconto County, WI	
24660	Greensboro-High Point, NC	0.8638
	Guilford County, NC	
	Randolph County, NC	
	Rockingham County, NC	
24780	Greenville, NC	0.9694
	Greene County, NC	
	Pitt County, NC	
24860	Greenville-Mauldin-Easley, SC	0.9737
	Greenville County, SC	
	Laurens County, SC	
	Pickens County, SC	
25020	Guayama, PR	0.3696
	Arroyo Municipio, PR	
	Guayama Municipio, PR	
	Patillas Municipio, PR	
25060	Gulfport-Biloxi, MS	0.8544
	Hancock County, MS	
	Harrison County, MS	
	Stone County, MS	
25180	Hagerstown-Martinsburg, MD-WV	0.9422
	Washington County, MD	
	Berkeley County, WV	
	Morgan County, WV	
25260	Hanford-Corcoran, CA	1.0992
	Kings County, CA	
25420	Harrisburg-Carlisle, PA	0.9525
	Cumberland County, PA	
	Dauphin County, PA	
	Perry County, PA	
25500	Harrisonburg, VA	0.9087
	Rockingham County, VA	
	Harrisonburg City, VA	
25540	Hartford-West Hartford-East Hartford, CT	1.0869
	Hartford County, CT	
	Middlesex County, CT	
	Tolland County, CT	
25620	Hattiesburg, MS	0.8035
	Forrest County, MS	
	Lamar County, MS	
	Perry County, MS	
25860	Hickory-Lenoir-Morganton, NC	0.8677
	Alexander County, NC	
	Burke County, NC	
	Caldwell County, NC	
	Catawba County, NC	
25980	Hinesville-Fort Stewart, GA[1]	0.8843
	Liberty County, GA	
	Long County, GA	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
26100	Holland-Grand Haven, MI	0.8024
	Ottawa County, MI	
26180	Honolulu, HI	1.2156
	Honolulu County, HI	
26300	Hot Springs, AR	0.8944
	Garland County, AR	
26380	Houma-Bayou Cane-Thibodaux, LA	0.7928
	Lafourche Parish, LA	
	Terrebonne Parish, LA	
26420	Houston-Sugar Land-Baytown, TX	0.9933
	Austin County, TX	
	Brazoria County, TX	
	Chambers County, TX	
	Fort Bend County, TX	
	Galveston County, TX	
	Harris County, TX	
	Liberty County, TX	
	Montgomery County, TX	
	San Jacinto County, TX	
	Waller County, TX	
26580	Huntington-Ashland, WV-KY-OH	0.8635
	Boyd County, KY	
	Greenup County, KY	
	Lawrence County, OH	
	Cabell County, WV	
	Wayne County, WV	
26620	Huntsville, AL	0.8667
	Limestone County, AL	
	Madison County, AL	
26820	Idaho Falls, ID	0.9114
	Bonneville County, ID	
	Jefferson County, ID	
26900	Indianapolis-Carmel, IN	0.9870
	Boone County, IN	
	Brown County, IN	
	Hamilton County, IN	
	Hancock County, IN	
	Hendricks County, IN	
	Johnson County, IN	
	Marion County, IN	
	Morgan County, IN	
	Putnam County, IN	
	Shelby County, IN	
26980	Iowa City, IA	1.0120
	Johnson County, IA	
	Washington County, IA	
27060	Ithaca, NY	0.9249
	Tompkins County, NY	
27100	Jackson, MI	0.8511
	Jackson County, MI	
27140	Jackson, MS	0.8177
	Copiah County, MS	
	Hinds County, MS	
	Madison County, MS	
	Rankin County, MS	
	Simpson County, MS	
27180	Jackson, TN	0.7672
	Chester County, TN	
	Madison County, TN	
27260	Jacksonville, FL	0.8883
	Baker County, FL	
	Clay County, FL	
	Duval County, FL	
	Nassau County, FL	
	St. Johns County, FL	
27340	Jacksonville, NC	0.7957
	Onslow County, NC	
27500	Janesville, WI	0.9458
	Rock County, WI	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
27620	Jefferson City, MO	0.8263
	Callaway County, MO	
	Cole County, MO	
	Moniteau County, MO	
	Osage County, MO	
27740	Johnson City, TN	0.7359
	Carter County, TN	
	Unicoi County, TN	
	Washington County, TN	
27780	Johnstown, PA	0.8116
	Cambria County, PA	
27860	Jonesboro, AR	0.8084
	Craighead County, AR	
	Poinsett County, AR	
27900	Joplin, MO	0.7828
	Jasper County, MO	
	Newton County, MO	
28020	Kalamazoo-Portage, MI	0.9834
	Kalamazoo County, MI	
	Van Buren County, MI	
28100	Kankakee-Bradley, IL	1.0127
	Kankakee County, IL	
28140	Kansas City, MO-KS	0.9614
	Franklin County, KS	
	Johnson County, KS	
	Leavenworth County, KS	
	Linn County, KS	
	Miami County, KS	
	Wyandotte County, KS	
	Bates County, MO	
	Caldwell County, MO	
	Cass County, MO	
	Clay County, MO	
	Clinton County, MO	
	Jackson County, MO	
	Lafayette County, MO	
	Platte County, MO	
	Ray County, MO	
28420	Kennewick-Pasco-Richland, WA	0.9708
	Benton County, WA	
	Franklin County, WA	
28660	Killeen-Temple-Fort Hood, TX	0.9102
	Bell County, TX	
	Coryell County, TX	
	Lampasas County, TX	
28700	Kingsport-Bristol-Bristol, TN-VA	0.7325
	Hawkins County, TN	
	Sullivan County, TN	
	Bristol City, VA	
	Scott County, VA	
	Washington County, VA	
28740	Kingston, NY	0.8953
	Ulster County, NY	
28940	Knoxville, TN	0.7575
	Anderson County, TN	
	Blount County, TN	
	Knox County, TN	
	Loudon County, TN	
	Union County, TN	
29020	Kokomo, IN	0.8756
	Howard County, IN	
	Tipton County, IN	
29100	La Crosse, WI-MN	1.0070
	Houston County, MN	
	La Crosse County, WI	
29140	Lafayette, IN	0.9316
	Benton County, IN	
	Carroll County, IN	
	Tippecanoe County, IN	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
29180	Lafayette, LA Lafayette Parish, LA St. Martin Parish, LA	0.8565
29340	Lake Charles, LA Calcasieu Parish, LA Cameron Parish, LA	0.7813
29404	Lake County-Kenosha County, IL-WI Lake County, IL Kenosha County, WI	1.0558
29420	Lake Havasu City-Kingman, AZ Mohave County, AZ	0.9760
29460	Lakeland-Winter Haven, FL Polk County, FL	0.8262
29540	Lancaster, PA Lancaster County, PA	0.9452
29620	Lansing-East Lansing, MI Clinton County, MI Eaton County, MI Ingham County, MI	1.0065
29700	Laredo, TX Webb County, TX	0.7486
29740	Las Cruces, NM Dona Ana County, NM	0.9044
29820	Las Vegas-Paradise, NV Clark County, NV	1.2076
29940	Lawrence, KS Douglas County, KS	0.8676
30020	Lawton, OK Comanche County, OK	0.8351
30140	Lebanon, PA Lebanon County, PA	0.7994
30300	Lewiston, ID-WA Nez Perce County, ID Asotin County, WA	0.9326
30340	Lewiston-Auburn, ME Androscoggin County, ME	0.9178
30460	Lexington-Fayette, KY Bourbon County, KY Clark County, KY Fayette County, KY Jessamine County, KY Scott County, KY Woodford County, KY	0.9023
30620	Lima, OH Allen County, OH	0.9226
30700	Lincoln, NE Lancaster County, NE Seward County, NE	0.9726
30780	Little Rock-North Little Rock-Conway, AR Faulkner County, AR Grant County, AR Lonoke County, AR Perry County, AR Pulaski County, AR Saline County, AR	0.8595
30860	Logan, UT-ID Franklin County, ID Cache County, UT	0.8456
30980	Longview, TX Gregg County, TX Rusk County, TX Upshur County, TX	0.8550
31020	Longview, WA Cowlitz County, WA	1.0081
31084	Los Angeles-Long Beach-Glendale, CA Los Angeles County, CA	1.2293

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
31140	Louisville-Jefferson County, KY-IN	0.8862
	Clark County, IN	
	Floyd County, IN	
	Harrison County, IN	
	Washington County, IN	
	Bullitt County, KY	
	Henry County, KY	
	Meade County, KY	
	Nelson County, KY	
	Oldham County, KY	
	Shelby County, KY	
	Spencer County, KY	
	Trimble County, KY	
31180	Lubbock, TX	0.8870
	Crosby County, TX	
	Lubbock County, TX	
31340	Lynchburg, VA	0.8615
	Amherst County, VA	
	Appomattox County, VA	
	Bedford County, VA	
	Campbell County, VA	
	Bedford City, VA	
	Lynchburg City, VA	
31420	Macon, GA	0.8584
	Bibb County, GA	
	Crawford County, GA	
	Jones County, GA	
	Monroe County, GA	
	Twiggs County, GA	
31460	Madera-Chowchilla, CA	0.8050
	Madera County, CA	
31540	Madison, WI	1.1264
	Columbia County, WI	
	Dane County, WI	
	Iowa County, WI	
31700	Manchester-Nashua, NH	1.0042
	Hillsborough County, NH	
31740	Manhattan, KS	0.7839
	Geary County, KS	
	Pottawatomie County, KS	
	Riley County, KS	
31860	Mankato-North Mankato, MN	0.9413
	Blue Earth County, MN	
	Nicollet County, MN	
31900	Mansfield, OH	0.8993
	Richland County, OH	
32420	Mayagüez, PR	0.3586
	Hormigueros Municipio, PR	
	Mayagüez Municipio, PR	
32580	McAllen-Edinburg-Mission, TX	0.8603
	Hidalgo County, TX	
32780	Medford, OR	1.0400
	Jackson County, OR	
32820	Memphis, TN-MS-AR	0.9049
	Crittenden County, AR	
	DeSoto County, MS	
	Marshall County, MS	
	Tate County, MS	
	Tunica County, MS	
	Fayette County, TN	
	Shelby County, TN	
	Tipton County, TN	
32900	Merced, CA	1.2996
	Merced County, CA	
33124	Miami-Miami Beach-Kendall, FL	1.0130
	Miami-Dade County, FL	
33140	Michigan City-La Porte, IN	0.9694
	LaPorte County, IN	
33260	Midland, TX	1.0640
	Midland County, TX	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
33340	Milwaukee-Waukesha-West Allis, WI	0.9931
	Milwaukee County, WI	
	Ozaukee County, WI	
	Washington County, WI	
	Waukesha County, WI	
33460	Minneapolis-St. Paul-Bloomington, MN-WI	1.1336
	Anoka County, MN	
	Carver County, MN	
	Chisago County, MN	
	Dakota County, MN	
	Hennepin County, MN	
	Isanti County, MN	
	Ramsey County, MN	
	Scott County, MN	
	Sherburne County, MN	
	Washington County, MN	
	Wright County, MN	
	Pierce County, WI	
	St. Croix County, WI	
33540	Missoula, MT	0.9001
	Missoula County, MT	
33660	Mobile, AL	0.7467
	Mobile County, AL	
33700	Modesto, CA	1.2841
	Stanislaus County, CA	
33740	Monroe, LA	0.7717
	Ouachita Parish, LA	
	Union Parish, LA	
33780	Monroe, MI	0.8472
	Monroe County, MI	
33860	Montgomery, AL	0.7858
	Autauga County, AL	
	Elmore County, AL	
	Lowndes County, AL	
	Montgomery County, AL	
34060	Morgantown, WV	0.8284
	Monongalia County, WV	
	Preston County, WV	
34100	Morristown, TN	0.6768
	Grainger County, TN	
	Hamblen County, TN	
	Jefferson County, TN	
34580	Mount Vernon-Anacortes, WA	1.0340
	Skagit County, WA	
34620	Muncie, IN	0.8734
	Delaware County, IN	
34740	Muskegon-Norton Shores, MI	1.1007
	Muskegon County, MI	
34820	Myrtle Beach-North Myrtle Beach-Conway, SC	0.8717
	Horry County, SC	
34900	Napa, CA	1.6045
	Napa County, CA	
34940	Naples-Marco Island, FL	0.9265
	Collier County, FL	
34980	Nashville-Davidson—Murfreesboro-Franklin, TN	0.9061
	Cannon County, TN	
	Cheatham County, TN	
	Davidson County, TN	
	Dickson County, TN	
	Hickman County, TN	
	Macon County, TN	
	Robertson County, TN	
	Rutherford County, TN	
	Smith County, TN	
	Sumner County, TN	
	Trousdale County, TN	
	Williamson County, TN	
	Wilson County, TN	
35004	Nassau-Suffolk, NY	1.2698
	Nassau County, NY	
	Suffolk County, NY	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
35084	Newark-Union, NJ-PA	1.1223
	Essex County, NJ	
	Hunterdon County, NJ	
	Morris County, NJ	
	Sussex County, NJ	
	Union County, NJ	
	Pike County, PA	
35300	New Haven-Milford, CT	1.2061
	New Haven County, CT	
35380	New Orleans-Metairie-Kenner, LA	0.8932
	Jefferson Parish, LA	
	Orleans Parish, LA	
	Plaquemines Parish, LA	
	St. Bernard Parish, LA	
	St. Charles Parish, LA	
	St. John the Baptist Parish, LA	
	St. Tammany Parish, LA	
35644	New York-White Plains-Wayne, NY-NJ	1.2914
	Bergen County, NJ	
	Hudson County, NJ	
	Passaic County, NJ	
	Bronx County, NY	
	Kings County, NY	
	New York County, NY	
	Putnam County, NY	
	Queens County, NY	
	Richmond County, NY	
	Rockland County, NY	
	Westchester County, NY	
35660	Niles-Benton Harbor, MI	0.8237
	Berrien County, MI	
35840	North Port-Bradenton-Sarasota-Venice, FL	0.9375
	Manatee County, FL	
	Sarasota County, FL	
35980	Norwich-New London, CT	1.1376
	New London County, CT	
36084	Oakland-Fremont-Hayward, CA	1.6654
	Alameda County, CA	
	Contra Costa County, CA	
36100	Ocala, FL	0.8455
	Marion County, FL	
36140	Ocean City, NJ	1.0307
	Cape May County, NJ	
36220	Odessa, TX	0.9741
	Ector County, TX	
36260	Ogden-Clearfield, UT	0.9031
	Davis County, UT	
	Morgan County, UT	
	Weber County, UT	
36420	Oklahoma City, OK	0.8810
	Canadian County, OK	
	Cleveland County, OK	
	Grady County, OK	
	Lincoln County, OK	
	Logan County, OK	
	McClain County, OK	
	Oklahoma County, OK	
36500	Olympia, WA	1.1397
	Thurston County, WA	
36540	Omaha-Council Bluffs, NE-IA	1.0037
	Harrison County, IA	
	Mills County, IA	
	Pottawattamie County, IA	
	Cass County, NE	
	Douglas County, NE	
	Sarpy County, NE	
	Saunders County, NE	
	Washington County, NE	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
36740	Orlando-Kissimmee, FL	0.9082
	Lake County, FL	
	Orange County, FL	
	Osceola County, FL	
	Seminole County, FL	
36780	Oshkosh-Neenah, WI	0.9433
	Winnebago County, WI	
36980	Owensboro, KY	0.8117
	Daviess County, KY	
	Hancock County, KY	
	McLean County, KY	
37100	Oxnard-Thousand Oaks-Ventura, CA	1.3079
	Ventura County, CA	
37340	Palm Bay-Melbourne-Titusville, FL	0.8838
	Brevard County, FL	
37380	Palm Coast, FL	0.9880
	Flagler County, FL	
37460	Panama City-Lynn Haven-Panama City Beach, FL	0.7976
	Bay County, FL	
37620	Parkersburg-Marietta-Vienna, WV-OH	0.7487
	Washington County, OH	
	Pleasants County, WV	
	Wirt County, WV	
	Wood County, WV	
37700	Pascagoula, MS	0.7662
	George County, MS	
	Jackson County, MS	
37764	Peabody, MA	1.0551
	Essex County, MA	
37860	Pensacola-Ferry Pass-Brent, FL	0.7819
	Escambia County, FL	
	Santa Rosa County, FL	
37900	Peoria, IL	0.8882
	Marshall County, IL	
	Peoria County, IL	
	Stark County, IL	
	Tazewell County, IL	
	Woodford County, IL	
37964	Philadelphia, PA	1.0806
	Bucks County, PA	
	Chester County, PA	
	Delaware County, PA	
	Montgomery County, PA	
	Philadelphia County, PA	
38060	Phoenix-Mesa-Scottsdale, AZ	1.0477
	Maricopa County, AZ	
	Pinal County, AZ	
38220	Pine Bluff, AR	0.7847
	Cleveland County, AR	
	Jefferson County, AR	
	Lincoln County, AR	
38300	Pittsburgh, PA	0.8585
	Allegheny County, PA	
	Armstrong County, PA	
	Beaver County, PA	
	Butler County, PA	
	Fayette County, PA	
	Washington County, PA	
	Westmoreland County, PA	
38340	Pittsfield, MA	1.0721
	Berkshire County, MA	
38540	Pocatello, ID	0.9555
	Bannock County, ID	
	Power County, ID	
38660	Ponce, PR	0.4314
	Juana Díaz Municipio, PR	
	Ponce Municipio, PR	
	Villalba Municipio, PR	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
38860	Portland-South Portland-Biddeford, ME	0.9975
	Cumberland County, ME	
	Sagadahoc County, ME	
	York County, ME	
38900	Portland-Vancouver-Beaverton, OR-WA	1.1673
	Clackamas County, OR	
	Columbia County, OR	
	Multnomah County, OR	
	Washington County, OR	
	Yamhill County, OR	
	Clark County, WA	
	Skamania County, WA	
38940	Port St. Lucie, FL	0.9577
	Martin County, FL	
	St. Lucie County, FL	
39100	Poughkeepsie-Newburgh-Middletown, NY	1.1325
	Dutchess County, NY	
	Orange County, NY	
39140	Prescott, AZ	1.2009
	Yavapai County, AZ	
39300	Providence-New Bedford-Fall River, RI-MA	1.0699
	Bristol County, MA	
	Bristol County, RI	
	Kent County, RI	
	Newport County, RI	
	Providence County, RI	
	Washington County, RI	
39340	Provo-Orem, UT	0.9133
	Juab County, UT	
	Utah County, UT	
39380	Pueblo, CO	0.8518
	Pueblo County, CO	
39460	Punta Gorda, FL	0.8590
	Charlotte County, FL	
39540	Racine, WI	0.9158
	Racine County, WI	
39580	Raleigh-Cary, NC	0.9488
	Franklin County, NC	
	Johnston County, NC	
	Wake County, NC	
39660	Rapid City, SD	0.9823
	Meade County, SD	
	Pennington County, SD	
39740	Reading, PA	0.9072
	Berks County, PA	
39820	Redding, CA	1.4555
	Shasta County, CA	
39900	Reno-Sparks, NV	1.0328
	Storey County, NV	
	Washoe County, NV	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
40060	Richmond, VA	0.9695
	Amelia County, VA	
	Caroline County, VA	
	Charles City County, VA	
	Chesterfield County, VA	
	Cumberland County, VA	
	Dinwiddie County, VA	
	Goochland County, VA	
	Hanover County, VA	
	Henrico County, VA	
	King and Queen County, VA	
	King William County, VA	
	Louisa County, VA	
	New Kent County, VA	
	Powhatan County, VA	
	Prince George County, VA	
	Sussex County, VA	
	Colonial Heights City, VA	
	Hopewell City, VA	
	Petersburg City, VA	
	Richmond City, VA	
40140	Riverside-San Bernardino-Ontario, CA	1.1396
	Riverside County, CA	
	San Bernardino County, CA	
40220	Roanoke, VA	0.9088
	Botetourt County, VA	
	Craig County, VA	
	Franklin County, VA	
	Roanoke County, VA	
	Roanoke City, VA	
	Salem City, VA	
40340	Rochester, MN	1.0708
	Dodge County, MN	
	Olmsted County, MN	
	Wabasha County, MN	
40380	Rochester, NY	0.8704
	Livingston County, NY	
	Monroe County, NY	
	Ontario County, NY	
	Orleans County, NY	
	Wayne County, NY	
40420	Rockford, IL	0.9935
	Boone County, IL	
	Winnebago County, IL	
40484	Rockingham County-Strafford County, NH	1.0234
	Rockingham County, NH	
	Strafford County, NH	
40580	Rocky Mount, NC	0.8898
	Edgecombe County, NC	
	Nash County, NC	
40660	Rome, GA	0.8844
	Floyd County, GA	
40900	Sacramento-Arden-Arcade-Roseville, CA	1.4752
	El Dorado County, CA	
	Placer County, CA	
	Sacramento County, CA	
	Yolo County, CA	
40980	Saginaw-Saginaw Township North, MI	0.8820
	Saginaw County, MI	
41060	St. Cloud, MN	1.1010
	Benton County, MN	
	Stearns County, MN	
41100	St. George, UT	0.8870
	Washington County, UT	
41140	St. Joseph, MO-KS	0.9856
	Doniphan County, KS	
	Andrew County, MO	
	Buchanan County, MO	
	DeKalb County, MO	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
41180	St. Louis, MO-IL	0.9420
	Bond County, IL	
	Calhoun County, IL	
	Clinton County, IL	
	Jersey County, IL	
	Macoupin County, IL	
	Madison County, IL	
	Monroe County, IL	
	St. Clair County, IL	
	Crawford County, MO	
	Franklin County, MO	
	Jefferson County, MO	
	Lincoln County, MO	
	St. Charles County, MO	
	St. Louis County, MO	
	Warren County, MO	
	Washington County, MO	
	St. Louis City, MO	
41420	Salem, OR	1.1069
	Marion County, OR	
	Polk County, OR	
41500	Salinas, CA	1.6074
	Monterey County, CA	
41540	Salisbury, MD	0.9260
	Somerset County, MD	
	Wicomico County, MD	
41620	Salt Lake City, UT	0.9063
	Salt Lake County, UT	
	Summit County, UT	
	Tooele County, UT	
41660	San Angelo, TX	0.8221
	Irion County, TX	
	Tom Green County, TX	
41700	San Antonio, TX	0.8936
	Atascosa County, TX	
	Bandera County, TX	
	Bexar County, TX	
	Comal County, TX	
	Guadalupe County, TX	
	Kendall County, TX	
	Medina County, TX	
	Wilson County, TX	
41740	San Diego-Carlsbad-San Marcos, CA	1.1922
	San Diego County, CA	
41780	Sandusky, OH	0.8347
	Erie County, OH	
41884	San Francisco-San Mateo-Redwood City, CA	1.6327
	Marin County, CA	
	San Francisco County, CA	
	San Mateo County, CA	
41900	San Germán-Cabo Rojo, PR	0.4804
	Cabo Rojo Municipio, PR	
	Lajas Municipio, PR	
	Sabana Grande Municipio, PR	
	San Germán Municipio, PR	
41940	San Jose-Sunnyvale-Santa Clara, CA	1.7396
	San Benito County, CA	
	Santa Clara County, CA	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
41980	San Juan-Caguas-Guaynabo, PR	0.4318
	Aguas Buenas Municipio, PR	
	Aibonito Municipio, PR	
	Arecibo Municipio, PR	
	Barceloneta Municipio, PR	
	Barranquitas Municipio, PR	
	Bayamón Municipio, PR	
	Caguas Municipio, PR	
	Camuy Municipio, PR	
	Canóvanas Municipio, PR	
	Carolina Municipio, PR	
	Cataño Municipio, PR	
	Cayey Municipio, PR	
	Ciales Municipio, PR	
	Cidra Municipio, PR	
	Comerío Municipio, PR	
	Corozal Municipio, PR	
	Dorado Municipio, PR	
	Florida Municipio, PR	
	Guaynabo Municipio, PR	
	Gurabo Municipio, PR	
	Hatillo Municipio, PR	
	Humacao Municipio, PR	
	Juncos Municipio, PR	
	Las Piedras Municipio, PR	
	Loíza Municipio, PR	
	Manatí Municipio, PR	
	Maunabo Municipio, PR	
	Morovis Municipio, PR	
	Naguabo Municipio, PR	
	Naranjito Municipio, PR	
	Orocovis Municipio, PR	
	Quebradillas Municipio, PR	
	Río Grande Municipio, PR	
	San Juan Municipio, PR	
	San Lorenzo Municipio, PR	
	Toa Alta Municipio, PR	
	Toa Baja Municipio, PR	
	Trujillo Alto Municipio, PR	
	Vega Alta Municipio, PR	
	Vega Baja Municipio, PR	
	Yabucoa Municipio, PR	
42020	San Luis Obispo-Paso Robles, CA	1.3081
	San Luis Obispo County, CA	
42044	Santa Ana-Anaheim-Irvine, CA	1.2038
	Orange County, CA	
42060	Santa Barbara-Santa Maria-Goleta, CA	1.2670
	Santa Barbara County, CA	
42100	Santa Cruz-Watsonville, CA	1.8062
	Santa Cruz County, CA	
42140	Santa Fe, NM	1.0400
	Santa Fe County, NM	
42220	Santa Rosa-Petaluma, CA	1.6440
	Sonoma County, CA	
42340	Savannah, GA	0.8968
	Bryan County, GA	
	Chatham County, GA	
	Effingham County, GA	
42540	Scranton—Wilkes-Barre, PA	0.8260
	Lackawanna County, PA	
	Luzerne County, PA	
	Wyoming County, PA	
42644	Seattle-Bellevue-Everett, WA	1.1771
	King County, WA	
	Snohomish County, WA	
42680	Sebastian-Vero Beach, FL	0.8850
	Indian River County, FL	
43100	Sheboygan, WI	0.9515
	Sheboygan County, WI	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
43300	Sherman-Denison, TX	0.8544
	Grayson County, TX	
43340	Shreveport-Bossier City, LA	0.8412
	Bossier Parish, LA	
	Caddo Parish, LA	
	De Soto Parish, LA	
43580	Sioux City, IA-NE-SD	0.9010
	Woodbury County, IA	
	Dakota County, NE	
	Dixon County, NE	
	Union County, SD	
43620	Sioux Falls, SD	0.8338
	Lincoln County, SD	
	McCook County, SD	
	Minnehaha County, SD	
	Turner County, SD	
43780	South Bend-Mishawaka, IN-MI	0.9531
	St. Joseph County, IN	
	Cass County, MI	
43900	Spartanburg, SC	0.9186
	Spartanburg County, SC	
44060	Spokane, WA	1.0824
	Spokane County, WA	
44100	Springfield, IL	0.9179
	Menard County, IL	
	Sangamon County, IL	
44140	Springfield, MA	1.0377
	Franklin County, MA	
	Hampden County, MA	
	Hampshire County, MA	
44180	Springfield, MO	0.8581
	Christian County, MO	
	Dallas County, MO	
	Greene County, MO	
	Polk County, MO	
	Webster County, MO	
44220	Springfield, OH	0.9236
	Clark County, OH	
44300	State College, PA	0.9510
	Centre County, PA	
44600	Steubenville-Weirton, OH-WV	0.7640
	Jefferson County, OH	
	Brooke County, WV	
	Hancock County, WV	
44700	Stockton, CA	1.3356
	San Joaquin County, CA	
44940	Sumter, SC	0.7454
	Sumter County, SC	
45060	Syracuse, NY	0.9829
	Madison County, NY	
	Onondaga County, NY	
	Oswego County, NY	
45104	Tacoma, WA	1.1741
	Pierce County, WA	
45220	Tallahassee, FL	0.8521
	Gadsden County, FL	
	Jefferson County, FL	
	Leon County, FL	
	Wakulla County, FL	
45300	Tampa-St. Petersburg-Clearwater, FL	0.9032
	Hernando County, FL	
	Hillsborough County, FL	
	Pasco County, FL	
	Pinellas County, FL	
45460	Terre Haute, IN	0.9113
	Clay County, IN	
	Sullivan County, IN	
	Vermillion County, IN	
	Vigo County, IN	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
45500	Texarkana, TX-Texarkana, AR	0.7967
	Miller County, AR	
	Bowie County, TX	
45780	Toledo, OH	0.9034
	Fulton County, OH	
	Lucas County, OH	
	Ottawa County, OH	
	Wood County, OH	
45820	Topeka, KS	0.8969
	Jackson County, KS	
	Jefferson County, KS	
	Osage County, KS	
	Shawnee County, KS	
	Wabaunsee County, KS	
45940	Trenton-Ewing, NJ	1.0360
	Mercer County, NJ	
46060	Tucson, AZ	0.9065
	Pima County, AZ	
46140	Tulsa, OK	0.8139
	Creek County, OK	
	Okmulgee County, OK	
	Osage County, OK	
	Pawnee County, OK	
	Rogers County, OK	
	Tulsa County, OK	
	Wagoner County, OK	
46220	Tuscaloosa, AL	0.8533
	Greene County, AL	
	Hale County, AL	
	Tuscaloosa County, AL	
46340	Tyler, TX	0.8361
	Smith County, TX	
46540	Utica-Rome, NY	0.8653
	Herkimer County, NY	
	Oneida County, NY	
46660	Valdosta, GA	0.7918
	Brooks County, GA	
	Echols County, GA	
	Lanier County, GA	
	Lowndes County, GA	
46700	Vallejo-Fairfield, CA	1.5844
	Solano County, CA	
47020	Victoria, TX	0.8992
	Calhoun County, TX	
	Goliad County, TX	
	Victoria County, TX	
47220	Vineland-Millville-Bridgeton, NJ	1.0596
	Cumberland County, NJ	
47260	Virginia Beach-Norfolk-Newport News, VA-NC	0.9208
	Currituck County, NC	
	Gloucester County, VA	
	Isle of Wight County, VA	
	James City County, VA	
	Mathews County, VA	
	Surry County, VA	
	York County, VA	
	Chesapeake City, VA	
	Hampton City, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City, VA	
	Williamsburg City, VA	
47300	Visalia-Porterville, CA	1.0349
	Tulare County, CA	
47380	Waco, TX	0.8458
	McLennan County, TX	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
47580	Warner Robins, GA	0.8197
	Houston County, GA	
47644	Warren-Troy-Farmington Hills, MI	0.9543
	Lapeer County, MI	
	Livingston County, MI	
	Macomb County, MI	
	Oakland County, MI	
	St. Clair County, MI	
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	1.0659
	District of Columbia, DC	
	Calvert County, MD	
	Charles County, MD	
	Prince George's County, MD	
	Arlington County, VA	
	Clarke County, VA	
	Fairfax County, VA	
	Fauquier County, VA	
	Loudoun County, VA	
	Prince William County, VA	
	Spotsylvania County, VA	
	Stafford County, VA	
	Warren County, VA	
	Alexandria City, VA	
	Fairfax City, VA	
	Falls Church City, VA	
	Fredericksburg City, VA	
	Manassas City, VA	
	Manassas Park City, VA	
	Jefferson County, WV	
47940	Waterloo-Cedar Falls, IA	0.8422
	Black Hawk County, IA	
	Bremer County, IA	
	Grundy County, IA	
48140	Wausau, WI	0.8921
	Marathon County, WI	
48300	Wenatchee-East Wenatchee, WA	1.0037
	Chelan County, WA	
	Douglas County, WA	
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	0.9661
	Palm Beach County, FL	
48540	Wheeling, WV-OH	0.6863
	Belmont County, OH	
	Marshall County, WV	
	Ohio County, WV	
48620	Wichita, KS	0.8681
	Butler County, KS	
	Harvey County, KS	
	Sedgwick County, KS	
	Sumner County, KS	
48660	Wichita Falls, TX	0.9048
	Archer County, TX	
	Clay County, TX	
	Wichita County, TX	
48700	Williamsport, PA	0.8230
	Lycoming County, PA	
48864	Wilmington, DE-MD-NJ	1.0687
	New Castle County, DE	
	Cecil County, MD	
	Salem County, NJ	
48900	Wilmington, NC	0.9155
	Brunswick County, NC	
	New Hanover County, NC	
	Pender County, NC	
49020	Winchester, VA-WV	0.9249
	Frederick County, VA	
	Winchester City, VA	
	Hampshire County, WV	

TABLE A—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
49180	Winston-Salem, NC	0.8660
	Davie County, NC	
	Forsyth County, NC	
	Stokes County, NC	
	Yadkin County, NC	
49340	Worcester, MA	1.1205
	Worcester County, MA	
49420	Yakima, WA	1.0097
	Yakima County, WA	
49500	Yauco, PR	0.4059
	Guánica Municipio, PR	
	Guayanilla Municipio, PR	
	Peñuelas Municipio, PR	
	Yauco Municipio, PR	
49620	York-Hanover, PA	0.9557
	York County, PA	
49660	Youngstown-Warren-Boardman, OH-PA	0.8283
	Mahoning County, OH	
	Trumbull County, OH	
	Mercer County, PA	
49700	Yuba City, CA [1]	1.2004
	Sutter County, CA	
	Yuba County, CA	
49740	Yuma, AZ	0.9517
	Yuma County, AZ	

[1] At this time, there are no hospitals located in this urban area on which to base a wage index.

TABLE B—FY 2013 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS

State code	Nonurban area	Wage index
1	Alabama	0.7121
2	Alaska	1.2807
3	Arizona	0.9182
4	Arkansas	0.7350
5	California	1.2567
6	Colorado	1.0208
7	Connecticut	1.1128
8	Delaware	1.0171
10	Florida	0.8062
11	Georgia	0.7421
12	Hawaii	1.0728
13	Idaho	0.7583
14	Illinois	0.8438
15	Indiana	0.8472
16	Iowa	0.8351
17	Kansas	0.7997
18	Kentucky	0.7877
19	Louisiana	0.7718
20	Maine	0.8300
21	Maryland	0.8797
22	Massachusetts	1.3540
23	Michigan	0.8387

TABLE B—FY 2013 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS—Continued

State code	Nonurban area	Wage index
24	Minnesota	0.9053
25	Mississippi	0.7537
26	Missouri	0.7622
27	Montana	0.8600
28	Nebraska	0.8733
29	Nevada	0.9739
30	New Hampshire	1.0372
31	New Jersey [1]	
32	New Mexico	0.8879
33	New York	0.8199
34	North Carolina	0.8271
35	North Dakota	0.6891
36	Ohio	0.8470
37	Oklahoma	0.7783
38	Oregon	0.9500
39	Pennsylvania	0.8380
40	Puerto Rico [1]	0.4047
41	Rhode Island [1]	
42	South Carolina	0.8338
43	South Dakota	0.8124
44	Tennessee	0.7559

TABLE B—FY 2013 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS—Continued

State code	Nonurban area	Wage index
45	Texas	0.7978
46	Utah	0.8516
47	Vermont	0.9725
48	Virgin Islands	0.7185
49	Virginia	0.7728
50	Washington	1.0092
51	West Virginia	0.7333
52	Wisconsin	0.9142
53	Wyoming	0.9238
65	Guam	0.9611

[1] All counties within the State are classified as urban, with the exception of Puerto Rico. Puerto Rico has areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2013. The Puerto Rico wage index is the same as FY 2012.

[FR Doc. 2012–18719 Filed 7–27–12; 4:15 pm]

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