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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

5 CFR Part 7501

[Docket No. FR–5542–F–02]

RIN 2501–AD55

Supplemental Standards of Ethical Conduct for Employees of the Department of Housing and Urban Development

AGENCY: Office of the Secretary, Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: The Department of Housing and Urban Development (HUD), with the concurrence of the Office of Government Ethics (OGE), is finalizing the proposed rule to amend its existing Supplemental Standards of Ethical Conduct, which are regulations for HUD officers and employees that supplement OGE's Standards of Ethical Conduct for Employees of the Executive Branch (Standards). To ensure a comprehensive and effective ethics program at HUD, and to address ethical issues unique to HUD, this final rule reflects statutory changes that were enacted subsequent to the codification of HUD's Supplemental Standards of Conduct regulation in 1996. Significantly, this final rule reflects the transfer of general regulatory authority over the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation from HUD to the Federal Housing Finance Agency (FHFA). This final rule also revises definitions used in HUD's Supplemental Standards of Conduct to reflect updated titles and positions and clarifies existing prohibitions on certain financial interests and outside employment to better guide employee conduct, while upholding the integrity of HUD in the administration of its programs. Finally, this final rule more clearly describes the role and responsibility of the HUD Office of Inspector General in the agency's ethics program. This rule follows publication of a March 14, 2012, proposed rule and considers public comment on the proposed rule, but makes no changes at this final rule stage.

DATES: *Effective Date:* September 5, 2012.

FOR FURTHER INFORMATION CONTACT: Robert H. Golden, Assistant General Counsel, Ethics Law Division, telephone number 202–402–6334, or Peter J. Constantine, Associate General Counsel for Ethics and Personnel Law, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone number 202–402–2377. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On March 14, 2012 (77 FR 14977, republished on March 22, 2012, at 77 FR 16761), HUD, with OGE's concurrence, published for comment a proposed rule to amend its Supplemental Standards of Ethical Conduct for Employees of the Department of Housing and Urban Development (Supplemental Standards of Conduct), codified at 5 CFR part 7501. The HUD Supplemental Standards of Conduct supplement OGE's government-wide Standards of Ethical Conduct for Employees of the Executive Branch (Standards), codified at 5 CFR part 2635, and addresses ethical issues unique to HUD officers and employees. HUD published its March 14, 2012, proposed rule to strengthen the integrity of the Department in the operation and administration of its program by ensuring that its ethics program reflected significant statutory changes to HUD's programs and operations enacted subsequent to the codification of its current Supplemental Standards of Conduct in 1996.

In this regard, one significant statutory change to HUD programs and operations was made by the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110–289, approved July 30, 2008). HERA transferred regulatory authority over the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively referred to as the Government Sponsored Enterprises, or GSEs) from HUD to the Federal Housing Finance Agency (FHFA). Based on this transfer of regulatory authority, HUD proposed removing provisions of its Supplemental Standards of Conduct that prohibit all HUD employees from owning certain financial interests issued by the GSEs. In addition, HUD proposed removing § 7501.106 entitled, ''Additional rules for certain Department employees involved in the regulation or oversight of Government sponsored enterprises,'' which prohibits employees whose duties involve the regulation or oversight of the GSEs from, among other things, owning financial interests in certain mortgage institutions and from performing any work, either compensated or uncompensated, for or on behalf of a mortgage institution. The removal of these sections was based on HUD's determination that they were no longer necessary to ensuring the impartiality and integrity in the administration of HUD's programs.

In addition, the proposed rule revised definitions used in HUD's Supplemental Standards of Conduct to reflect updated titles and positions and clarify existing prohibitions on certain financial interests and outside employment to better guide employee conduct, while upholding the integrity of HUD in the administration of its programs. The rule also proposed to add a new § 7501.106 to clarify the authority of the HUD Office of Inspector General (OIG) in the agency's ethics program and establishes it as a separate component as provided by 5 CFR 2635.203(a).

II. Public Comment on the Proposed Rule

By the close of the public comment period on May 14, 2012, HUD received one public comment on the proposed rule. The commenter, a member of the public, expressed a concern regarding the removal of § 7501.106, the provision that prohibits covered HUD employees from owning financial interests in or engaging in outside employment or certain other dealings with mortgage companies doing business with HUD. The commenter stated that such employees are in positions to possess insider information concerning the dealings of these companies and that the

removal of the ethics provision against dealings and ownership creates a circumstance where personal interests can easily cloud regulatory judgment. The commenter also stated that the removal of § 7501.106 opens the risk that these HUD employees could be charged with insider trading, creating a preventable public relations situation that would drain already strained budgets.

HUD appreciates the commenter's insightful consideration of its proposed rule. HUD has considered the comment but has decided, however, not to accept the comment or change the proposal to remove § 7501.106. As discussed in the proposed rule preceding the codification of § 7501.106 (60 FR 34420, July 30, 1995), the need for the provision resulted from the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501, *et seq.*) (FHEFSSA), which significantly expanded HUD's authority to regulate Fannie Mae and Freddie Mac. Specifically, FHEFSSA provided broad regulatory authority to a newly established Office of Federal Housing Enterprise Oversight within HUD to ensure the financial safety and soundness of the GSEs. Based on this authority, § 7501.106 was designed to protect against potential conflicts of interest and the appearance of conflicts of interest for HUD employees whose official duties involved the oversight or regulation of the GSEs, by prohibiting these employees from acquiring or obtaining the financial interests of certain mortgage institutions that conducted business with, or relied upon the GSEs. As stated in HUD's March 14, 2012, proposed rule, Title I of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, approved July 30, 2008) amended FHEFSSA to transfer regulatory authority over the GSEs from HUD to FHFA. As a result, HUD believes that the continued need for § 7501.106, as well as the general prohibition on directly receiving, acquiring, or owning securities issued by the GSEs, no longer exists.

While the purpose of § 7501.106 related to HUD's regulatory authority over the GSEs, other ethical requirements protect against the commenter's broader point regarding insider trading and insider information as it relates to mortgage companies with which a HUD employee may work. These requirements include 18 U.S.C. 208, a federal criminal statute, which prohibits employees from participating personally and substantially in any particular matters that will have a direct and predictable effect on the employee's financial interests, and 5 CFR 2635.502, which provides that an employee should not participate in a particular matter when the employee or the agency designee determines that the circumstances may cause a reasonable person with knowledge of the relevant facts to question his or her impartiality in the matter. Additionally, the Supplemental Standards of Conduct at § 7501.105 specifically prohibit HUD employees from outside employment with businesses related to real estate, which includes mortgage companies. Finally, the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) (Pub. L. 112–105) also prohibits certain executive branch employees in senior positions from purchasing securities that are the subject of an initial public offering in any manner other than is available to members of the public generally. HUD believes that these provisions are sufficient to ensure the integrity of HUD in the operation and administration of its programs.

III. Final Rule

At this final rule stage, HUD adopts the March 14, 2012, proposed rule without change. Significantly, HUD is removing provisions from its Supplemental Standards of Conduct that prohibit all HUD employees from owning certain financial interests issued by the GSEs. In addition, HUD is removing § 7501.106 entitled, ''Additional rules for certain Department employees involved in the regulation or oversight of Government sponsored enterprises.'' HUD's action is based on its determination that these provisions are no longer necessary to ensure public confidence in the impartiality and objectivity with which HUD programs are administered.

IV. Analysis of the Regulation

The following is a section-by-section overview of the significant amendments made by this final rule. Members of the public are invited to review the preamble to HUD's March 14, 2012, proposed rule for a fuller discussion of the revisions made by this final rule.

Section 7501.102 Definitions

Section 7501.102 updates and clarifies key terms used in the Supplemental Standard of Conduct. Specifically, the definitions of ''Agency designee'' and ''Designated Agency Ethics Official (DAEO)'' are revised to reflect updated office names and titles within the current HUD organization. Additionally, the reference to the Inspector General (IG) is removed from the definition of ''agency designee'' in favor of adding definitions for ''Bureau,'' ''Bureau Ethics Counselor,'' and ''Deputy Bureau Ethics Counselor.'' ''Bureau'' is defined to mean the Office of the Inspector General (OIG). ''Bureau Ethics Counselor'' and ''Deputy Bureau Ethics Counselor'' are defined to mean, respectively, the General Counsel for OIG and the OIG employees to whom the OIG General Counsel delegates responsibility to make determinations, issue explanatory guidance, or establish procedures necessary to implement this part, subpart I of 5 CFR 2634, and 5 CFR part 2635 for Bureau employees. The definition of ''employment'' is also revised to provide that employment includes uncompensated activity, such as volunteer work for others while off-duty.

Section 7501.103 Waivers

Section 7501.103 is revised to codify HUD practice that a waiver request must be in writing, and to guide employees on what should be included in a waiver request. It also confirms HUD practice that hardship and other exigent circumstances are legitimate reasons for a waiver request, and such a request will be considered in light of HUD's need to ensure public confidence in the impartiality and objectivity with which HUD programs are administered. This section also delegates authority to the Bureau Ethics Counselor to waive provisions of this part.

Section 7501.104 Prohibited Financial Interests

This final rule removes from § 7501.104(a) the reference to covered employees. This reflects HUD's decision to remove § 7501.106, which provided rules for employees involved in the regulation or oversight of GSEs. Section 7501.104(a) is also revised by removing provisions prohibiting HUD employees from receiving, acquiring, or owning securities issued by Fannie Mae or Freddie Mac and securities collateralized by Fannie Mae or Freddie Mac. HUD has determined that these prohibitions are no longer necessary based on the transfer of regulatory authority from HUD under HERA.

This final rule revises § 7501.104(a)(2), the provision prohibiting employees, their spouses, and minor children from holding stock or another financial interest ''in a multifamily project or single family dwelling, cooperative unit, or condominium unit'' that is owned or subsidized by the Department, by removing that term and replacing it with the term ''project.'' The final rule also removes the term ''stock or other financial interest,'' substitutes the term ''financial interest,'' and references

OGE's regulations at 5 CFR 2635.403(c) for a complete definition of the term ''financial interest,'' including examples. These changes provide clarity to the prohibition and will continue to prohibit HUD employees from holding ownership interests in all HUD-subsidized or -insured projects that exist or may come to exist in the future.

Section 7501.104(a)(3) continues to permit HUD employees to receive, on behalf of a tenant, a Section 8 subsidy under certain conditions. A new exception permits all new HUD employees who already have a tenant receiving Section 8 subsidies to retain that tenant until the tenant terminates his or her lease. In addition, § 7501.104(a)(3)(i)(E) adds a new exception that permits HUD employees to receive a Section 8 subsidy for the rental of properties located in areas of Presidentially declared emergency or natural disaster with prior written approval from an agency designee.

Section 7501.104(b) provides exceptions to § 7501.104(a). This final rule expands the exceptions by removing a prohibition on owning investment funds that concentrate in residential mortgages or mortgage-backed securities. HUD has determined that this prohibition is no longer needed in light of the fact that HUD no longer has regulatory authority over Fannie Mae and Freddie Mac.

This final rule continues to permit HUD employee to own homes financed with mortgages insured under programs of the Federal Housing Administration (FHA), and continues to permit the purchase by HUD employees of HUD-owned homes. The provisions permitting HUD employees to own or acquire these assets are established as exceptions to § 7501.104(a) at §§ 7501.104(b)(2) and (b)(3), respectively. In both sections, this final rule provides that employees must adhere to the procedures established by the Assistant Secretary for Housing–FHA Commissioner in order to obtain FHA insurance or to purchase a HUD-held property.

Section 7501.104(b)(4) provides that the employment compensation and benefits package for an employee's spouse is not a prohibited financial interest even if the employee's spouse is employed by an entity that has interests in HUD projects prohibited under § 7501.104(a)(2). Finally, § 7501.104(b)(5) continues to permit employees, or their spouses or minor children, to hold Government National Mortgage Association (GNMA) securities.

Section 7501.105 Outside Activities

Section 7501.105 governs the outside activities of HUD employees. HUD has determined that maintaining the policy against employment in businesses related to real estate or manufactured housing is necessary to protect against questions regarding the impartiality and objectivity of employees in the administration of HUD programs. Allowing such activity would hinder HUD in meeting its missions if members of the public question whether HUD employees are using their public positions or HUD connections to advance their outside real estate-related employment. To clarify the intent of this prohibition and support its consistent application, this final rule amends § 7501.105(a)(1) by removing the phrase ''involving active participation'' with a real estate-related business. Additionally, this final rule separates the prohibition against the ownership activities of operating and managing a real estate-related business involving investment properties from the employment prohibition by adding § 7501.105(a)(2), which prohibits the operation or management of investment properties to the extent that doing so rises to the level of a real estate business. To make the prohibition more transparent, HUD is also codifying longstanding policy by listing several factors that it uses to consider whether the employee's actions of operating or managing investment properties rise to the level of a real estate business that falls within the prohibition. These changes do not change the application of the prohibition.

This final rule also removes the specific restriction on employees having outside positions with Fannie Mae and Freddie Mac. As previously discussed, HUD no longer has general regulatory authority over Fannie Mae and Freddie Mac. HUD employees, under § 7501.105(a)(1), continue to be prohibited from employment with a business related to real estate. This prohibition also covers employment with Fannie Mae and Freddie Mac.

This final rule adds § 7501.105(b)(2), which codifies HUD's longstanding policy that employees with a real estate agent's license may continue to hold such license. An employee may only use his or her license in relation to purchasing or selling a single-family property for use as the employee's primary residence, or for the primary residence of an immediate family of the employee. Employees seeking to use their real estate license for this purpose, however, must obtain the prior written approval of an agency ethics official. Section 7501.105(c) is revised to add the requirement for prior written approval from an agency ethics official for employees seeking to use their real estate license for this purpose.

Section 7501.105(c)(1) requires an employee to receive written approval prior to accepting a position of authority with a prohibited source. This section has been expanded to include all prohibited sources because HUD has determined that taking a position of authority with any prohibited source, not just those that receive HUD funding, creates the appearance of a conflict of interest and should therefore be examined by an agency ethics official. As discussed in this preamble, HUD has added the requirement at § 7501.105(c)(1)(iv) for prior written approval from an agency ethics official for employees seeking to use their real estate license in relation to purchasing or selling a single-family property for use as the employee's primary residence or as the primary residence of an immediate family member of the employee.

Finally, this final rule adds § 7501.105(d) to incorporate HUD's policy regarding liaison representatives, which was previously provided as a Note. This change will avoid any confusion over the concept and its authority.

Section 7501.106 Bureau Instructions and Designation of Separate Agency Components

Former § 7501.106 entitled, ''Additional rules for certain Department employees involved in the regulation or oversight of Government sponsored enterprises,'' is removed. As previously discussed in this preamble, HUD no longer has regulatory authority over Fannie Mae and Freddie Mac and has determined that removing this provision would not compromise the integrity of HUD's programs and operations.

In its place, HUD is adding a new § 7501.106 that clarifies the authority of the OIG in the agency's ethics program and establishes it as a separate component as provided for by 5 CFR 2635.203(a). Specifically, new § 7501.106(a) delegates to the Bureau Ethics Counselor the authority to designate Deputy Bureau Ethics Counselors to make determinations, issue explanatory guidance, and establish procedures necessary to implement this part, subpart I of 5 CFR 2634, and 5 CFR part 2635 for their bureau. In addition, new § 7501.106(b) designates the OIG as a separate agency component.

V. Matters of Regulatory Procedure

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select the regulatory approach that maximizes net benefits. Because this rule relates solely to the internal operations of HUD, this rule was determined to be not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would not have a significant economic impact on a substantial number of small entities because this rule pertains only to HUD employees.

Information Collection Requirements

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) does not apply to this regulation because it does not contain information collection requirements subject to the approval of OMB.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. Since it is only directed toward HUD employees, this rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 5 CFR Part 7501

Conflicts of interests.

Accordingly, for the reasons described in the preamble, HUD, with the concurrence of OGE, revises 5 CFR part 7501 to read as follows:

PART 7501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec.
7501.101 Purpose.
7501.102 Definitions.
7501.103 Waivers.
7501.104 Prohibited financial interests.
7501.105 Outside activities.
7501.106 Bureau instructions and designation of separate agency component.

Authority: 5 U.S.C. 301, 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803, 2635.807.

§ 7501.101 Purpose.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Housing and Urban Development (HUD or Department) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and any additional rules of conduct that the Department is authorized to issue.

§ 7501.102 Definitions.

For purposes of this part, and otherwise as indicated, the following definitions shall apply:

Affiliate means any entity that controls, is controlled by, or is under common control with another entity.

Agency designee, as used also in 5 CFR part 2635, means the Associate General Counsel for Ethics and Personnel Law, the Assistant General Counsel for the Ethics Law Division, and the HUD Regional Counsels.

Agency ethics official, as used also in 5 CFR part 2635, means the agency designees as specified above.

Bureau means the Office of the Inspector General.

Bureau Ethics Counselor means the General Counsel for the Bureau.

Deputy Bureau Ethics Counselor means the Bureau employee or employees who the Bureau Ethics Counselor has delegated responsibility to act under § 7501.106 for the Bureau.

Designated Agency Ethics Official (DAEO) means the General Counsel of HUD or the Deputy General Counsel for Operations in the absence of the General Counsel.

Employment means any compensated or uncompensated (including volunteer work for others while off-duty) form of non-federal activity or business relationship, including self-employment, that involves the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product.

§ 7501.103 Waivers.

The Designated Agency Ethics Official, or the Bureau Ethics Counselor for a Bureau employee may waive any provision of this part upon finding that the waiver will not result in conduct inconsistent with 5 CFR part 2635 and is not otherwise prohibited by law and that application of the provision is not necessary to ensure public confidence in the Department's impartial and objective administration of its programs. Each waiver shall be in writing and supported by a statement of the facts and findings upon which it is based and may impose appropriate conditions, such as requiring the employee's execution of a written disqualification statement. A waiver will be considered only in response to a written waiver request submitted to an agency ethics official. The waiver request should include:

(a) The requesting employee's Branch, Unit, and a detailed description of his or her official duties;

(b) The nature and extent of the proposed waiver;

(c) A detailed statement of the facts supporting the request; and

(d) The basis for the request, such as undue hardship or other exigent circumstances.

§ 7501.104 Prohibited financial interests.

(a) *General requirement.* This section applies to all HUD employees except special Government employees. Except as provided in paragraph (b) of this section, the employee, or the employee's spouse or minor child, shall not directly or indirectly receive, acquire, or own:

(1) Federal Housing Administration (FHA) debentures or certificates of claim;

(2) A financial interest in a project, including any single family dwelling or unit, which is subsidized by the Department, or which is subject to a note or mortgage or other security interest insured by the Department. The definition of ''financial interest'' is found at 5 CFR 2635.403(c);

(3)(i) Any Department subsidy provided pursuant to Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437f), to or on behalf of a tenant of property owned by the employee or the employee's spouse or minor child. However, such subsidy is permitted when:

(A) The employee, or the employee's spouse or minor child acquires, without specific intent as through inheritance, a property in which a tenant receiving such a subsidy already resides;

(B) The tenant receiving such a subsidy lived in the rental property before the employee worked for the Department;

(C) The tenant receiving such a subsidy is a parent, child, grandchild, or sibling of the employee;

(D) The employee's, or the employee's spouse or minor child's, rental property has an incumbent tenant who has not previously received such a subsidy and becomes the beneficiary thereof; or

(E) The location of the rental property is in a Presidentially declared emergency or natural disaster area and the employee receives prior written approval from an agency designee.

(ii) The exception provided by paragraph (a)(3)(i) of this section continues only as long as:

(A) The tenant continues to reside in the property; and

(B) There is no increase in that tenant's rent upon the commencement of subsidy payments other than normal annual adjustments under the Section 8 program.

(b) *Exception to prohibition for certain interests.* Nothing in this section prohibits the employee, or the employee's spouse or minor child from directly or indirectly receiving, acquiring, or owning:

(1) A financial interest in a publicly available or publicly traded investment fund that includes financial interests prohibited by paragraph (a)(2) of this section, so long as the employee neither exercises control nor has the ability to exercise control over the fund or the financial interests held in the fund;

(2) Mortgage insurance provided pursuant to section 203 of the National Housing Act (12 U.S.C. 1709) on the employee's principal residence and any one other single family residence. Employees must adhere to the procedures established by the Assistant Secretary for Housing—FHA Commissioner in order to obtain FHA insurance;

(3) Department-owned single family property. Employees must adhere to the procedures established by the Assistant Secretary for Housing—FHA Commissioner in order to purchase a HUD-held property;

(4) Employment compensation and benefit packages provided by the employer of an employee's spouse that include financial interests prohibited by paragraph (a)(2) of this section; or

(5) Government National Mortgage Association (GNMA) securities.

(c) *Reporting and divestiture.* An employee must report, in writing, to the appropriate agency ethics official, any interest prohibited under paragraph (a) of this section acquired prior to the commencement of employment with the Department or without specific intent, as through gift, inheritance, or marriage, within 30 days from the date of the start of employment or acquisition of such interest. Such interest must be divested within 90 days from the date reported unless waived by the Designated Agency Ethics Official in accordance with § 7501.103.

§ 7501.105 Outside activities.

(a) *Prohibited outside activities.* Subject to the exceptions set forth in paragraph (b) of this section, HUD employees, except special Government employees, shall not engage in:

(1) Employment with a business related to real estate or manufactured housing including, but not limited to, real estate brokerage, management and sales, architecture, engineering, mortgage lending, property insurance, appraisal services, title search services, construction, construction financing, land planning, or real estate development;

(2) The operation or management of investment properties to the extent that it rises to the level of a real estate-related business. HUD will determine whether an employee is operating or managing investment properties to an extent that it rises to the level of a real estate business based on the totality of the circumstances, and will consider whether the employee maintains an office; advertises or otherwise solicits clients or business; hires staff or employees; uses business stationary or other similar materials; files the business as a corporation, limited liability company, partnership, or other type of business association with a state government; establishes a formal or informal association with an existing business; hires a management company; and the nature and number of its investment properties;

(3) Employment with a person or entity who registered as a lobbyist or lobbyist organization pursuant to 2 U.S.C 1603(a) and engages in lobbying activity concerning the Department;

(4) Employment as an officer or director with a Department-approved mortgagee, a lending institution, or an organization that services securities for the Department; or

(5) Employment with the Federal Home Loan Bank System or any affiliate thereof.

(b) *Exceptions to employment prohibitions.* The prohibitions set forth in paragraph (a) of this section do not apply to:

(1) Serving as an officer or a member of the Board of Directors of:

(i) A Federal Credit Union;

(ii) A cooperative, condominium association, or homeowners association for a housing project that is not subject to regulation by the Department or, if so regulated, in which the employee personally resides; or

(iii) An entity designated in writing by the Designated Agency Ethics Official.

(2) Holding a real estate agent's license; however, use of the license is limited as provided by paragraph (c) of this section.

(c) *Prior approval requirement.* (1) Employees, except special Government employees, shall obtain the prior written approval of an Agency Ethics Official before accepting compensated or uncompensated employment:

(i) As an officer, director, trustee, or general partner of, or in any other position of authority with a prohibited source, as defined at 5 CFR 2635.203(d);

(ii) With a state or local government;

(iii) In the same professional field as that of the employee's official position; or

(iv) As a real estate agent in relation to purchasing or selling a single family

property for use as the employee's primary residence, or the primary residence of the employee's immediate family member.

(2) Approval shall be granted unless the conduct is inconsistent with 5 CFR part 2635 or this part.

(d) *Liaison representative.* An employee designated to serve in an official capacity as the Department's liaison representative to an outside organization is not engaged in an outside activity to which this section applies. Notwithstanding, an employee may be designated to serve as the Department's liaison representative only as authorized by law, and as approved by the Department under applicable procedures.

§ 7501.106 Bureau instructions and designation of separate agency component.

(a) *Bureau instructions.* With the concurrence of the Designated Agency Ethics Official, the Bureau Ethics Counselor is authorized, consistent with 5 CFR 2635.105(c), to designate Deputy Bureau Ethics Counselors, to make a determination, issue explanatory guidance, and establish procedures necessary to implement this part, subpart I of 5 CFR part 2634, and 5 CFR part 2635 for the Bureau.

(b) *Designation of separate agency component.* Pursuant to 5 CFR 2635.203(a), the Office of the Inspector General is designated as a separate agency for purposes of the regulations contained in subpart B of 5 CFR part 2635, governing gifts from outside sources; and 5 CFR 2635.807, governing teaching, speaking, or writing.

Dated: July 18, 2012.

Shaun Donovan,

Secretary.

Don W. Fox,

Acting Director, Office of Government Ethics.

[FR Doc. 2012–19150 Filed 8–3–12; 8:45 am]

BILLING CODE 4210–67–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1072

[Docket No. CFPB–2012–0025]

Enforcement of Nondiscrimination on the Basis of Disability in Programs and Activities Conducted by the Bureau of Consumer Financial Protection

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: This interim final rule provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability in programs or activities conducted by the Bureau of Consumer Financial Protection. It sets forth standards for what constitutes discrimination on the basis of mental or physical disability, provides a definition for ''individual with a disability'' and ''qualified individual with a disability,'' and establishes a complaint mechanism for resolving allegations of discrimination. The rule further clarifies that the complaint mechanism is also available for processing complaints that the agency has failed to meet accessibility standards for electronic and information technology, in violation of section 508 of the Rehabilitation Act of 1973.

DATES: This interim final rule is effective August 6, 2012. Written comments must be submitted by October 5, 2012.

ADDRESSES: You may submit comments, identified by *Docket No. CFPB–2012–0025,* by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 200552.

Instructions: All submissions must include the agency name and docket number for this rulemaking. 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: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552 at 202–435–7275.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, the President signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203). Title X of that law is the Consumer Financial Protection Act of 2010 (the ''Act''), which created the Bureau of Consumer Financial Protection (the ''Bureau''). Pursuant to the provisions of the Act, the Bureau began to exercise its authorities to regulate the offering and provision of consumer financial products and services under the federal consumer financial laws on July 21, 2011.

II. Summary of Interim Final Rule

This interim final rule establishes procedures for the Bureau that are necessary to implement section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, § 119 (Pub. L. 95–602, 92 Stat. 2982), the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810), the Workforce Investment Act of 1998 (Pub. L. 105–220, 112 Stat. 936), and the Americans with Disabilities Act Amendments of 2008 (Pub. L. 110–325, 122 Stat. 3553). It is an adaptation of the model rule prepared by the Department of Justice in 1980 under Executive Order 12250, 45 FR 72995, 3 CFR, 1980 Comp., p. 298.

The Bureau invites public comment on all aspects of this interim final rule and will take those comments into account before publishing a final rule.

Section-by-Section Analysis

Section 1072.101 Purpose

Section 1072.101 states that the purpose of the rule is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 1072.102 Application

The regulation applies to all programs or activities conducted by the Bureau.

Section 1072.103 Definitions

Section 1072.103 defines terms that are utilized elsewhere in the rule. Several of these terms warrant brief discussion. The Bureau has modified the language of the Department of Justice model to replace the terms ''handicap,'' ''individual with a

handicap,'' and ''individuals with handicaps'' with the terms ''disability,'' ''individual with a disability,'' and ''individuals with disabilities,'' respectively, in keeping with the most current statutory terms used in the Americans with Disabilities Act. 42 U.S.C. 12101, *et seq.* The Bureau has modified the characterization of ''major life activities'' in the definition of ''individual with a disability'' to reflect the guidance provided by EEOC in its 2011 regulations interpreting the Americans with Disabilities Act Amendments Act of 2008. We intend our definition of the term ''major life activities'' to be interpreted consistent with that guidance. Similarly, the evaluation of whether an identified disability ''substantially limits'' an individual's major life activities is not intended to be restrictive in nature and, with the exception of vision-correcting tools (eyeglasses and contact lenses), is to be made without regard to whether an individual has taken ameliorative measures. For example, an individual with bipolar disorder is within the definition of ''individual with a disability'' even if medication balances the individual's mood. Conditions that may be episodic, such as major depression, or subject to remission, such as cancer, will be evaluated as if they were active.

The Bureau has also modified the language of the Department of Justice model to replace the outdated term ''mental retardation'' with ''intellectual disability.'' The definition of ''auxiliary aids'' has been modified to reflect technological developments that have rendered obsolete some forms of communication common in 1984 through the use of new technologies available to the public.

Section 1072.104 Self-Evaluation

This section commits the Bureau to conduct a self-evaluation of its compliance with section 504 within two years of the effective date of this regulation. This provision comports with the Department of Justice guidance. The Bureau recognizes the value of a self-evaluation process to obtain meaningful feedback from the community affected by this regulation and to promote effective and efficient implementation of section 504.

Section 1072.105 Notice

This section commits the Bureau to make available to employees, applicants, participants, beneficiaries, and other interested persons sufficient information about Bureau programs and activities, and to apprise them of rights and protections afforded by section 504 and this regulation. The language of the section follows that of the Department of Justice model.

Section 1072.106 General Prohibitions Against Discrimination

This section is an adaptation of the corresponding section of the Department of Justice model.

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in the section establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation.

Paragraph (b) prohibits overt denials of equal treatment of individuals with disabilities. The Bureau may not refuse to provide an individual with a disability an opportunity to participate in or benefit from its programs on the basis of that disability. The determination, rather, must always be whether the individual, with or without a reasonable accommodation, has the actual ability to participate or benefit. Paragraph (b)(1)(iii) requires that the opportunity to participate or benefit afforded to an individual with a disability be as effective as the opportunity afforded to others—that is, that facilities be accessible to those with physical disabilities, and that assistive accommodations be available to those who may require such accommodations to access communications from the Bureau.

Paragraph (b)(1)(iv) prohibits the Bureau from denying a qualified individual with a disability the opportunity to participate as a member of a planning or advisory board. Paragraphs (b)(2) through (b)(6) generally comport with the Department of Justice model language, except to the extent that they refer to ''individuals with disabilities'' rather than ''individuals with handicaps.'' These paragraphs collectively prohibit any Bureau policy or practice that would have the effect of unlawfully discriminating against individuals with disabilities, whether any such policy or practice is overtly exclusionary or, although neutral on its face, results in denying an effective opportunity for participation in a Bureau program or benefit to individuals with disabilities. Pursuant to these paragraphs, the Bureau must evaluate whether criteria or methods of administration may result in denial of opportunity to individuals with disabilities (paragraph (b)(4)), selection of facilities for use by the Bureau ensures accessibility for individuals with disabilities (paragraph (b)(5)), criteria for selection of procurement contractors may result in denial of opportunity to individuals with disabilities (paragraph (b)(6)), and licensing and certification procedures are neutrally applied to individuals with disabilities (paragraph (b)(7)).

Paragraph (b)(8) clarifies that section 504 does not extend to the programs or activities of licensees or certified entities, which are not themselves federally conducted programs or activities.

Paragraph (c) permits the Bureau to limit participation in programs designed to benefit individuals with disabilities or a given class of individuals with disabilities to those individuals or classes of individuals.

Paragraph (d) provides the Bureau will administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities—that is, in a setting in which individuals with disabilities will be interacting with individuals who have not self-identified as having disabilities.

Section 1072.107 Employment

This section prohibits unlawful discrimination on the basis of disability in employment by the Bureau. The section clarifies that the definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 apply to employment in federally conducted programs or activities.

Section 1072.108 Program Accessibility: Discrimination Prohibited

Section 1072.108 states the general nondiscrimination principle underlying the program accessibility requirements of the following two sections.

Section 1072.109 Program Accessibility: Existing Facilities

This section requires that each Bureau program or activity, when viewed in its entirety, be accessible to and usable by individuals with disabilities. The section does not require, however, that the Bureau make each existing facility in which it operates programs or activities accessible to and usable by individuals with disabilities, as long as program accessibility can be achieved through other means. Paragraph (a)(2) provides that in meeting the program accessibility requirement the Bureau is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or that would result in undue financial and administrative burden. The paragraph states the burden of proving that compliance with accessibility requirements would fundamentally alter

the nature of a program or activity or would result in undue financial and administrative burdens rests with the Bureau. A decision that compliance would result in such alteration or burdens must be made by the Bureau head or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she has been injured by the Bureau head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 1072.112.

Paragraph (b) sets forth methods by which program accessibility may be achieved, which include delivering services at alternate accessible sites or making home visits. The paragraph reiterates the Bureau's commitment to give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

Paragraph (c) establishes the time period for complying with the program accessibility requirement. As a new federal entity occupying leased space, the Bureau is obligated to evaluate any prospective leased property to ensure that structural accessibility standards are satisfied. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within ninety days of the effective date of this regulation.

Section 1072.110 Program Accessibility: New Construction and Alterations

This section clarifies that the definitions, requirements, and standards of the Architectural Barriers Act, 42 U.S.C. 4151–4157, apply to all buildings or parts of buildings constructed or altered by or on behalf of the Bureau. Any such facilities must be readily accessible to and usable by individuals with disabilities.

Section 1072.111 Communications

This section obligates the Bureau to provide appropriate assistive accommodations to ensure that the Bureau can communicate effectively with all applicants, participants, personnel of other federal entities, and members of the public, including individuals with disabilities. Paragraph (a)(1)(i) states that the Bureau will consider providing auxiliary aids in accordance with the expressed preference of the individual requesting accommodation. Paragraph (a)(1)(ii) notes that the Bureau is not obligated to provide personally prescribed devices to individuals with disabilities.

Paragraph (b) states the Bureau will ensure that interested persons can obtain information about the existence and location of accessible services, activities, and facilities. Paragraph (c) commits the Bureau to provide signage utilizing the international symbol for accessibility informing individuals with disabilities of the location of accessible entrances to and routes within the Bureau's facilities.

Paragraph (d) clarifies that this section does not require the Bureau to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, and sets forth the procedures whereby the Bureau may establish that such conditions exist.

Section 1072.112 Compliance Procedures

Paragraph (a) of this section specifies that paragraphs (c) through (l) establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the Bureau will process employment complaints according to procedures established in existing regulations of the Equal Employment Opportunity Commission, 29 CFR part 1614, pursuant to section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791.

Paragraph (c) vests responsibility for the implementation and operation of this section in the Office of the Chief Human Capital Officer.

Paragraph (d)(1) is adapted from the compliance procedures of the Department of Justice's model regulation. This paragraph prevents third parties from filing generalized complaints where there has been no harm to a particular individual or individuals. The Bureau is required to accept and investigate all complete complaints, as defined in § 1072.103.

Paragraph (e) states if the Bureau determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to an appropriate entity of the federal government. Paragraph (f) specifically requires the Bureau to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with disabilities.

Paragraph (g) requires the Bureau to prepare written findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice to the complainant of the right to appeal. Paragraph (i) provides for an internal appeal process within the Office of the Chief Human Capital Officer.

Paragraph (l) permits the Bureau either to delegate its investigative responsibilities under this section to another federal agency or to contract with a nongovernmental investigator. The Bureau may not delegate its responsibility to make a determination of compliance or noncompliance.

III. Procedural Requirements

The Bureau concludes this interim final rule constitutes a Bureau rule of organization, procedure, or practice that is exempt from notice and public comment pursuant to 5 U.S.C. 553(b).

In any event, the Bureau has also determined that good cause exists, pursuant to 5 U.S.C. 553(b), to publish these regulations as an interim final rule. It is important for the Bureau to establish additional procedures promptly to facilitate the Bureau's interactions with the public. The Bureau began exercising certain parts of its regulatory authority on July 21, 2011, as well as launching several consumer outreach initiatives. The Bureau's public Web site has been developed to meet accessibility standards and to comport with § 508. Failure to establish such procedures promptly risks impairing the ability of individuals with disabilities to access Bureau facilities, communications, programs, and activities, and to participate in the public outreach that the Bureau encourages. Furthermore, the Bureau has adapted Department of Justice guidance that has been broadly implemented across the federal government. For all of these reasons, the Bureau concludes that notice and public comment are unnecessary for these regulations and that delay will be contrary to the public interest. For the same reasons, the Bureau has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

Notwithstanding these conclusions, the Bureau invites public comment on this interim final rule.

Because no notice of proposed rulemaking is required, these regulations are not a ''rule'' as defined by the Regulatory Flexibility Act do not apply, 5 U.S.C. 601(2). The regulations in this part do not contain any information collection requirement that requires the approval of OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 1072

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal buildings and facilities, Government employees, Individuals with disabilities.

Authority and Issuance

For the reasons set forth above, the Bureau amends Chapter X in Title 12 of the Code of Federal Regulations by adding a new part 1072 to read as follows:

CHAPTER X—BUREAU OF CONSUMER FINANCIAL PROTECTION

PART 1072—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS AND ACTIVITIES CONDUCTED BY THE BUREAU OF CONSUMER FINANCIAL PROTECTION

Sec.

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Authority: 29 U.S.C. 794; 29 U.S.C. 794d.

§ 1072.101 Purpose.

(a) This part implements section 504 of the Rehabilitation Act of 1973, as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Sec. 119 (Pub. L. 95–602, 92 Stat. 2982), the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810), the Workforce Investment Act of 1998 (Pub. L. 105–220, 112 Stat. 936), and the Americans with Disabilities Act Amendments of 2008 (Pub. L. 110–325, 122 Stat. 3553), to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

(b) This part is also intended to implement section 508 of the Rehabilitation Act of 1973 as amended to ensure that employees and members of the public with disabilities have access to, and are able to use, electronic and information technology (EIT) to the same extent as individuals without disabilities, unless an undue burden would be imposed on the department or the Bureau. Specifically, this part clarifies that individuals with disabilities may utilize the complaint procedures established in section 504 to enforce rights guaranteed under section 508.

§ 1072.102 Application.

This part applies to all programs, activities, and electronic and information technology developed, procured, maintained, used, or conducted by the Bureau.

§ 1072.103 Definitions.

For purposes of this part *Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Bureau. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TDD's), interpreters, Computer-aided real-time transcription (CART), captioning, note takers, written materials, and other similar services and devices.

Bureau means the Bureau of Consumer Financial Protection.

Complete complaint means a written statement or a complaint in audio, Braille, electronic, and/or video format, that contains the complainant's name and address, and describes the Bureau's alleged discriminatory action in sufficient detail to inform the Bureau of the nature and date of the alleged violation of section 504 or section 508. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints in audio, Braille, electronic, and/or video formats shall contain an affirmative identity statement of the individual, which for this purpose shall be considered to be functionally equivalent to a complaint's signature. Complaints filed on behalf of classes of individuals with disabilities shall also identify (where possible) the alleged victims of discrimination.

Electronic and information technology means information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term includes, but is not limited to, telecommunications products (such as telephones), information kiosks and transaction machines, world-wide web sites, multimedia, and office equipment such as copiers and fax machines. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation are not electronic and information technology.

Facility means all or any portion of a building, structure, equipment, road, walk, parking lot, rolling stock or other conveyance, or other real or personal property.

Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more of the individual's major life activities.

Is regarded as having an impairment means—

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Bureau as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Bureau as having such an impairment.

Individual with a disability means any person who has a physical or mental impairment that substantially limits one or more of the individual's major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

Major life activities includes without limitation—

(1) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.

(2) The operation of major bodily functions of the immune system, special sense organs and skin, normal cell growth, and digestive genitourinary,

bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

(3) In determining other examples of major life activities, the Bureau will follow the guidance provided by EEOC in its 2011 regulations interpreting the Americans with Disabilities Act Amendments Act of 2008.

Physical or mental impairment includes without limitation:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine.

(2) Any mental or psychological disorder such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(3) Diseases and conditions such as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, drug addiction and alcoholism.

Program or Activity means any activity of the Bureau permitted or required by its enabling statutes, including but not limited to any proceeding, investigation, hearing, or meeting.

Qualified individual with a disability means:

(1) In reference to individuals other than employees of the Bureau—

(i) With respect to any Bureau program or activity under which an individual is required to perform services or to achieve a level of accomplishment, an individual with a disability who, with or without reasonable accommodations, meets the essential eligibility requirements for participation in the program or activity, and who can achieve the purpose of the program or activity without modifications in the program or activity that would result in a fundamental alteration in its nature; or

(ii) With respect to any other program or activity, an individual with a disability who, with or without reasonable modification to rules, policies, or practices that do not change the fundamental nature of the activity, or the provision of auxiliary aids, meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; or

(2) In reference to individuals employed by the Bureau, the definition of that term for purposes of employment contained in 29 CFR 1630.2(m), which is made applicable to this part by § 1072.101.

Section 504 means section 504 of the Rehabilitation Act of 1973 as amended. As used in this part, § 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Section 508 means section 508 of the Rehabilitation Act of 1973 as amended.

§ 1072.104 Review of compliance.

(a) The Bureau shall, within two years of the promulgation of this regulation, review its current policies and practices in view of advances in relevant technology and achievability. Based on this review, the Bureau shall modify its practices and procedures to ensure that the Bureau's programs and activities are fully accessible.

(b) The Bureau shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the review process.

(c) The Bureau shall maintain on file and make available for public inspection until three years following the completion of the compliance review—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1072.105 Notice.

The Bureau shall make available to all Bureau employees, applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the programs or activities conducted by the Bureau in a manner that apprises them of the protections against discrimination provided by § 504 and this regulation.

§ 1072.106 General prohibitions against discrimination.

(a) No qualified individual with a disability in the United States, shall, on the basis of disability, be excluded from the participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Bureau.

(b) *Discriminatory actions prohibited.* (1) The Bureau, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not substantially equivalent to that afforded others;

(iii) Provide different or separate aid, benefits or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits or services that are as effective as those provided to others;

(iv) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with disabilities and for persons who are not so identified, but must afford individuals with disabilities a reasonable opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's needs.

(3) Even if the Bureau is permitted, under paragraph (b)(1)(iv) of this section, to operate a separate or different program for individuals with disabilities or for any class of individuals with disabilities, to the extent reasonably feasible, the Bureau must permit any qualified individual with a disability who wishes to participate in the program that is not separate or different to do so.

(4) The Bureau may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with disabilities to unlawful discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(5) The Bureau may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to unlawful discrimination under any

program or activity conducted by the Bureau; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(6) The Bureau, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to unlawful discrimination on the basis of disability.

(7) The Bureau may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to unlawful discrimination on the basis of disability, nor may the Bureau establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to unlawful discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the Bureau are not, themselves, covered by this part.

(8) The Bureau shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the Bureau can demonstrate that making the modifications would fundamentally alter the nature of the program, service, or activity.

(c) The exclusion of persons who have not self-identified as having disabilities from the benefits of a program limited by federal statute or Executive order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by federal statute or Executive order to a different class of individuals with disabilities is not prohibited by this part.

(d) The Bureau shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

§ 1072.107 Employment.

No qualified individual with disability shall, on the basis of disability, be subjected to unlawful discrimination in employment under any program or activity conducted by the Bureau. The definitions, requirements and procedures of § 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791, as established by the Equal Employment Opportunity Commission in 29 CFR parts 1614 and 1630, shall apply to employment in federally conducted programs or activities.

§ 1072.108 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1072.109 no qualified individual with a disability shall, because the Bureau's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Bureau .

§ 1072.109 Program accessibility: Existing facilities.

(a) *General.* The Bureau shall operate each program or activity so that the program or activity, when viewed in its entirety, is accessible to and usable by individuals with disabilities. This paragraph does not require the Bureau

(1) To make structural alterations in each of its existing facilities in order to make them accessible to and usable by individuals with disabilities where other methods are effective in achieving compliance with this section; or

(2) To take any action that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the Bureau shall take any other action that would not result in such an alteration or such burdens but would nevertheless to the extent reasonably feasible ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods.* The Bureau may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. The Bureau, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Bureau shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(c) *Time period for compliance.* The Bureau shall comply with the obligations established under this section within ninety (90) days of the effective date of this part except that where structural changes in facilities are undertaken, such changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

§ 1072.110 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Bureau shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as implemented in 41 CFR 101–19.600 through 101–19.607, apply to buildings covered by this section.

§ 1072.111 Communications.

(a) The Bureau shall take appropriate steps to effectively communicate with applicants, participants, personnel of other federal entities, and members of the public.

(1) The Bureau shall furnish appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Bureau.

(i) In determining what type of auxiliary aid is necessary, the Bureau shall give consideration to any reasonable request of the individual with a disability.

(ii) The Bureau need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature to applicants or participants in programs.

(2) Where the Bureau communicates with applicants and beneficiaries by

telephone, the Bureau shall use a telecommunication device for deaf persons (TDD's) or equally effective telecommunication systems to communicate with persons with impaired hearing.

(b) The Bureau shall make available to interested persons, including persons with impaired vision or hearing, information as to the existence and location of accessible services, activities, and facilities.

(c) The Bureau shall post notices at a primary entrance to each of its inaccessible facilities, directing users to an accessible facility, or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Bureau to take any action that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

§ 1072.112. Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs and activities conducted by the Bureau and denial of access to electronic and information technology.

(b) The Bureau shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) All other complaints alleging violations of section 504 or section 508 may be sent to Labor and Employee Relations, Office of the Chief Human Capital Officer Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20052. The Office of the Chief Human Capital Officer shall be responsible for coordinating implementation of this section.

(d) *Complaint-filing procedures.* (1) Any person who believes that he or she has been subjected to discrimination prohibited by this part may by himself or herself or by his or her authorized representative file a complaint. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a class complaint.

(2) The Bureau shall accept and investigate each timely filed, complete complaint over which it has jurisdiction.

(3) A complete complaint must be filed within 180 days of the alleged act of discrimination. A complaint submitted to the Bureau via first-class mail will be deemed to have been filed when postmarked. A complaint submitted to the Bureau via any other means of delivery will be deemed to have been filed when received by the Bureau. The Bureau may extend this time period for good cause.

(e) If the Bureau receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Bureau shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with disabilities.

(g)(1) Within 180 days of the receipt of a timely filed, complete complaint over which it has jurisdiction, the Bureau shall notify the complainant of the results of the investigation in a letter containing:

(i) Findings of fact and conclusions of law;

(ii) A description of a remedy for each violation found; and

(iii) A notice of the right to appeal.

(2) Bureau employees are required to cooperate in the investigation and attempted resolution of complaints. Employees who are required to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant. The written agreement shall describe the subject matter of the complaint and any corrective action to which the parties have agreed.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 30 days of receipt from the Bureau of the letter required by § 1072.112(g). The Bureau may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Chief Human Capital Officer, who will issue the final agency decision which may include appropriate corrective action to be taken by the Bureau.

(j) The Bureau shall notify the complainant of the results of the appeal within 60 days of the receipt of the timely appeal. If the Bureau determines that it needs additional information from the complainant, it shall have 60 days from the date it received the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended for an individual case when the Chief Human Capital Officer determines there is good cause, based on the particular circumstances of that case, for the extension.

(l) The Bureau may delegate its authority for conducting complaint investigations to other federal agencies or may contract with a nongovernment investigator to perform the investigation, but the authority for making the final determination may not be delegated to another entity.

Dated: June 18, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–18827 Filed 8–3–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 522, and 524

[Docket No. FDA–2012–N–0002]

New Animal Drugs; Change of Sponsor; Change of Sponsor Address; Azaperone; Miconazole, Polymyxin B, and Prednisolone Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for two new animal drug applications (NADAs) from Janssen Pharmaceutica NV, to Elanco Animal Health, a Division of Eli Lilly & Co. FDA is also amending the animal drug regulations to reflect a change of sponsor's address for Veterinary Service, Inc.

DATES: This rule is effective August 6, 2012.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 240–276–8300, email: *steven.vaughn@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Janssen Pharmaceutica NV, Turnhoutseweg 30, B–2340 Beerse, Belgium, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 115–732 for STRESNIL (azaperone) Injection and NADA 141–298 for SUROLAN (miconazole nitrate, polymyxin B sulfate, prednisolone acetate) Otic Suspension to Elanco Animal Health, a Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285. Following these changes of sponsorship, Janssen Pharmaceutica NV will no longer be the sponsor of an approved application. Accordingly, the Agency is amending the regulations in 21 CFR 510.600, 522.150, and 524.1445 to reflect the transfer of ownership.

In addition, Veterinary Service, Inc., 416 North Jefferson St., P.O. Box 2467,

Modesto, CA 95354 has informed FDA of a change of address to 4100 Bangs Ave., Modesto, CA 95356. Accordingly, the Agency is amending the regulations in 21 CFR 510.600 to reflect these changes.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520 and 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 522, and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entry for ''Janssen Pharmaceutica NV'' and revise the entry for ''Veterinary Service, Inc.''; and in the table in paragraph (c)(2), remove the entry for ''012758'' and revise the entry for ''033008'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Veterinary Service, Inc., 4100 Bangs Ave., Modesto, CA 95356	033008
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
033008	Veterinary Service, Inc., 4100 Bangs Ave., Modesto, CA 95356.
* * * * *	

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.150 [Amended]

■ 4. In paragraph (b) of § 522.150, remove ''012578'' and in its place add ''000986''.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 5. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 6. In § 524.1445, revise paragraph (b) to read as follows:

§ 524.1445 Miconazole, polymixin B, and prednisolone suspension.

* * * * *

(b) *Sponsor.* See No. 000986 in § 510.600(c) of this chapter.

* * * * *

Dated: August 1, 2012.

Elizabeth Rettie,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2012–19147 Filed 8–3–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0223]

RIN 1625–AA00

Safety Zone; 2012 Ironman US Championship Swim, Hudson River, Fort Lee, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Hudson River in the vicinity of Englewood Cliffs and Fort Lee, NJ for the 2012 Ironman US Championship swim event. This temporary safety zone is necessary to protect the maritime public and event participants from the hazards associated with swim events. This rule is intended to restrict all vessels and persons from entering into, transiting through, mooring, or anchoring within the safety zone unless authorized by the Captain of the Port (COTP) New York or a designated representative.

DATES: This rule is effective from 6 a.m. until 10 a.m. on August 11, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0223]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ensign Kimberly Farnsworth, Coast Guard; Telephone (718) 354–4163, email *Kimberly.A.Farnsworth@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
CFR Code of Federal Regulations
NPRM Notice of Proposed Rulemaking
COTP Captain of the Port

A. Regulatory History and Information

On June 8, 2012, we published a notice of proposed rulemaking (NPRM) entitled 2012 Ironman US Championship Swim, Hudson River, Fort Lee, NJ in the **Federal Register** (77 FR 34285). We received no comments on the proposed rule. No public meeting was requested and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This event will occur before 30 days has elapsed after the publication of the rule. The event sponsor is unable and unwilling to postpone this event because the date of this event was

chosen based on optimal tide, current, and weather conditions needed to promote the safety of swim participants. In addition, any change to the date of the event would cause economic hardship on the marine event sponsor and negatively impact other activities being held in conjunction with this event, such as potentially causing numerous event participant cancellations.

B. Basis and Purpose

The legal basis for this rule is 33 U.S.C 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which collectively authorizes the Coast Guard to define regulatory safety zones.

The COTP has determined that swim events in close proximity to marine traffic pose significant risk to public safety and property. The combination of increased numbers of recreation vessels, congested waterways, and large numbers of swimmers in the water has the potential to result in serious injuries or fatalities. In order to protect the safety of all waterway users including event participants and spectators, this rule establishes a temporary safety zone for the duration of the event.

C. Discussion of Comments, Changes and the Final Rule

No comments were received. The Coast Guard did not make any changes in this final rule that were not published in the NPRM.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule to be very minimal. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons. Vessels will only be restricted from the safety zone for a short duration of time. Before activating the zone, we will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners. Furthermore, vessels may be authorized to transit the zones with permission of the COTP New York or designated representative.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(1) This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Hudson River during the effective period.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone will be enforced for only 4 hours. Vessel traffic can pass safely through the safety zone with permission from the COTP or a designated representative. Before activating the zone, we will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of

Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

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

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

■ 2. Add § 165.T01–0223 to read as follows:

§ 165.T01–0223 Safety Zone; 2012 Ironman US Championship Swim, Hudson River, Fort Lee, NJ.

(a) *Regulated Area.* All navigable waters of the Hudson River bound by a line drawn from the shoreline of the Palisades Interstate Parkway, approximately 2.8 NM North of the George Washington Bridge, Fort Lee, New Jersey, approximate position 40°53′44.93″ N 073°56′11.79″ W, east to a point 515 yards offshore, approximate position 40°53′40.00″ N 073°55′53.00″ W, south to a position 242 yards offshore, approximate position 40°51′30.00″ N 073°57′09.00″ W, west to the south corner of Ross Dock, Fort Lee, New Jersey, approximate position 40°51′33.77″ N 073°57′16.00″ W, then back to the point of origin.

(b) *Effective Period.* This rule will be effective from 6 a.m. to 10 a.m. on August 11, 2012.

(c) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative.* A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) *Official Patrol Vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(d) *Regulations.* (1) No vessels, except for participating safety vessels, will be allowed to transit the safety zone without the permission of the COTP.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(3) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated representative via VHF channel 16 or 718–354–4353 (Coast Guard Sector New York command center) to obtain permission to do so.

Dated: July 19, 2012.

G. Loebl,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2012–19080 Filed 8–3–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1, 5, 10, 11, and 41

[Docket No. PTO–P–2011–0072]

RIN 0651–AC66

Changes To Implement Miscellaneous Post Patent Provisions of the Leahy-Smith America Invents Act

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Leahy-Smith America Invents Act (AIA) expands the scope of information that any party may cite in a patent file to include written statements of a patent owner filed in a proceeding before a Federal court or the United States Patent and Trademark Office (Office) regarding the scope of any claim of the patent, and provides for how such information may be considered in *ex parte* reexamination, *inter partes* review, and post grant review. The AIA also provides for an estoppel that may attach with respect to the filing of an *ex parte* reexamination request subsequent to a final written decision in an *inter partes* review or post grant review proceeding. The Office is revising the rules of practice to implement these post-patent provisions, as well as other miscellaneous provisions, of the AIA.

DATES: *Effective date:* The changes in this final rule are effective on September 16, 2012.

FOR FURTHER INFORMATION CONTACT: Joseph F. Weiss, Jr. ((571) 272–7759), Legal Advisor, or Pinchus M. Laufer ((571) 272–7726), Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy.

SUPPLEMENTARY INFORMATION:

Executive Summary: Purpose: Section 6 of the AIA amends the patent laws to create new post-grant review proceedings and replace *inter partes* reexamination proceedings with *inter partes* review proceedings. Section 6 of the AIA also provides for an estoppel that may attach with respect to the filing of an *ex parte* reexamination request subsequent to a final written decision in a post grant review or *inter partes* review proceeding, expands the scope of information that any person may cite in the file of a patent to include written statements of a patent owner filed in a proceeding before a Federal court or the Office regarding the scope of any claim of the patent, and provide for how such patent owner statements may be considered in *ex parte* reexamination, *inter partes* review, and post grant review. Section 3(i) of the AIA replaces interference proceedings with derivation proceedings; section 7 redesignates the Board of Patent Appeals and Interferences as the Patent Trial and Appeal Board; section 3(j) replaces the title ''Board of Patent Appeals and Interferences'' with ''Patent Trial and Appeal Board'' in 35 U.S.C. 134, 145, 146, 154, and 305; and section 4(c) inserts alphabetical references to the subsections of 35 U.S.C. 112.

Summary of Major Provisions: This final rule primarily implements the provisions in section 6 of the AIA to provide for an estoppel that may attach to the filing of an *ex parte* reexamination request subsequent to a final written decision in a post grant review or *inter partes* review proceeding, and expands the scope of information that any person may cite in the file of a patent to include written statements of the patent owner filed in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of the patent.

This final rule revises the *ex parte* reexamination rules to require that a third party request for *ex parte* reexamination contain a certification by the third party requester that the statutory estoppel provisions of *inter partes* review and post grant review do not bar the third party from requesting *ex parte* reexamination.

This final rule revises the rules of practice pertaining to submissions to the file of a patent to provide for the submission of written statements of the patent owner filed by the patent owner in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of the patent. This final rule requires that such submissions must: (1) Identify the forum and proceeding in which patent owner filed each statement, and the specific papers and portions of the papers submitted that contain the statements; (2) explain how each statement is a statement in which patent owner took a position on the scope of any claim in the patent; (3) explain the pertinency and manner of applying the statement to at least one patent claim; and (4) reflect that a copy of the submission has been served on the patent owner, if submitted by a party other than the patent owner.

This final rule also revises the nomenclature in the rules of practice for consistency with the changes in sections 3(i), 3(j), 4(c), and 7 of the AIA.

Costs and Benefits: This rulemaking is not economically significant as that term is defined in Executive Order 12866 (Sept. 30, 1993).

Background: Sections 3(i) and (j) and section 4(c) of the AIA enact miscellaneous nomenclature and title changes. Section 3(i) of the AIA replaces interference proceedings with derivation proceedings; section 3(j) replaces the title ''Board of Patent Appeals and Interferences'' with ''Patent Trial and Appeal Board'' in 35 U.S.C. 134, 145, 146, 154, and 305; and section 4(c) inserts alphabetical designations to the subsections of 35 U.S.C. 112.

Section 6(g) of the AIA amends 35 U.S.C. 301 to expand the information that may be submitted in the file of an issued patent to include written statements of a patent owner filed in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of the patent. This amendment limits the Office's use of such written statements to determining the meaning of a patent claim in *ex parte* reexamination proceedings that have already been ordered and in *inter partes* review and post grant review proceedings that have already been instituted.

Section 6(a) and (d) of the Leahy-Smith American Invents Act also contains provisions (35 U.S.C. 315(e)(1) and 35 U.S.C. 325(e)(1)) estopping a third party requester from filing a request for *ex parte* reexamination, in certain instances, where the third party requester filed a petition for *inter partes* review or post grant review and a final written decision under 35 U.S.C. 318(a) or 35 U.S.C. 328(a) has been issued. The estoppel provisions apply to the real party in interest of the *inter partes* review or post grant review petitioner and any privy of such a petitioner.

Section 6(h)(1) of the AIA amends 35 U.S.C. 303 to expressly identify the authority of the Director to initiate reexamination based on patents and publications cited in a prior reexamination request under 35 U.S.C. 302.

Discussion of Specific Rules: The following is a discussion of the amendments to Title 37 of the Code of Federal Regulations, parts 1, 5, 10, 11, and 41, which are being implemented in this final rule:

Changes in nomenclature: The phrase ''Board of Patent Appeals and Interferences'' is changed to ''Patent Trial and Appeal Board'' in §§ 1.1(a)(1)(ii), 1.4(a)(2), 1.6(d)(9), 1.9(g), 1.17(b), 1.36(b), 1.136(a)(1)(iv), 1.136(a)(2), 1.136(b), 1.181(a)(1), 1.181(a)(3), 1.191, 1.198, 1.248(c), 1.701(a)(3), 1.701(c)(3), 1.702(a)(3), 1.702(b)(4), 1.702(e), 1.703(a)(5), 1.704(c)(9), 1.937(a), 1.959, 1.979(a), 1.979(b), 1.981, 1.983(a), 1.983(c), 1.983(d), 1.983(f), 11.5(b)(1), 11.6(d), 41.1(a), 41.2, 41.10(a) through (c), and 41.77(a), and in the title of 37 CFR part 41. Specific references are added to trial proceedings before the Patent Trial and Appeal Board to §§ 1.5(c), 1.6(d), 1.6(d)(9), 1.11(e), 1.136(a)(2), 1.136(b), 1.178(b), 1.248(c), 1.322(a)(3), 1.323, 1.985(a), 1.985(b), 1.993, 10.1(s), 11.10(b)(3)(iii), 11.58(b)(1)(i), 41.30, 41.37(c)(1)(ii), 41.67(c)(1)(ii), and 41.68(c)(1)(ii).

The phrase ''Board of Patent Appeals and Interferences'' in §§ 1.703(b)(4) and 1.703(e) will be changed to ''Patent Trial and Appeal Board'' in a separate rulemaking (RIN 0651–AC63).

Specific references are added to derivation proceedings before the Patent Trial and Appeal Board to §§ 1.136(a)(1)(v), 1.313(b)(4), 1.701(a)(1), 1.701(c)(1)(i) and (c)(1)(ii), 1.701(c)(2)(iii), 1.702(b)(2), 1.702(c), 1.703(b)(2), 1.703(b)(3)(iii), 1.703(c)(1) and (c)(2), 1.703(d)(3), and 5.3(b).

Sections 1.51, 1.57, 1.78, 41.37, 41.67, 41.110 and 41.201 are revised to substitute the current references to 35 U.S.C. 112, of first, second, and sixth paragraphs with references to 35 U.S.C. 112 subsections (a), (b), and (f). Section 1.78 is also revised to add ''other than the requirement to disclose the best mode'' following the references to 35 U.S.C. 112(a) for consistency with the changes to 35 U.S.C. 119(e) and 120 in section 15(b) of the AIA.

Section 1.59 is revised to refer to § 42.7.

Changes to ex parte reexamination procedure:

The undesignated center heading before § 1.501: The undesignated center heading is revised to read ''Citation of prior art and written statements.''

Section 1.501: Section 1.501 implements the amendment to 35 U.S.C. 301 by section 6(g)(1) of the AIA. New 35 U.S.C. 301(a)(2) provides for any

person to submit in the patent file written ''statements of the patent owner filed in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of a particular patent.'' Section 1.501, implementing 35 U.S.C. 301(a)(2), provides that a submission may include prior art and written patent owner claim scope statements. The term ''Federal court'' in 35 U.S.C. 301(a)(2) includes the United States Court of International Trade, which is a Federal court, but does not include the International Trade Commission, which is a Federal agency and not a Federal court.

Section 1.501(a): In light of the comments, the scope of what may be submitted has been expanded relative to the proposed rule because the final rule does not prohibit the submission of written statements ''made outside of a Federal court or Office proceeding and later filed for inclusion in a Federal court or Office proceeding.'' Section 1.501(a)(1) provides for the submission to the Office of prior art patents or printed publications that a person making the submission believes to have a bearing on the patentability of any claim of a particular patent. Section 1.501(a)(2) permits any person to submit to the Office statements of the patent owner that were filed by the patent owner in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of the patent. As long as the statement was filed by the patent owner in the proceeding, the statement is eligible for submission under § 1.501(a)(2) even if originally made outside the proceeding. Permitting submission of these claim scope statements is intended to limit a patent owner's ability to put forward different positions with respect to the prior art in different proceedings on the same patent. *See* H.R. Rep. No. 112–98, Part 1, at page 46 (2011) (''[t]his addition will counteract the ability of patent owners to offer differing interpretations of prior art in different proceedings.''). Any papers or portions of papers that contain the patent owner claim scope statement submitted under this paragraph must be accompanied by any other documents, pleadings, or evidence from the proceeding in which the statement was filed that address the statement. Where appropriate, the papers or portions of papers that contain the statement and accompanying information must be submitted in redacted form to exclude information subject to an applicable protective order.

Section 1.501(a)(3) requires that submissions under § 1.501(a)(2) must identify: (1) The forum and proceeding in which patent owner filed each statement; (2) the specific papers and portions of the papers submitted that contain the statement; and (3) how each statement submitted is a statement in which patent owner took a position on the scope of any claim in the patent. Identification of the portions of the papers required by § 1.501(a)(3)(ii) can be satisfied, for example, by citing to the documents and specific pages of those documents where the patent owner claim scope statements are found. The requirement of § 1.501(a)(3)(iii) ensures that the statement is one in which a patent owner has taken a position on claim scope in a proceeding and not merely a restatement of a position asserted by another party. Other information can, but is not required to, be provided by the submitter to assist the Office in readily identifying the patent owner claim scope statement, such as (1) information regarding the status of the proceeding; and (2) the relationship of the proceeding to the patent.

Section 1.501(b): Section 1.501(b)(1) implements the 35 U.S.C. 301(b) requirement that the submission include an explanation in writing of the pertinency and manner of applying the prior art or written statements to at least one patent claim. Section 1.501(b)(1) requires a submitter to explain in writing the pertinence and manner of applying any prior art submitted under § 1.501(a)(1) and any written statement and accompanying information submitted under § 1.501(a)(2) to at least one claim of the patent in order for the submission to become a part of the official file of the patent. Where a patent owner claim scope statement and accompanying information are submitted along with prior art, an explanation as to how each patent owner claim scope statement and each prior art reference applies to at least one claim must be included with the submission in order for the submission to become part of the patent file. Section 1.501(b)(1) requires an explanation of the additional information required by 35 U.S.C. 301(c) to show how the additional information addresses and provides context to the patent owner claim scope statement, thereby providing a full understanding as to how the cited information is pertinent to the claim(s).

Section 1.501(b)(2) incorporates the second sentence of former § 1.501(a), which permits a patent owner submitter to provide an explanation to distinguish the claims of the patent from the submitted prior art. Section 1.501(b)(2) also provides a patent owner submitter with the opportunity to explain how the claims of the patent are patentable in view of any patent owner claim scope statement and additional information filed under § 1.501(a)(2), along with any prior art filed under § 1.501(a)(1).

Section 1.501(c): Section 1.501(c) restates the last sentence of prior § 1.501(a) directed to the timing for a submission under §§ 1.502 and 1.902 when there is a reexamination proceeding pending for the patent in which the submission is made.

Section 1.501(d): Section 1.501(d) restates former § 1.501(b) that permits the person making the submission to exclude his or her identity from the patent file by anonymously filing the submission.

Section 1.501(e): Section 1.501(e) requires that a submission made under § 1.501 must reflect that a copy of the submission by a party other than the patent owner has been served upon patent owner at the correspondence address of record in the patent, and that service was carried out in accordance with § 1.248. Service is required to provide notice to the patent owner of the submission. The presence of a certificate of service that is compliant with § 1.248(b) is *prima facie* evidence of compliance with § 1.501(e). A submission will not be entered into the patent's Image File Wrapper (IFW) if it does not include proof of service compliant with § 1.248(b).

Section 1.501(f): The provisions of proposed § 1.501(f) have been incorporated with specificity in §§ 1.515(a) and 1.552(d) rather than adopted as a separate paragraph of § 1.501. The proposed codification in § 1.501(f) of the limitation set forth in 35 U.S.C. 301(d) on the use of a patent owner claim scope statement by the Office was unnecessary in view of the language of § 1.515(a) and § 1.552(d).

Section 1.510: This final rule revises § 1.510(a) and (b)(2), and adds § 1.510(b)(6) to implement provisions of the AIA.

Section 1.510(a) is revised to reflect the estoppel limitations placed upon the filing of a request for *ex parte* reexamination by 35 U.S.C. 315(e)(1) and 325(e)(1). In light of the comments, the scope of the estoppel provisions is interpreted to only prohibit the filing of a subsequent request for *ex parte* reexamination.

Section 1.510(b)(2) is revised to require that any statement of the patent owner submitted pursuant to § 1.501(a)(2), which is relied upon in the detailed explanation, explain how that statement is being used to determine the

proper meaning of a patent claim in connection with prior art applied to that claim. Section 1.510(b)(2) requires that the ''detailed explanation'' of applying prior art provided in the request for *ex parte* reexamination must explain how each patent owner claim scope statement is being used to determine the proper meaning of each patent claim in connection with the prior art applied to that claim. The explanation will be considered by the Office during the examination stage, if reexamination is ordered. At the order stage, the Office will not consider any patent owner claim scope statement discussed in the detailed explanation of the request. *See* 35 U.S.C. 301(d)

Section 1.510(b)(6) requires that the request contain a certification by the third party requester that the statutory estoppel provisions of *inter partes* review and post grant review do not bar the third party from requesting *ex parte* reexamination. The basis for this requirement is the estoppel provisions of *inter partes* review and post grant review provided in new 35 U.S.C. 315(e)(1) and 325(e)(1), respectively, which identify when a petitioner for *inter partes* review or post grant review, or a real party in interest or privy of the petitioner, may not file a request for *ex parte* reexamination. The certification required under § 1.510(b)(6) is consistent with the real party in interest identification certification practice employed in existing *inter partes* reexamination.

In light of the comments, the final rule does not require an *ex parte* reexamination requester to identify themselves upon the filing of the request. The certification requirement of § 1.510(b)(6), coupled with a party's § 11.18 certification obligations when transacting business before the Office, are considered sufficient to ensure compliance with the new statutory estoppel requirements. A real party in interest that wishes to remain anonymous when filing a request for reexamination under § 1.510 can do so by utilizing the services of a registered practitioner. In such an instance, the registered practitioner submitting a request for reexamination on behalf of the real party in interest would be certifying that the real party in interest was not estopped from filing the request. Conversely, an individual filing a request for reexamination under § 1.510 on behalf of himself cannot remain anonymous as he is required to sign the document that includes the § 1.510(b)(6) certification.

Section 1.515: Section 1.515 is revised to add: ''A statement and any accompanying information submitted pursuant to § 1.501(a)(2) will not be considered by the examiner when making a determination on the request.'' 35 U.S.C. 301(d) states: ''A written statement submitted pursuant to subsection (a)(2), and additional information submitted pursuant to subsection (c) [of 35 U.S.C. 301], shall not be considered by the Office for any purpose other than to determine the proper meaning of a patent claim in a proceeding that is ordered * * * pursuant to section 304.'' Thus, a patent owner claim scope statement will not be considered when making the determination of whether to order *ex parte* reexamination under 35 U.S.C. 303. *See also* H.R. Rep. No. 112–98, Part 1, at page 46 (2011). In making the § 1.515(a) determination of whether to order *ex parte* reexamination, the Office will give the claims the broadest reasonable interpretation consistent with the specification, except in the case of an expired patent. *See Ex parte Papst-Motoren,* 1 USPQ2d 1655 (Bd. Pat. App. & Inter. 1986); *In re Yamamoto,* 740 F.2d 1569 (Fed. Cir. 1984); *see also Manual of Patent Examining Procedure* § 2258 I.(G) (8th ed. 2001) (Rev. 8, July 2010) (MPEP). If reexamination is ordered, the patent owner statements submitted pursuant to 35 U.S.C. 301(a)(2) will be considered to the fullest extent possible when determining the scope of any claims of the patent which are subject to reexamination.

The section has also been revised to replace ''mailed'' with ''given or mailed'' regarding the manner the Office may employ to notify patent owner of a determination on a request for *ex parte* reexamination. Usage of the term ''given'' tracks the relevant statutory language of 35 U.S.C. 304 and offers the Office flexibility to employ alternative means of communication to streamline patent reexamination and customer interaction, *e.g.,* Web-based forms of notification.

Section 1.552: Section 1.552 is revised to include new § 1.552(d) to reflect the amendment of 35 U.S.C. 301 by section 6(g)(1) of the AIA. Section 1.552(d) states: ''Any statement of the patent owner and any accompanying information submitted pursuant to § 1.501(a)(2) which is of record in the patent being reexamined (which includes any reexamination files for the patent) may be used after a reexamination proceeding has been ordered to determine the proper meaning of a patent claim when applying patents or printed publications.'' As discussed above, 35 U.S.C. 301(a)(2) permits a submission under 35 U.S.C. 301 to contain written ''statements of the patent owner filed in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of a particular patent.'' Written statements cited under 35 U.S.C. 301(a)(2) may be considered after an *ex parte* reexamination proceeding has been ordered. However, the statement may not be considered in determining whether to order *ex parte* reexamination under 35 U.S.C. 303, because 301(d) prohibits the use of the statement ''by the Office for any purpose other than to determine the proper meaning of a patent claim in a proceeding that is ordered or instituted pursuant to section 304, 314, or 324.'' *See* 35 U.S.C. 301(d). *See also* H.R. Rep. No. 112–98, Part 1, at page 46 (2011). Therefore, the Office can only consider such statements after the proceeding has been ordered or instituted.

Comments and Responses to Comments: The Office published a notice on January 5, 2012, proposing to change the rules of practice to implement the post patent and other miscellaneous provisions of the AIA of sections 3 and 6 of the AIA. *See Changes to Implement Miscellaneous Post Patent Provisions of the Leahy-Smith America Invents Act,* 77 FR 442 (Jan. 5, 2012). The Office received seventeen written comments (from intellectual property organizations, industry, law firms, individual patent practitioners, and the general public) in response to this notice. The comments and the Office's responses to the comments follow:

Comment 1: A number of comments stated that the proposed regulatory exclusion of patent owner claim scope statements ''made outside of a Federal court or Office proceeding and later filed for inclusion in a Federal court or Office proceeding'' was overly restrictive and inconsistent with the statute. These comments suggested that patent owner statements filed in a proceeding in a Federal court or the Office should be entered regardless of when and where the original statements were made, consistent with the phrase ''statements of the patent owner filed in a proceeding'' as set forth in 35 U.S.C. 301 and the stated intent of Congress to limit a patent owner's ability to take different positions in different proceedings.

Response: In response to the comments, § 1.501(a)(2) is revised to permit any person to submit into the official file of a patent written statements of the patent owner that were filed by the patent owner in a proceeding before a Federal court or the Office in which the patent owner took

a position with regard to the scope of any claim in the patent. This revision, relative to the proposed rule, encompasses any statements a patent owner files in a proceeding in which the patent owner took a position on the scope of any claim of a particular patent. As long as the statement was filed by the patent owner in the proceeding, the statement is eligible for submission under § 1.501(a)(2) even if originally made outside the proceeding. Submissions are limited to statements filed by the patent owner, as the statement must be a position that patent owner took in the proceeding with respect to the scope of a claim. The rule focuses on whether the patent owner filed the statement in a proceeding before a Federal court or the Office. This interpretation is consistent with the stated intent of Congress to prevent a patent owner from taking different positions in different proceedings

Comment 2: Several comments requested clarification of the meaning of ''patent owner'' as used in § 1.501(a)(2). These comments questioned whether the term ''patent owner'' encompasses parties who may make written statements regarding claim scope on behalf of the patent owner.

Response: The term ''patent owner'' is synonymous with the term ''patentee''. Patentee is defined by 35 U.S.C. 100 to include the entity ''not only * * * to whom the patent was issued but also the successors in title to the patentee.'' Therefore, the scope of the term ''patent owner'' encompasses the party or parties having title to the patent. The rule has been modified to require the submitter to identify how any statement submitted under § 1.501(a)(2) is a written statement of the patent owner in which the patent owner took a position on the scope of any claim in the patent.

Comment 3: A number of comments questioned whether a patent owner claim scope statement under 35 U.S.C. 301 is limited to statements made about that specific patent or whether it extends to statements made about claims in related patents and applications.

Response: A patent owner claim scope statement must be directed to the claims of a particular patent to be eligible for entry into the official file of that patent. 35 U.S.C 301 does not provide for the submission of a patent owner claim scope statement not directed to any claim of that particular patent or a statement that is directed to claims in a related patent or application.

Comment 4: Several comments suggested that properly submitted patent owner claim scope statements should be considered when the Office is deciding whether to order or institute a post-patent proceeding.

Response: Use of a patent owner claim scope statement is governed by statute. New 35 U.S.C. 301(d) states in pertinent part, ''A written statement * * * shall not be considered by the Office for any purpose other than to determine the proper meaning of a patent claim in a proceeding that is ordered or instituted pursuant to section 304, 314, or 324.'' The statute prohibits the use of the statement for any purpose other than determining the claim scope in a proceeding that has already been ordered or instituted. Therefore, the Office may not, and will not, consider such statements when the Office is deciding whether to order or institute a post-patent proceeding.

Comment 5: Several comments suggested that the Office adopt a ''summary judgment like'' procedure if the patent owner statement could not be used when the Office makes a decision to order or institute a post-patent proceeding. In this proposed procedure, a party could move to expedite the post-patent proceeding to final disposition based upon the previously unconsidered patent owner claim scope statement.

Response: A properly submitted patent owner claim scope statement may be used by the Office during a post-patent proceeding in accordance with 35 U.S.C. 301(d). The effect of a patent owner claim scope statement on the merits of an ordered or instituted post-patent proceeding will be addressed on a case-by-case basis.

Comment 6: Several comments suggested that third parties should not be required to serve a copy of a submission under 35 U.S.C. 301 on the patent owner, as this may compromise the anonymity of the submitter. Suggestions were made for other ways to notify a patent owner that a submission was made, including sending a notification by the Office to the patent owner or publishing relevant patent information in the Official Gazette when a submission is made.

Response: A patent owner should be fully and timely informed as to the content of his or her patent file. As a result, when a third party files a submission under 35 U.S.C. 301, contemporaneous service on the patent owner is necessary. *See* MPEP § 2208. Direct service is the most efficient manner of notifying the patent owner as to the content of his or her patent file. If the submission under § 1.501 is made by a registered practitioner, the real party in interest need not be identified. Thus, service and proof of service in accordance with § 1.248 can be achieved while preserving the anonymity of the real party in interest.

Comment 7: One comment suggested that proposed § 1.501(e) be clarified to indicate that service is only required when an entity other than the patent owner files a submission under § 1.501. A number of comments requested clarification regarding what the Office means by ''a *bona fide* attempt of service.'' These comments questioned whether it means that where a third party is notified that service was not successful, the entire submission would need to be resubmitted with proof that service of the patent owner was attempted. Several comments suggested that if the submitter becomes aware that service of the patent owner was not successful, the submitter should, as set forth in proposed § 42.105(b), have the option of contacting the Office to discuss alternative modes of service.

Response: The Office's proposal in § 1.501(e) to require proof of a *bona fide* attempt of service has not been implemented. As promulgated in this final rule, § 1.501(e) provides that a person other than the patent owner making a submission pursuant to § 1.501(a) must include a certification that a copy of a submission under § 1.501 has been served in its entirety upon the patent owner at the address as provided for in § 1.33(c). Section 1.248(a) governs the manner of service and provides different ways to achieve service, including publication in the Official Gazette if service is otherwise unsuccessful. *See* § 1.248(a)(5).

Comment 8: A number of comments requested guidance on a patent owner's ability to respond to a third party's submission under § 1.501, and the procedure a patent owner should follow if such a response is permitted. These comments also questioned whether a third party submission can be challenged as non-compliant and whether a non-compliant submission can be expunged or redacted from the official file of a patent.

Response: The rules do not provide a mechanism by which a patent owner can file a response to a third party submission under § 1.501. A patent owner may, however, at any time, file a submission in accordance with 35 U.S.C. 301 and § 1.501 containing the same prior art and/or patent owner claim scope statement as that of a third party. The patent owner may include a written explanation of how the claims of the patent differ from the prior art or any patent owner claim scope statement and accompanying information submitted by the third party. If the Office inadvertently entered a non-compliant submission into the official

file of a patent, the patent owner may request review of the determination to enter the submission by way of a petition under § 1.181.

Comment 9: A number of comments requested clarification as to what would constitute a sufficient explanation of the pertinence and manner of applying the prior art or patent owner claim scope statement to at least one claim in the patent as required in § 1.501(b)(1). These comments questioned whether the submission could include affidavits and declarations.

Response: Guidance regarding the content of a submission under 35 U.S.C. 301, with exemplary explanations, can be found in MPEP § 2205. Pursuant to the guidance in MPEP § 2205, affidavits and declarations are permitted to explain the pertinence and manner of applying the prior art or patent owner claim scope statement.

Comment 10: A number of comments requested that the Office clarify what it means when referring to information that ''addresses'' the patent owner claim scope statement. These comments also suggested that the Office limit the scope of accompanying information that could be submitted with a patent owner claim scope statement to avoid voluminous submissions that would detract from the usefulness of such submissions. It was further suggested that the meaning of information that ''addresses the written statement'' (35 U.S.C. 301(c)) should be narrowly defined and limited to information or portions of documents that directly refer to the statement or have been used to support or contradict the statement.

Response: The party submitting the patent owner claim scope statement should ensure that the accompanying information filed with the submission is sufficient to provide context for the statement, so the Office can properly weigh its probative value in construing the proper meaning of a claim. Insufficient or unnecessarily voluminous accompanying information will diminish the probative value of any submitted patent owner claim scope statement in determining the proper meaning of a claim. Documents that address the patent owner claim scope statement may include documents that the patent owner claim scope statement refers to or relies upon for support, and documentary evidence of what prompted the patent owner claim scope statement to be filed in the Federal court or Office proceeding. Additionally, documents submitted in support, response, or rebuttal of the patent owner claim scope statement would all be considered additional information ''addressing'' the statement. These examples are illustrative only and are not intended to be exhaustive or limiting. The Office encourages submitters to present focused filings correlating the patent owner claim scope statement to the items of additional information in order to provide sufficient context for the claim scope statement filed in a court or Office proceeding and to assist the Office in construing the proper meaning of a claim.

Comment 11: One comment suggested that the Office require the submission of identifying information which was previously proposed to be optional, including: (1) The forum in which the statement was made; (2) the Federal court or Office proceeding designation; (3) the status of the proceeding; (4) the relationship between the proceeding and the patent; (5) an identification of the specific papers in the proceeding containing the statement; and (6) an identification of the portions of the papers relevant to the written statement.

Response: Consistent with the comment section 1.501(a)(3) requires a submitter to identify the forum and proceeding in which patent owner filed each statement and the specific papers and portions of the papers submitted that contain the patent owner claim scope statement. The Office did not amend § 1.501(a)(3) to require the status of the proceeding or its relationship to the patent as they are not needed by the Office when determining if the submission is proper. Submissions that do not include sufficient indicia to conclude that a submitted patent owner claim scope statement, and all additional information, and were filed in a Federal court or Office proceeding will not be entered into the official file of a patent.

Comment 12: One comment questioned whether there is a continuing duty to supplement the accompanying information submitted with a patent owner claim scope statement.

Response: The statute does not impose a continuing duty to supplement any submissions made pursuant to 35 U.S.C. 301(a)(2). Should a party determine that a subsequent submission is needed, one can be filed in accordance with § 1.501. Any subsequent submission filed by a party other than the patent owner, during the pendency of a reexamination proceeding, will not be considered in that reexamination proceeding.

Comment 13: One comment suggested that § 1.501(c) be amended to permit the submission by a third party of a patent owner claim scope statement filed in a pending litigation to be entered into a pending reexamination proceeding.

Response: The comment's proposed change to § 1.501(c) cannot be adopted as it is contrary to statute. 35 U.S.C. 305 dictates that the reexamination will be conducted *ex parte* after the time period for filing the patent owner statement and reply provided for in 35 U.S.C. 304 has expired. A third party submission of alleged patent owner claim scope statements, even if compliant with 35 U.S.C. 301, would constitute prohibited third party participation as to the merits of an *ex parte* proceeding. MPEP § 2282, however, provides that in order to ensure a complete file, with updated status information regarding prior or concurrent proceedings regarding the patent under reexamination, the Office will, at any time, accept from any parties, for entry into the reexamination file, copies of notices of suit and other proceedings involving the patent and bare notice of decisions or papers filed in the court from litigations or other proceedings involving the patent, *e.g.* a final written decision in an *inter partes* review or post grant review of the patent subject to the *ex parte* reexamination. *See* MPEP § 2282.

Patent owners are reminded that § 1.565(a) requires the patent owner to ''inform the Office of any prior or concurrent proceedings in which the patent is or was involved such as interferences, reissues, *ex parte* reexaminations, *inter partes* reexaminations, or litigation and the results of such proceedings.'' Because § 1.565(a) uses open language to provide a non-exhaustive listing of proceedings of which patent owner must inform the Office, the rule also includes *inter partes* review and post grant review proceedings, once they become effective.

Comment 14: One comment questioned why there is a difference in the required explanations of relevance in a post-patent submission under § 1.501 and in a preissuance submission under § 1.290.

Response: The difference between the regulatory requirements for the accompanying explanation of a preissuance submission and the accompanying explanation of a post-issuance submission is due to the different statutory requirements that govern each respective submission's explanation. *Cf.* new 35 U.S.C. 122(e) with 35 U.S.C. 301(b). New 35 U.S.C. 122(e)(2)(A) requires a preissuance submission to include a concise description of the asserted relevance of each submitted document, whereas 35 U.S.C. 301(b) requires the person citing prior art or written statements to

provide an explanation of the pertinence and manner of applying the prior art or written statements to at least one claim of the patent.

Comment 15: One comment suggested that the ''period of enforceability of a patent'' in 35 U.S.C. 301 should be interpreted to begin upon the issuance of a Notice of Allowance, thus authorizing the submission of prior art in the official files of allowed applications.

Response: The comment's position that the language of 35 U.S.C. 301 should be interpreted to authorize the submission of prior art in allowed applications is not in accord with the express language of the provision New 35 U.S.C. 301(a)(1) and (2) both use the phrase ''claim of any particular patent. ''New 35 U.S.C. 301(b) also uses the term ''patent'' with regard to which official files are eligible for entry of a submission under 35 U.S.C. 301. Therefore, 35 U.S.C. 301 only permits submissions of prior art and written statements into the official files of issued patents, which by statute does not include patent applications, even those in which a Notice of Allowance has issued.

Comment 16: A number of comments requested that the Office to clarify how a patent owner claim scope statement under § 1.501(a)(2) differs from a patent owner statement under § 1.530(b).

Response: Under § 1.530(b), a patent owner may file a statement in an *ex parte* reexamination proceeding, in response to an order granting reexamination, to make comments on the substantial new question of patentability identified in the order for reexamination. Under § 1.501(a)(2), any party may submit in a patent file a written statement of the patent owner that has been filed in a Federal court or Office proceeding in which the patent owner took a position on the scope of any claim in the patent.

Comment 17: A number of comments suggested that the definition of a Federal court should include the International Trade Commission (ITC).

Response: New 35 U.S.C. 301(a)(2) limits statements eligible for submission to those filed in a proceeding before a Federal court or the Office. The International Trade Commission (ITC) is a Federal agency and not a Federal court. The ITC is an independent Federal agency established by 19 U.S.C. 1330 to conduct investigations under 19 U.S.C. 1337, and not a Federal court.

Comment 18: Several comments requested clarification of the phrase ''proper meaning of a patent claim'' as set forth in 35 U.S.C. 301(d) and in § 1.510(b)(2) and § 1.552(d). The comments suggested that claim construction of patent claims in post-patent proceedings at the Office should be based on the same standards as patent claim construction in the courts, following *Phillips* v. *AWH Corp.,* 415 F.3d 1303 (Fed. Cir. 2005) and *Thorner* v. *Sony Computer Entertainment Inc.,* 669 F.3d 1362 (Fed. Cir. 2012). These comments also questioned how statements by patent owners will be used to determine the proper meaning of a patent claim.

Response: The Office standard for claim construction, *i.e.,* ''the proper meaning of a claim,'' is the ''broadest reasonable interpretation'' (BRI) consistent with the specification. *See In re Am. Acad. of Sci. Tech Ctr.,* 367 F.3d 1359, 1364 (Fed. Cir. 2004), *In re Morris,* 127 F.3d 1048, 1053–54 (Fed. Cir. 1997), and *In re Zletz,* 893 F.2d 319, 321 (Fed. Cir. 1989); *see also* MPEP § 2111. During reexamination, claims of an unexpired patent will be given the broadest reasonable interpretation consistent with the specification. *See* In re Yamamoto, 740 F.2d at 1571–72 (Fed. Cir. 1984). In a reexamination proceeding involving claims of an expired patent, claim construction is performed pursuant to the principles set forth in *Ex parte Papst-Motoren,* 1 USPQ2d 1655 (Bd. Pat. App. & Inter. 1986); and MPEP § 2258 I.(G) (8th ed. 2001) (Rev. 8, July 2010). Written statements submitted pursuant to 35 U.S.C. 301(a)(2) will not be used when ordering reexamination, but will be used during reexamination to assist in construing the claims. *See* 35 U.S.C. 301(d).

Comment 19: Several comments suggested the language in proposed § 1.501(b)(2) be amended to make clear that the accompanying information filed with the patent owner claim scope statement is not limited to information of the patent owner.

Response: The language in § 1.501(b)(2) has been amended to make clear that the accompanying information filed with the patent owner claim scope statement is not limited to information of the patent owner.

Comment 20: A number of comments suggested that the requirement for identification of the real party in interest in an *ex parte* reexamination proceeding proposed in § 1.510(b)(7) not be implemented by the final rule. These comments suggested that requiring identification of the real party in interest could have a chilling effect on the submission of *ex parte* reexamination requests.

Response: The Office's proposal to require an *ex parte* reexamination requester to identify themselves upon filing of the request has not been implemented. Instead, the Office will rely upon the *ex parte* reexamination requester's certification required by § 1.510(b)(6).

Comment 21: Several comments suggested that the estoppel provisions, as they apply to *ex parte* reexamination proceedings, only estop a party from requesting *ex parte* reexamination after a final decision in a post grant review or an *inter partes* review. These comments also suggested that the estoppel provisions do not apply to pending *ex parte* reexamination proceedings because the Office, not the third party requester, maintains an *ex parte* reexamination proceeding after the reexamination is ordered. One comment further suggested that the estoppel provisions should not estop a pending *ex parte* reexamination proceeding from continuing because once the Office determines that there is a substantial new question of patentability (SNQ), the *ex parte* reexamination statute mandates that the Office issue a reexamination certificate that resolves the SNQ. One comment requested that the rule specifically state that the estoppel provisions bar the initiation or the maintenance of an *ex parte* reexamination.

Response: Section 1.510 has been revised vis-a-vis the previous rule to implement the new statutory estoppel provisions with respect to requests for *ex parte* reexamination. The comment that the scope of the estoppel provisions precludes maintenance of pending reexamination proceedings is not in accord with the language of the statute. Under certain circumstances, sections 315(e) and 325(e) prohibit a requester from requesting a new proceeding or maintaining an ongoing proceeding in the Office. With respect to reexamination, it is the Office that maintains a reexamination proceeding, not the requester. Accordingly, the estoppel provisions do not apply to pending reexamination proceedings.

Comment 22: Several comments suggested that the estoppel provisions of 35 U.S.C. 315(e) and 325(e) do not apply to requests for *ex parte* reexamination in view of 35 U.S.C. 302 which provides that any person at any time can file such a request.

Response: The legislative history of 35 U.S.C. 315(e) and 35 U.S.C. 325(e) indicates that the estoppel provision applies ''* * * to subsequent administrative proceedings. A party that uses *inter partes* review is estopped from raising in a subsequent PTO proceeding (such as an *ex parte* reexam or *inter partes* review) any issue that it raised or reasonably could have raised

in the *inter partes* review.'' *See* H.R. Rep. No. 112–98, Part 1, at page 47 (2011). [Internal quotations and emphasis removed]. Therefore, the new estoppel provisions apply to the filing of a subsequent request for *ex parte* reexamination by a requester that previously instituted a review that resulted in a final written decision.

Comment 23: One comment suggested that when there is an *ex parte* reexamination proceeding co-pending with an *inter partes* review or post-grant review, the reexamination should be either stayed or merged. By contrast, another comment suggested that an *ex parte* reexamination proceeding co-pending with an *inter partes* review or post grant review, should not be merged given the statutory requirement of 35 U.S.C. 305 to conduct *ex parte* reexamination with special dispatch.

Response: The Director possesses statutory discretion as to the manner of handling multiple proceedings and matters pending before the Office for a single patent. *See* 35 U.S.C. 315(d) and 35 U.S.C. 325(d). Therefore, a determination whether to stay, transfer, consolidate (merge) or terminate any proceeding(s) on the same patent is within the sole discretion of the Office, and will be addressed on a case-by-case basis.

Comment 24: One comment requested clarification as to who is a real party in interest or a privy for purposes of the certification in § 1.510(b)(6). The comment suggested that the common law test of ''control'' be used, similar to and consistent with the control test discussed in *Practice Guide for Proposed Trial Rules,* 77 FR 6868, 6870–71 (Feb. 9, 2012), and *Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions,* 77 FR 6879, 6883–84 (Feb. 9, 2012) (''Board Notices''). The comment also suggested that certification should apply only to those entities that have controlled a post-issuance proceeding and that the identification requirement is exclusively applicable to them. The comment further suggested that any challenges to the non-estoppel certification should occur before a determination to order reexamination is made.

Response: The ''control test'' referred to by the comment may be used as guidance when determining whether the certification required by § 1.510(b)(6) is proper with regard to a real party in interest. A requester may also consult the Office's *inter partes* reexamination certification policy for additional guidance concerning the definition of a real party in interest. *See* MPEP § 2612. Similarly, privity is determined on a case-by-case basis. Therefore, whether a requester is a privy to an estopped party must be decided by evaluating all the facts and circumstances of each individual situation.

Section 1.510(b)(6) requires a third party requester to certify that the estoppel provisions do not prohibit the filing of the *ex parte* reexamination request, and the Office will not generally look beyond this required certification. If the Office becomes aware of facts that call the certification into question, the Office will determine, on a case-by-case basis, whether the request for *ex parte* reexamination is prohibited by statute.

Comment 25: A number of comments suggested that the statement identifying the real party in interest, required by proposed § 1.510(b)(7), be deleted because it is unnecessary in view of the certification in § 1.510(b)(6). Several of these comments pointed out that should the Office retain the requirement for identification of the real party in interest, procedures for safeguarding anonymity are critical.

Response: The Office's proposal in § 1.510(b)(7) to require an *ex parte* reexamination requester to identify themselves upon the filing of the request has not been implemented. The certification requirement of § 1.510(b)(6), coupled with a party's obligations under § 11.18 when transacting business before the Office, are considered sufficient to ensure compliance with the new statutory estoppel requirements. A real party in interest that wishes to remain anonymous can do so by utilizing the services of a registered practitioner. In such an instance, the registered practitioner submitting a request for reexamination on behalf of the real party in interest would be certifying that the real party in interest was not estopped from filing the request. Conversely, an individual filing a request for reexamination on behalf of himself cannot remain anonymous as he is required to sign the document that includes the § 1.510(b)(6) certification.

Rulemaking Considerations

A. *Administrative Procedure Act (APA):* This final rule revises existing rules governing prior art citations in a patent file and *ex parte* reexamination to implement the following provisions of sections 3 and 6 of the AIA: (1) Section 6(g) which amends 35 U.S.C. 301, to expand the scope of information that may be submitted in the file of an issued patent to include patent owner claim scope statements; (2) the provisions of sections 6(a) and 6(d) (which newly enact *inter partes* review and post grant review, respectively) that provide for estoppels effective as to proceedings before the Office, including but not limited to reexamination; and (3) sections 3(j) and 7 which change the title ''Board of Patent Appeals and Interferences'' to ''Patent Trial and Appeal Board,'' and change references to interference proceedings to derivation proceedings.

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

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

B. *Regulatory Flexibility Act:* As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. *See* 5 U.S.C. 603. The Office received no comments on this subject.

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

D. *Executive Order 13563 (Improving Regulation and Regulatory Review):* The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society

consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

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

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

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

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

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

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

K. *Congressional Review Act:* Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the United States Patent and Trademark Office will submit a report containing this final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this final rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

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

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

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

O. *Paperwork Reduction Act:* The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. This final rule makes changes to the rules of practice that would impose new information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). Accordingly, the Office submitted a proposed information collection to OMB for its review and approval when the notice of proposed rulemaking was published. The Office also published the title, description, and respondent description of the information collection, with an estimate of the annual reporting burdens, in the notice of proposed rulemaking (*See Changes to Implement Miscellaneous Post Patent Provisions of the Leahy-Smith America Invents Act,* 77 FR 447). The Office did not receive any comments on the proposed information collection. The changes adopted in this final rule do not require any further change to the proposed information collection. Accordingly, the Office has resubmitted the proposed information collection to OMB. The proposed information collection is available at the OMB's Information Collection Review Web site (*www.reginfo.gov/public/do/PRAMain*).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses, and Biologics.

37 CFR Part 5

Classified information, Foreign relations, Inventions and patents.

37 CFR Part 10

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

37 CFR Part 11

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

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, 37 CFR parts 1, 5, 10, 11, and 41 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Section 1.1 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 1.1 Addresses for non-trademark correspondence with the United States Patent and Trademark Office.

(a) * * *

(1) * * *

(ii) *Patent Trial and Appeal Board.* See § 41.10 or § 42.6 of this title. Notices of appeal, appeal briefs, reply briefs, requests for oral hearing, as well as all other correspondence in an application or a patent involved in an appeal to the Board for which an address is not otherwise specified, should be addressed as set out in paragraph (a)(1)(i) of this section.

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■ 3. Section 1.4 is amended by revising paragraph (a)(2) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

(a) * * *

(2) *Correspondence in and relating to a particular application or other proceeding in the Office.* See particularly the rules relating to the filing, processing, or other proceedings of national applications in subpart B, §§ 1.31 to 1.378; of international applications in subpart C, §§ 1.401 to 1.499; of *ex parte* reexaminations of patents in subpart D, §§ 1.501 to 1.570; of extension of patent term in subpart F, §§ 1.710 to 1.785; of *inter partes* reexaminations of patents in subpart H, §§ 1.902 to 1.997; and of the Patent Trial and Appeal Board in parts 41 and 42 of this title.

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■ 4. Section 1.5 is amended by adding new paragraph (c) to read as follows:

§ 1.5 Identification of patent, patent application, or patent-related proceeding.

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(c) Correspondence relating to a trial proceeding before the Patent Trial and Appeal Board (part 42 of this title) are governed by § 42.6 of this title.

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■ 5. Section 1.6 is amended by revising the introductory text of paragraph (d) and paragraph (d)(9) to read as follows:

§ 1.6 Receipt of correspondence.

* * * * *

(d) *Facsimile transmission.* Except in the cases enumerated below, correspondence, including authorizations to charge a deposit account, may be transmitted by facsimile. The receipt date accorded to the correspondence will be the date on which the complete transmission is received in the United States Patent and Trademark Office, unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. See paragraph (a)(3) of this section. To facilitate proper processing, each transmission session should be limited to correspondence to be filed in a single application or other proceeding before the United States Patent and Trademark Office. The application number of a patent application, the control number of a reexamination proceeding, the interference number of an interference proceeding, the trial number of a trial proceeding before the Board, or the patent number of a patent should be entered as a part of the sender's identification on a facsimile cover sheet. Facsimile transmissions are not permitted and, if submitted, will not be accorded a date of receipt in the following situations:

* * * * *

(9) In contested cases and trials before the Patent Trial and Appeal Board, except as the Board may expressly authorize.

* * * * *

■ 6. Section 1.9 is amended by revising paragraph (g) to read as follows:

§ 1.9 Definitions.

* * * * *

(g) For definitions in Patent Trial and Appeal Board proceedings, see parts 41 and 42 of this title.

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■ 7. Section 1.11 is amended by revising paragraph (e) to read as follows:

§ 1.11 Files open to the public.

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(e) Except as prohibited in § 41.6(b), § 42.14 or § 42.410(b), the file of any interference or trial before the Patent Trial and Appeal Board is open to public inspection and copies of the file may be obtained upon payment of the fee therefor.

■ 8. Section 1.17 is amended by revising paragraph (b) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

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(b) For fees in proceedings before the Patent Trial and Appeal Board, see § 41.20 and § 42.15 of this title.

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■ 9. Section 1.36 is amended by revising paragraph (b) to read as follows:

§ 1.36 Revocation of power of attorney; withdrawal of patent attorney or agent.

* * * * *

(b) A registered patent attorney or patent agent who has been given a power of attorney pursuant to § 1.32(b) may withdraw as attorney or agent of record upon application to and approval by the Director. The applicant or patent owner will be notified of the withdrawal of the registered patent attorney or patent agent. Where power of attorney is given to the patent practitioners associated with a Customer Number, a request to delete all of the patent practitioners associated with the Customer Number may not be granted if an applicant has given power of attorney to the patent practitioners associated with the Customer Number in an application that has an Office action to which a reply is due, but insufficient time remains for the applicant to file a reply. See § 41.5 of this title for withdrawal during proceedings before the Patent Trial and Appeal Board.

■ 10. Section 1.51 is amended by revising paragraph (c)(2) to read as follows:

§ 1.51 General requisites of an application.

* * * * *

(c) * * *

(2) A specification as prescribed by 35 U.S.C. 112(a), see § 1.71;

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■ 11. Section 1.57 is amended by revising paragraphs (c)(1), (c)(2), and (c)(3) to read as follows:

§ 1.57 Incorporation by reference.

* * * * *

(c) * * *

(1) Provide a written description of the claimed invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and set forth the best mode contemplated by the inventor of carrying out the invention as required by 35 U.S.C. 112(a);

(2) Describe the claimed invention in terms that particularly point out and distinctly claim the invention as required by 35 U.S.C. 112(b); or

(3) Describe the structure, material, or acts that correspond to a claimed means or step for performing a specified function as required by 35 U.S.C. 112(f).

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■ 12. Section 1.59 is amended by revising paragraph (a)(1) to read as follows:

§ 1.59 Expungement of information or copy of papers in application file.

(a)(1) Information in an application will not be expunged, except as provided in paragraph (b) of this section or § 41.7(a) or § 42.7(a) of this title.

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■ 13. Section 1.78 is amended by revising the introductory text of paragraph (a)(1) and paragraph (a)(4) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a)(1) A nonprovisional application or international application designating the United States of America may claim an invention disclosed in one or more prior-filed copending nonprovisional applications or international applications designating the United States of America. In order for an application to claim the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America, each prior-filed application must name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by 35 U.S.C. 112(a), other than the requirement to disclose the best mode. In addition, each prior-filed application must be:

* * * * *

(4) A nonprovisional application, other than for a design patent, or an international application designating the United States of America may claim an invention disclosed in one or more prior-filed provisional applications. In order for an application to claim the benefit of one or more prior-filed provisional applications, each prior-filed provisional application must name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by 35 U.S.C. 112(a), other than the requirement to disclose the best mode. In addition, each prior-filed provisional application must be entitled to a filing date as set forth in § 1.53(c), and the basic filing fee set forth in § 1.16(d) must be paid within the time period set forth in § 1.53(g).

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■ 14. Section 1.136 is amended by revising paragraphs (a)(1)(iv), (a)(1)(v), (a)(2), and (b) to read as follows:

§ 1.136 Extensions of time.

(a)(1) * * *

(iv) The reply is to a decision by the Patent Trial and Appeal Board pursuant to § 1.304 or to § 41.50 or § 41.52 of this title; or

(v) The application is involved in a contested case (§ 41.101(a) of this title) or a derivation proceeding (§ 42.4(b) of this title).

(2) The date on which the petition and the fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. A reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application (§ 1.135), but in no situation may an applicant reply later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings, § 1.956 for extensions of time in *inter partes* reexamination proceedings; §§ 41.4(a) and 41.121(a)(3) of this title for extensions of time in contested cases before the Patent Trial and Appeal Board; and § 42.5(c) of this title for extensions of time in trials before the Patent Trial and Appeal Board.

* * * * *

(b) When a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not effect any extension under this paragraph. In no situation can any extension carry the date on which reply is due beyond the maximum time period set by statute. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings; § 1.956 for extensions of time in *inter partes* reexamination proceedings; §§ 41.4(a) and 41.121(a)(3) of this title for extensions of time in contested cases before the Patent Trial and Appeal Board; and § 42.5(c) of this title for extensions of time in trials before the Patent Trial and Appeal Board. Any request under this section must be accompanied by the petition fee set forth in § 1.17(g).

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■ 15. Section 1.178 is amended by revising paragraph (b) to read as follows:

§ 1.178 Original patent; continuing duty of applicant.

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(b) In any reissue application before the Office, the applicant must call to the attention of the Office any prior or concurrent proceedings in which the patent (for which reissue is requested) is or was involved, such as interferences or trials before the Patent Trial and Appeal Board, reissues, reexaminations, or litigations and the results of such proceedings (see also § 1.173(a)(1)).

■ 16. Section 1.181 is amended by revising paragraphs (a)(1) and (a)(3) to read as follows:

§ 1.181 Petition to the Director.

(a) * * *

(1) From any action or requirement of any examiner in the *ex parte* prosecution of an application, or in *ex parte* or *inter partes* prosecution of a reexamination proceeding which is not subject to appeal to the Patent Trial and Appeal Board or to the court;

* * * * *

(3) To invoke the supervisory authority of the Director in appropriate circumstances. For petitions involving action of the Patent Trial and Appeal Board, see § 41.3 of this title.

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■ 17. The undesignated center heading before § 1.191 is revised to read as follows:

Appeal to the Patent Trial and Appeal Board

■ 18. Section 1.191 is revised to read as follows:

§ 1.191 Appeal to Patent Trial and Appeal Board.

Appeals to the Patent Trial and Appeal Board under 35 U.S.C. 134(a) and (b) are conducted according to part 41 of this title.

■ 19. Section 1.198 is revised to read as follows:

§ 1.198 Reopening after a final decision of the Patent Trial and Appeal Board.

When a decision by the Patent Trial and Appeal Board on appeal has become final for judicial review, prosecution of the proceeding before the primary examiner will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.114 or § 41.50 of this title without the written authority of the Director,

and then only for the consideration of matters not already adjudicated, sufficient cause being shown.

■ 20. Section 1.248 is amended by revising the section heading and paragraph (c) to read as follows:

§ 1.248 Service of papers; manner of service; proof of service in cases other than interferences and trials.

* * * * *

(c) See § 41.106(e) or § 42.6(e) of this title for service of papers in contested cases or trials before the Patent Trial and Appeal Board.

■ 21. Section 1.313 is amended by revising paragraph (b)(4) to read as follows:

§ 1.313 Withdrawal from issue.

* * * * *

(b) * * *

(4) For an interference or derivation proceeding.

* * * * *

■ 22. Section 1.322 is amended by revising paragraph (a)(3) to read as follows:

§ 1.322 Certificate of correction of Office mistake.

(a) * * *

(3) If the request relates to a patent involved in an interference or trial before the Patent Trial and Appeal Board, the request must comply with the requirements of this section and be accompanied by a motion under § 41.121(a)(2), § 41.121(a)(3), or § 42.20 of this title.

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■ 23. Section 1.323 is revised to read as follows:

§ 1.323 Certificate of correction of applicant's mistake.

The Office may issue a certificate of correction under the conditions specified in 35 U.S.C. 255 at the request of the patentee or the patentee's assignee, upon payment of the fee set forth in § 1.20(a). If the request relates to a patent involved in an interference or trial before the Patent Trial and Appeal Board, the request must comply with the requirements of this section and be accompanied by a motion under § 41.121(a)(2), § 41.121(a)(3) or § 42.20 of this title.

■ 24. The undesignated center heading before § 1.501 is revised to read as follows:

Citation of Prior Art and Written Statements

■ 25. Section 1.501 is revised to read as follows:

§ 1.501 Citation of prior art and written statements in patent files.

(a) *Information content of submission:* At any time during the period of enforceability of a patent, any person may file a written submission with the Office under this section, which is directed to the following information:

(1) Prior art consisting of patents or printed publications which the person making the submission believes to have a bearing on the patentability of any claim of the patent; or

(2) Statements of the patent owner filed by the patent owner in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of the patent. Any statement submitted under this paragraph must be accompanied by any other documents, pleadings, or evidence from the proceeding in which the statement was filed that address the written statement, and such statement and accompanying information under this paragraph must be submitted in redacted form to exclude information subject to an applicable protective order.

(3) Submissions under paragraph (a)(2) of this section must identify:

(i) The forum and proceeding in which patent owner filed each statement;

(ii) The specific papers and portions of the papers submitted that contain the statements; and

(iii) How each statement submitted is a statement in which patent owner took a position on the scope of any claim in the patent.

(b) *Explanation:* A submission pursuant to paragraph (a) of this section:

(1) Must include an explanation in writing of the pertinence and manner of applying any prior art submitted under paragraph (a)(1) of this section and any written statement and accompanying information submitted under paragraph (a)(2) of this section to at least one claim of the patent, in order for the submission to become a part of the official file of the patent; and

(2) May, if the submission is made by the patent owner, include an explanation of how the claims differ from any prior art submitted under paragraph (a)(1) of this section or any written statements and accompanying information submitted under paragraph (a)(2) of this section.

(c) *Reexamination pending:* If a reexamination proceeding has been requested and is pending for the patent in which the submission is filed, entry of the submission into the official file of the patent is subject to the provisions of §§ 1.502 and 1.902.

(d) *Identity:* If the person making the submission wishes his or her identity to be excluded from the patent file and kept confidential, the submission papers must be submitted anonymously without any identification of the person making the submission.

(e) *Certificate of Service:* A submission under this section by a person other than the patent owner must include a certification that a copy of the submission was served in its entirety upon patent owner at the address as provided for in § 1.33 (c). A submission by a person other than the patent owner that fails to include proper proof of service as required by § 1.248(b) will not be entered into the patent file.

■ 26. Section 1.510 is amended by revising paragraphs (a) and (b)(2) and adding new paragraph (b)(6) to read as follows:

§ 1.510 Request for ex parte reexamination.

(a) Any person may, at any time during the period of enforceability of a patent, file a request for an *ex parte* reexamination by the Office of any claim of the patent on the basis of prior art patents or printed publications cited under § 1.501, unless prohibited by 35 U.S.C. 315(e)(1) or 35 U.S.C. 325(e)(1). The request must be accompanied by the fee for requesting reexamination set in § 1.20(c)(1).

(b) * * *

(2) An identification of every claim for which reexamination is requested, and a detailed explanation of the pertinency and manner of applying the cited prior art to every claim for which reexamination is requested. For each statement of the patent owner and accompanying information submitted pursuant to § 1.501(a)(2) which is relied upon in the detailed explanation, the request must explain how that statement is being used to determine the proper meaning of a patent claim in connection with the prior art applied to that claim and how each relevant claim is being interpreted. If appropriate, the party requesting reexamination may also point out how claims distinguish over cited prior art.

* * * * *

(6) A certification by the third party requester that the statutory estoppel provisions of 35 U.S.C. 315(e)(1) or 35 U.S.C. 325(e)(1) do not prohibit the requester from filing the *ex parte* reexamination request.

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■ 27. Section 1.515 is amended by revising paragraph (a) to read as follows:

§ 1.515 Determination of the request for ex parte reexamination.

(a) Within three months following the filing date of a request for an *ex parte* reexamination, an examiner will consider the request and determine whether or not a substantial new question of patentability affecting any claim of the patent is raised by the request and the prior art cited therein, with or without consideration of other patents or printed publications. A statement and any accompanying information submitted pursuant to § 1.501(a)(2) will not be considered by the examiner when making a determination on the request. The examiner's determination will be based on the claims in effect at the time of the determination, will become a part of the official file of the patent, and will be given or mailed to the patent owner at the address provided for in § 1.33(c) and to the person requesting reexamination.

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■ 28. Section 1.552 is amended by adding new paragraph (d) to read as follows:

§ 1.552 Scope of reexamination in ex parte reexamination proceedings.

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(d) Any statement of the patent owner and any accompanying information submitted pursuant to § 1.501(a)(2) which is of record in the patent being reexamined (which includes any reexamination files for the patent) may be used after a reexamination proceeding has been ordered to determine the proper meaning of a patent claim when applying patents or printed publications.

■ 29. Section 1.701 is amended by revising paragraphs (a)(1), (a)(3), (c)(1)(i), (c)(1)(ii), (c)(2)(iii), and (c)(3) to read as follows:

§ 1.701 Extension of patent term due to examination delay under the Uruguay Round Agreements Act (original applications, other than designs, filed on or after June 8, 1995, and before May 29, 2000).

(a) * * *

(1) Interference or derivation proceedings under 35 U.S.C. 135(a); and/or

* * * * *

(3) Appellate review by the Patent Trial and Appeal Board or by a Federal court under 35 U.S.C. 141 or 145, if the patent was issued pursuant to a decision in the review reversing an adverse determination of patentability and if the patent is not subject to a terminal disclaimer due to the issuance of another patent claiming subject matter that is not patentably distinct from that under appellate review. If an application is remanded by a panel of the Patent Trial and Appeal Board and the remand is the last action by a panel of the Patent Trial and Appeal Board prior to the mailing of a notice of allowance under 35 U.S.C. 151 in the application, the remand shall be considered a decision in the review reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(2) as amended by section 532(a) of the Uruguay Round Agreements Act, Public Law 103–465, 108 Stat. 4809, 4983–85 (1994), and a final decision in favor of the applicant under paragraph (c)(3) of this section. A remand by a panel of the Patent Trial and Appeal Board shall not be considered a decision in the review reversing an adverse determination of patentability as provided in this paragraph if there is filed a request for continued examination under 35 U.S.C. 132(b) that was not first preceded by the mailing, after such remand, of at least one of an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151.

(c)(1) * * *

(i) With respect to each interference or derivation proceeding in which the application was involved, the number of days, if any, in the period beginning on the date the interference or derivation proceeding was instituted to involve the application in the interference or derivation proceeding and ending on the date that the interference or derivation proceeding was terminated with respect to the application; and

(ii) The number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Patent and Trademark Office due to interference or derivation proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension.

(2) * * *

(iii) The number of days, if any, in the period beginning on the date applicant was notified that an interference or derivation proceeding would be instituted but for the secrecy order and ending on the date the secrecy order and any renewal thereof was removed; and

* * * * *

(3) The period of delay under paragraph (a)(3) of this section is the sum of the number of days, if any, in the period beginning on the date on which an appeal to the Patent Trial and Appeal Board was filed under 35 U.S.C. 134 and ending on the date of a final decision in favor of the applicant by the Patent Trial and Appeal Board or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145.

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■ 30. Section 1.702 is amended by revising paragraphs (a)(3), (b)(2), (b)(4), (c), and (e) to read as follows:

§ 1.702 Grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).

(a) * * *

(3) Act on an application not later than four months after the date of a decision by the Patent Trial and Appeal Board under 35 U.S.C. 134 or 135 or a decision by a Federal court under 35 U.S.C. 141, 145, or 146 where at least one allowable claim remains in the application; or

* * * * *

(b) * * *

(2) Any time consumed by an interference or derivation proceeding under 35 U.S.C. 135(a);

* * * * *

(4) Any time consumed by review by the Patent Trial and Appeal Board or a Federal court; or

* * * * *

(c) *Delays caused by interference and derivation proceedings.* Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to interference or derivation proceedings under 35 U.S.C. 135(a).

* * * * *

(e) *Delays caused by successful appellate review.* Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to review by the Patent Trial and Appeal Board under 35 U.S.C. 134 or by a Federal court under 35 U.S.C. 141 or 145, if the patent was issued under a decision in the review reversing an adverse determination of patentability. If an application is remanded by a panel of the Patent Trial and Appeal Board and the remand is the last action by a panel of the Patent Trial and Appeal Board prior to the mailing of a notice of allowance under 35 U.S.C. 151 in the application, the remand shall be considered a decision by the Patent Trial and Appeal Board as that phrase is used in 35 U.S.C. 154(b)(1)(A)(iii), a decision in the review reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(1)(C)(iii), and a final decision in favor of the applicant under § 1.703(e). A remand by a panel of the Patent Trial and Appeal Board shall not be

considered a decision in the review reversing an adverse determination of patentability as provided in this paragraph if there is filed a request for continued examination under 35 U.S.C. 132(b) that was not first preceded by the mailing, after such remand, of at least one of an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151.

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■ 31. Section 1.703 is amended by revising paragraphs (a)(5), (b)(2), (b)(3)(iii), (c)(1), (c)(2) and (d)(3) to read as follows:

§ 1.703 Period of adjustment of patent term due to examination delay.

(a) * * *

(5) The number of days, if any, in the period beginning on the day after the date that is four months after the date of a final decision by the Patent Trial and Appeal Board or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145 or 146 where at least one allowable claim remains in the application and ending on the date of mailing of either an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151, whichever occurs first; and

* * * * *

(b) * * *

(2)(i) The number of days, if any, in the period beginning on the date an interference or derivation proceeding was instituted to involve the application in the interference or derivation proceeding under 35 U.S.C. 135(a) and ending on the date that the interference or derivation proceeding was terminated with respect to the application; and

(ii) The number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Office due to interference or derivation proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension;

(3) * * *

(iii) The number of days, if any, in the period beginning on the date applicant was notified that an interference or derivation proceeding under 35 U.S.C. 135(a) would be instituted but for the secrecy order and ending on the date the secrecy order was removed; and

* * * * *

(c) * * *

(1) The number of days, if any, in the period beginning on the date an interference or derivation proceeding was instituted to involve the application in the interference or derivation proceeding under 35 U.S.C. 135(a) and ending on the date that the interference or derivation proceeding was terminated with respect to the application; and

(2) The number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Office due to interference or derivation proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension.

(d) * * *

(3) The number of days, if any, in the period beginning on the date applicant was notified that an interference or derivation proceeding under 35 U.S.C. 135(a) would be instituted but for the secrecy order and ending on the date the secrecy order was removed; and

* * * * *

■ 32. Section 1.704 is amended by revising the introductory text of paragraph (c)(9) to read as follows:

§ 1.704 Reduction of period of adjustment of patent term.

* * * * *

(c) * * *

(9) Submission of an amendment or other paper after a decision by the Patent Trial and Appeal Board, other than a decision designated as containing a new ground of rejection under § 41.50 (b) of this title or statement under § 41.50(c) of this title, or a decision by a Federal court, less than one month before the mailing of an Office action under 35 U.S.C. 132 or notice of allowance under 35 U.S.C. 151 that requires the mailing of a supplemental Office action or supplemental notice of allowance, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

* * * * *

■ 33. Section 1.937 is amended by revising paragraph (a) to read as follows:

§ 1.937 Conduct of inter partes reexamination.

(a) All *inter partes* reexamination proceedings, including any appeals to the Patent Trial and Appeal Board, will be conducted with special dispatch within the Office, unless the Director makes a determination that there is good cause for suspending the reexamination proceeding.

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■ 34. The undesignated center heading before § 1.959 is revised to read as follows:

Appeal to the Patent Trial and Appeal Board in Inter Partes Reexamination

■ 35. Section 1.959 is revised to read as follows:

§ 1.959 Appeal in inter partes reexamination.

Appeals to the Patent Trial and Appeal Board under 35 U.S.C. 134(c) are conducted according to part 41 of this title.

■ 36. Section 1.979 is revised to read as follows:

§ 1.979 Return of Jurisdiction from the Patent Trial and Appeal Board; termination of appeal proceedings.

(a) Jurisdiction over an *inter partes* reexamination proceeding passes to the examiner after a decision by the Patent Trial and Appeal Board upon transmittal of the file to the examiner, subject to each appellant's right of appeal or other review, for such further action as the condition of the *inter partes* reexamination proceeding may require, to carry into effect the decision of the Patent Trial and Appeal Board.

(b) Upon judgment in the appeal before the Patent Trial and Appeal Board, if no further appeal has been taken (§ 1.983), the prosecution in the *inter partes* reexamination proceeding will be terminated and the Director will issue and publish a certificate under § 1.997 concluding the proceeding. If an appeal to the U.S. Court of Appeals for the Federal Circuit has been filed, that appeal is considered terminated when the mandate is issued by the Court.

■ 37. Section 1.981 is revised to read as follows:

§ 1.981 Reopening after a final decision of the Patent Trial and Appeal Board.

When a decision by the Patent Trial and Appeal Board on appeal has become final for judicial review, prosecution of the *inter partes* reexamination proceeding will not be reopened or reconsidered by the primary examiner except under the provisions of § 41.77 of this title without the written authority of the Director, and then only for the consideration of matters not already adjudicated, sufficient cause being shown.

■ 38. Section 1.983 is amended by revising paragraphs (a), (c), (d), and (f) to read as follows:

§ 1.983 Appeal to the United States Court of Appeals for the Federal Circuit in inter partes reexamination.

(a) The patent owner or third party requester in an *inter partes* reexamination proceeding who is a party to an appeal to the Patent Trial and Appeal Board and who is dissatisfied with the decision of the Patent Trial and Appeal Board may, subject to § 41.81, appeal to the U.S. Court of Appeals for the Federal Circuit and may be a party to any appeal thereto

taken from a reexamination decision of the Patent Trial and Appeal Board.

* * * * *

(c) If the patent owner has filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit, the third party requester may cross appeal to the U.S. Court of Appeals for the Federal Circuit if also dissatisfied with the decision of the Patent Trial and Appeal Board.

(d) If the third party requester has filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit, the patent owner may cross appeal to the U.S. Court of Appeals for the Federal Circuit if also dissatisfied with the decision of the Patent Trial and Appeal Board.

* * * * *

(f) Notwithstanding any provision of the rules, in any reexamination proceeding commenced prior to November 2, 2002, the third party requester is precluded from appealing and cross appealing any decision of the Patent Trial and Appeal Board to the U.S. Court of Appeals for the Federal Circuit, and the third party requester is precluded from participating in any appeal taken by the patent owner to the U.S. Court of Appeals for the Federal Circuit.

■ 39. Section 1.985 is revised to read as follows:

§ 1.985 Notification of prior or concurrent proceedings in inter partes reexamination.

(a) In any *inter partes* reexamination proceeding, the patent owner shall call the attention of the Office to any prior or concurrent proceedings in which the patent is or was involved, including but not limited to interference or trial before the Patent Trial and Appeal Board, reissue, reexamination, or litigation and the results of such proceedings.

(b) Notwithstanding any provision of the rules, any person at any time may file a paper in an *inter partes* reexamination proceeding notifying the Office of a prior or concurrent proceeding in which the same patent is or was involved, including but not limited to interference or trial before the Patent Trial and Appeal Board, reissue, reexamination, or litigation and the results of such proceedings. Such paper must be limited to merely providing notice of the other proceeding without discussion of issues of the current *inter partes* reexamination proceeding.

■ 40. Section 1.993 is revised to read as follows:

§ 1.993 Suspension of concurrent interference and inter partes reexamination proceeding.

If a patent in the process of *inter partes* reexamination is or becomes involved in an interference or trial before the Patent Trial and Appeal Board, the Director may suspend the *inter partes* reexamination, interference, or trial. The Director will not consider a request to suspend an interference or trial unless a motion under § 41.121(a)(3) of this title to suspend the interference or trial has been presented to, and denied by, an administrative patent judge and the request is filed within ten (10) days of a decision by an administrative patent judge denying the motion for suspension or such other time as the administrative patent judge may set.

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

■ 41. The authority citation for 37 CFR part 5 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 41, 181–188, as amended by the Patent Law Foreign Filing Amendments Act of 1988, Public Law 100–418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.;* the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.;* the Nuclear Non Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.;* and the delegations in the regulations under these Acts to the Director (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

■ 42. Section 5.3 is amended by revising paragraph (b) to read as follows:

§ 5.3 Prosecution of application under secrecy orders; withholding patent.

* * * * *

(b) An interference or derivation will not be instituted involving a national application under secrecy order. An applicant whose application is under secrecy order may suggest an interference (§ 41.202(a) of this title), but the Office will not act on the request while the application remains under a secrecy order.

* * * * *

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

■ 43. The authority citation for 37 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 500, 15 U.S.C. 1123; 35 U.S.C. 2(b)(2), 31, 32, 41.

■ 44. Section 10.1 is amended by revising paragraph (s) to read as follows:

§ 10.1 Definitions.

* * * * *

(s) A *proceeding before the Office* includes an application, a reexamination, a protest, a public use proceeding, a patent interference, a trial before the Patent Trial and Appeal Board, an *inter partes* trademark proceeding, or any other proceeding which is pending before the Office.

* * * * *

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

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

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

■ 46. Section 11.5 is amended by revising the introductory text of paragraph (b)(1) to read as follows:

§ 11.5 Register of attorneys and agents in patent matters; practice before the office.

* * * * *

(b) * * *

(1) *Practice before the Office in patent matters.* Practice before the Office in patent matters includes, but is not limited to, preparing and prosecuting any patent application, consulting with or giving advice to a client in contemplation of filing a patent application or other document with the Office, drafting the specification or claims of a patent application; drafting an amendment or reply to a communication from the Office that may require written argument to establish the patentability of a claimed invention; drafting a reply to a communication from the Office regarding a patent application; and drafting a communication for a public use, interference, reexamination proceeding, petition, appeal to or any other proceeding before the Patent Trial and Appeal Board, or other proceeding. Registration to practice before the Office in patent cases sanctions the performance of those services which are reasonably necessary and incident to the preparation and prosecution of patent applications or other proceeding before the Office involving a patent application or patent in which the practitioner is authorized to participate. The services include:

* * * * *

■ 47. Section 11.6 is amended by revising paragraph (d) to read as follows:

§ 11.6 Registration of attorneys and agents.

* * * * *

(d) *Patent Trial and Appeal Board matters.* For action by a person who is

not registered in a proceeding before the Patent Trial and Appeal Board, see § 41.5(a) or § 42.10(c) of this title.

■ 48. Section 11.10 is amended by revising paragraph (b)(3)(iii) to read as follows:

§ 11.10 Restrictions on practice in patent matters.

* * * * *

(b) * * *

(3) * * *

(iii) Particular patent or patent application means any patent or patent application, including, but not limited to, a provisional, substitute, international, continuation, divisional, continuation-in-part, or reissue patent application, as well as any protest, reexamination, petition, appeal, interference, or trial proceeding based on the patent or patent application.

* * * * *

■ 49. Section 11.58 is amended by revising paragraph (b)(1)(i) to read as follows:

§ 11.58 Duties of disciplined or resigned practitioner, or practitioner on disability inactive status.

* * * * *

(b) * * *

(1) * * *

(i) File a notice of withdrawal as of the effective date of the exclusion, suspension, acceptance of resignation, or transfer to disability inactive status in each pending patent and trademark application, each pending reexamination and interference or trial proceeding, and every other matter pending in the Office, together with a copy of the notices sent pursuant to paragraphs (b) and (c) of this section;

* * * * *

PART 41—PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 50. The authority citation for 37 CFR part 41 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 132, 133, 134, 135, 306, and 315.

■ 51. The heading of part 41 is revised to read as set forth above.

■ 52. Section 41.1 is amended by revising paragraph (a) to read as follows:

§ 41.1 Policy.

(a) *Scope.* Part 41 governs appeals and interferences before the Patent Trial and Appeal Board. Sections 1.1 to 1.36 and 1.181 to 1.183 of this title also apply to practice before the Board, as do other sections of part 1 of this title that are incorporated by reference into part 41.

* * * * *

■ 53. Section 41.2 is amended by revising the introductory text of the definition of *Board* to read as follows:

§ 41.2 Definitions.

* * * * *

Board means the Patent Trial and Appeal Board and includes:

* * * * *

■ 54. Section 41.10 is revised to read as follows:

§ 41.10 Correspondence addresses.

Except as the Board may otherwise direct,

(a) *Appeals.* Correspondence in an application or a patent involved in an appeal (subparts B and C of this part) during the period beginning when an appeal docketing notice is issued and ending when a decision has been rendered by the Board, as well as any request for rehearing of a decision by the Board, shall be mailed to: Patent Trial and Appeal Board, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450. Notices of appeal, appeal briefs, reply briefs, requests for oral hearing, as well as all other correspondence in an application or a patent involved in an appeal to the Board for which an address is not otherwise specified, should be addressed as set out in § 1.1(a)(1)(i) of this title.

(b) *Interferences.* Mailed correspondence in interference (subpart D of this part) shall be sent to Mail Stop INTERFERENCE, Patent Trial and Appeal Board, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

(c) *Trial Proceedings.* Correspondence in trial proceedings (part 42 of this title) are governed by § 42.6(b) of this title.

■ 55. Section 41.30 is amended by revising the definition of *Proceeding* to read as follows:

§ 41.30 Definitions.

* * * * *

Proceeding means either a national application for a patent, an application for reissue of a patent, an *ex parte* reexamination proceeding, or a trial before the Patent Trial and Appeal Board. Appeal to the Board in an *inter partes* reexamination proceeding is controlled by subpart C of this part.

* * * * *

■ 56. Section 41.37 is amended by revising paragraphs (c)(1)(ii) and (c)(1)(iii) to read as follows:

§ 41.37 Appeal brief.

* * * * *

(c) * * *

(1) * * *

(ii) *Related appeals, interferences, and trials.* A statement identifying by application, patent, appeal, interference, or trial number all other prior and pending appeals, interferences, trials before the Board, or judicial proceedings (collectively, ''related cases'') which satisfy all of the following conditions: involve an application or patent owned by the appellant or assignee, are known to appellant, the appellant's legal representative, or assignee, and may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal, except that such statement is not required if there are no such related cases. If an appeal brief does not contain a statement of related cases, the Office may assume that there are no such related cases.

(iii) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the rejected independent claims, which shall refer to the specification in the Record by page and line number or by paragraph number, and to the drawing, if any, by reference characters. For each rejected independent claim, and for each dependent claim argued separately under the provisions of paragraph (c)(1)(iv) of this section, if the claim contains a means plus function or step plus function recitation as permitted by 35 U.S.C. 112(f), then the concise explanation must identify the structure, material, or acts described in the specification in the Record as corresponding to each claimed function with reference to the specification in the Record by page and line number or by paragraph number, and to the drawing, if any, by reference characters. Reference to the patent application publication does not satisfy the requirements of this paragraph.

* * * * *

■ 57. Section 41.67 is amended by revising paragraphs (c)(1)(ii) and (c)(1)(v) to read as follows:

§ 41.67 Appellant's brief.

* * * * *

(c)(1) * * *

(ii) *Related appeals, interferences, and trials.* A statement identifying by application, patent, appeal, interference, or trial number all other prior and pending appeals, interferences, trials before the Board, or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any

proceeding identified under this paragraph must be included in an appendix as required by paragraph (c)(1)(xi) of this section.

* * * * *

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by column and line number, and to the drawing(s), if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112(f), must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

* * * * *

■ 58. Section 41.68 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 41.68 Respondent's brief.

* * * * *

(b)(1) * * *

(ii) *Related Appeals, Interferences, and trials.* A statement identifying by application, patent, appeal, interference, or trial number all other prior and pending appeals, interferences or judicial proceedings known to respondent, the respondent's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph must be included in an appendix as required by paragraph (b)(1)(ix) of this section.

* * * * *

■ 59. Section 41.77 is amended by revising paragraph (a) to read as follows:

§ 41.77 Decisions and other actions by the Board.

(a) The Patent Trial and Appeal Board, in its decision, may affirm or reverse each decision of the examiner on all issues raised on each appealed claim, or remand the reexamination proceeding to the examiner for further consideration. The reversal of the examiner's determination not to make a rejection proposed by the third party requester constitutes a decision adverse to the patentability of the claims which are subject to that proposed rejection which will be set forth in the decision of the Patent Trial and Appeal Board as a new ground of rejection under paragraph (b) of this section. The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed.

* * * * *

■ 60. Section 41.110 is amended by revising paragraph (b)(2) to read as follows:

§ 41.110 Filing claim information.

* * * * *

(b) * * *

(2) For each involved claim that contains a means-plus-function or step-plus-function limitation in the form permitted under 35 U.S.C. 112(f), file an annotated copy of the claim indicating in bold face between braces ({ }) the specific portions of the specification that describe the structure, material, or acts corresponding to each claimed function.

* * * * *

■ 61. Section 41.201 is amended by revising paragraph (2)(ii) of the definition of *Threshold issue* to read as follows:

§ 41.201 Definitions.

* * * * *

Threshold issue * * *

(2) * * *

(ii) Unpatentability for lack of written description under 35 U.S.C. 112(a) of an involved application claim where the applicant suggested, or could have suggested, an interference under § 41.202(a).

Dated: July 25, 2012.

David J. Kappos,

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

[FR Doc. 2012–18530 Filed 8–3–12; 8:45 am]

BILLING CODE 3510–16–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 12–130; RM–11662, DA 12–1208]

Television Broadcasting Services; Greenville, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by ION Media Greenville License, Inc. (''ION''), the licensee of WEPX–TV, channel 51, Greenville, North Carolina, requesting the substitution of channel 26 for channel 51 at Greenville. While the Commission instituted a freeze on the acceptance of full power television rulemaking petitions requesting channel substitutions in May 2011, it subsequently announced that it would lift the freeze to accept such petitions for rulemaking seeking to relocate from channel 51 pursuant to a voluntary relocation agreement with Lower 700 MHz A Block licensees. In addition, according to ION, this channel substitution serves the public interest as it will increase the station's service area by almost 100,000 persons.

DATES: This rule is effective August 6, 2012.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *joyce.bernstein@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 12–130, adopted July 27, 2012, and released July 30, 2012. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via the company's Web site, *http://www.bcpiweb.com.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the

Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under North Carolina, is amended by removing channel 51 and adding channel 26 at Greenville.

[FR Doc. 2012–19104 Filed 8–3–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MB Docket No. 11–154, FCC 12–9]

Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's Report and Order (*Order*) implementing provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 related to closed captioning of Internet protocol-delivered video programming and apparatus closed captioning requirements. This notice is consistent with the *Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: 47 CFR 79.4(c)(1)(ii), 79.4(c)(2)(ii) through (iii), 79.4(d)(1) through (4) and (d)(6) through (9), 79.4(e)(1) through (6), and 79.103(b)(3) through (4) published at 77 FR 19480, March 30, 2012 are effective on August 6, 2012.

FOR FURTHER INFORMATION CONTACT: Diana Sokolow, Policy Division, Media Bureau, at (202) 418–2120, or email: *diana.sokolow@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on July 24, 2012, OMB approved, for a period of three years, the information collection requirements relating to the rules and procedures contained in the Commission's *Order,* FCC 12–9, published at 77 FR 19480, March 30, 2012. The OMB Control Number is 3060–1162. The Commission publishes this notice as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1162, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on July 24, 2012, for the information collection requirements contained in new rules 47 CFR 79.4(c)(1)(ii), 79.4(c)(2)(ii)–(iii), 79.4(d)(1)–(4) and (6)–(9), 79.4(e)(1)–(6), and 79.103(b)(3)–(4).

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, 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 that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1162.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1162.

OMB Approval Date: July 24, 2012.

OMB Expiration Date: July 31, 2015.

Title: Closed Captioning of Video Programming Delivered Using Internet Protocol, and Apparatus Closed Caption Requirements.

Form Number: N/A.

Respondents: Individuals or households; Businesses or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 1,762 respondents; 4,684 responses.

Estimated Time per Response: 0.084 to 10 hours.

Frequency of Response: One-time and on-occasion reporting requirements; Recordkeeping requirement; Third-party disclosure requirement.

Obligation to Respond: Mandatory; Required to obtain or retain benefits. The statutory authority for this information collection is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and Sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617.

Total Annual Burden: 11,685 hours.

Total Annual Cost: $ 307,800.

Nature and Extent of Confidentiality: Some assurances of confidentiality are being provided to the respondents.

Parties filing petitions for exemption based on economic burden, requests for Commission determinations of technical feasibility and achievability, requests for purpose-based waivers, or responses to complaints alleging violations of the Commission's rules may seek confidential treatment of information they provide pursuant to the Commission's existing confidentiality rules. *See* 47 CFR 0.459.

The Commission is not requesting that individuals who file complaints alleging violations of the Commission's rules (complainants) submit confidential information (e.g., credit card numbers, social security numbers, or personal financial information) to the Commission. The Commission requests that complainants submit their names, addresses, and other contact information, which Commission staff needs to process complaints. Any use of this information is covered under the routine uses listed in the Commission's SORN, FCC/CGB–1, ''Informal Complaints and Inquiries.''

The PIA that the FCC completed on June 28, 2007 gives a full and complete

explanation of how the FCC collects, stores, maintains, safeguards, and destroys PII, as required by OMB regulations and the Privacy Act, 5 U.S.C. 552a. The PIA may be viewed at: <*http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html*>.

Also, the Commission will prepare a revision to the SORN and PIA to cover the PII collected related to this information collection, as required by OMB's Memorandum M–03–22 (September 26, 2003) and by the Privacy Act, 5 U.S.C. 552a.

Privacy Act Impact Assessment: Yes. The Privacy Impact Assessment (PIA) was completed on June 28, 2007. It may be reviewed at: <*http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html*>. The Commission is in the process of updating the PIA to incorporate various revisions made to the SORN.

Needs and Uses: On January 13, 2012, in document FCC 12–9, the Commission released a Report and Order adopting final rules—containing information collection requirements—to implement sections 303, 330(b), and 713 of the Communications Act of 1934 (the Act), as amended by the ''Twenty-First Century Communications and Video Accessibility Act of 2010'' (CVAA). *See* Public Law. 111–260, §§ 202 and 203. The Commission also released an Erratum thereto on January 30, 2012. Pursuant to Section 202 of the CVAA, the *Order* adopted rules governing the closed captioning requirements for the owners, providers, and distributors of video programming delivered using Internet protocol (IP). Pursuant to Section 203 of the CVAA, the *Order* adopted rules governing the closed captioning capabilities of certain apparatus on which consumers view video programming.

Federal Communications Commission.

Bulah P. Wheeler,

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

[FR Doc. 2012–19067 Filed 8–3–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393 and Appendix G to Subchapter B of Chapter III

[Docket No. FMCSA–2010–0257]

RIN 2126–AB28

Parts and Accessories Necessary for Safe Operation: Brakes; Adjustment Limits

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) amends the requirements regarding brake readjustment limits in the Federal Motor Carrier Safety Regulations (FMCSRs). This rule amends the readjustment limits, clarifies their application, and corrects an error in cross-referencing a Federal Motor Vehicle Safety Standard (FMVSS). This rule responds to a petition for rulemaking from the Commercial Vehicle Safety Alliance (CVSA).

DATES: *Effective Date:* This final rule becomes effective September 5, 2012.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than September 5, 2012.

ADDRESSES: Please include the Docket ID Number FMCSA–2010–0257 or the Regulatory identification Number (RIN) 2126–AB28 in the subject line of your petition, and submit it by 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. ET, Monday through Friday, except Federal holidays.

Fax: 202–493–2251.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations (MC–PSV), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001; *deborah.freund@dot.gov;* telephone (202) 366–5370.

SUPPLEMENTARY INFORMATION:

I. Abbreviations
II. Legal Basis for the Rulemaking
III. Background
IV. CVSA's Petition
V. NPRM; Comments Received
VI. Regulatory Analyses

I. Abbreviations

ATA American Trucking Associations
CMV commercial motor vehicle
CVSA Commercial Vehicle Safety Alliance
DOT U.S. Department of Transportation
FHWA Federal Highway Administration
FMCSRs Federal Motor Carrier Safety Regulations
FMVSSs Federal Motor Vehicle Safety Standards
NHTSA National Highway Traffic Safety Administration
NPRM Notice of Proposed Rulemaking
OOS out of service
SAE Society of Automotive Engineers

II. Legal Basis for the Rulemaking

This final rule is based on the authority of the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, August 9, 1935, now codified at 49 U.S.C. 31502(b)) (1935 Act) and the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act), both of which provide broad discretion to the Secretary of Transportation (Secretary) in implementing their provisions.

The 1935 Act provides that the Secretary may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier [49 U.S.C. 31502(b)(1)], and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation [section 31502(b)(2)]. This final rule is based on the Secretary's authority to regulate the safety and standards of equipment of for-hire and private carriers.

The 1984 Act gives the Secretary concurrent authority to regulate drivers, motor carriers, and vehicle equipment. Codified in 49 U.S.C. 31136(a), section 206(a) of the Act requires the Secretary to publish regulations on commercial motor vehicle (CMV) safety. Specifically, the Act sets forth minimum safety standards to ensure that (1) CMVs are maintained, equipped, loaded, and operated safely [section 31136(a)(1)]; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely [section 31136(a)(2)]; (3) the physical condition of CMV operators is adequate to enable them to operate the vehicles safely [section 31136(a)(3)]; and (4) the operation of CMVs does not have a deleterious effect on the physical

condition of the operators [section 31136(a)(4)].

The rule provides improved guidance concerning CMV brake adjustment limits. The revised requirements concerning maximum pushrod stroke for brake actuators will enhance the braking performance of the vehicle, consistent with section 31136(a)(1). The rule is not concerned with the responsibilities or physical condition of drivers addressed by section 31136(a)(2) and (3), respectively, and deals with section 31136(a)(4) only to the extent that a safer vehicle is less likely to have a deleterious effect on the physical condition of a driver. Before prescribing any such regulations, however, FMCSA must consider the ''costs and benefits'' of any proposal (49 U.S.C. 31136(c)(2)(A) and 31502(d)).

III. Background

Appendix G, Minimum Periodic Inspection Standards, was added to the FMCSRs in 1988 (53 FR 49411, Dec. 7, 1988). Under the inspection standards of Appendix G, all items required to be inspected must be in proper adjustment, must not be defective, and must function properly before a commercial motor vehicle (CMV) is placed in service. Appendix G includes, among many other things, brake adjustment (readjustment) limits. Paragraph 1.a.(5) of this appendix currently states that the maximum stroke at which brakes should be readjusted is given below. Any brake ¼″ or more past the readjustment limit or any two brakes less than ¼″; beyond the readjustment limit shall be cause for rejection. Stroke shall be measured with engine off and reservoir pressure of 80 to 90 psi with brakes fully applied.

The figures in the rightmost column of each of the three tables following paragraph 1.a.(5) indicate the maximum stroke at which brakes should be readjusted.

Subsequently, in June 1991, the Society of Automotive Engineers (SAE) (now known as SAE International) developed International Recommended Practice J1817 (SAE J1817) to provide a marking system that distinguishes long-stroke from standard-stroke air brake actuators, rotochambers, and their components. It defines ''rated stroke'' as the minimum design stroke of a brake actuator.

The 2001 revision of SAE J1817 includes tables listing recommended values for minimum rated stroke and maximum readjustment stroke for clamp band/sealed design standard- stroke brake actuators (Table 1A), clamp band/sealed design long-stroke brake actuators (Table 1B), and rotochamber designs (Table 1C). Table 1B is further broken down to include three classes of long-stroke actuators. The classes are defined according to the range of difference between the maximum readjustment stroke and the standard rated stroke. In most but not all cases, the maximum readjustment stroke is 80 percent of the minimum rated stroke. The differences are greatest for the smaller sizes of brake chambers.

In 1997, the Federal Highway Administration (FHWA), FMCSA's predecessor agency within the U.S. Department of Transportation (DOT), published in the **Federal Register** an NPRM titled ''Parts and Accessories Necessary for Safe Operation; General Amendments'' (62 FR 18169, Apr. 14, 1997). The NPRM proposed various amendments to 49 CFR part 393 and 49 CFR part 571, which generally did not establish new or more stringent requirements but clarified existing requirements.

As part of that NPRM, FHWA proposed to add a new § 393.47(e) to the FMCSRs to specify the maximum permissible stroke for different types (sizes) of brake chambers and incorporate by reference SAE J1817, Long-Stroke Air-Brake Actuator Marking (June 1991). The NPRM proposed to require that the maximum values for pushrod stroke for clamp- and rotochamber-type actuators must be less than 80 percent of the rated strokes listed in SAE J1817, or 80 percent of the rated stroke marked on the brake chamber by the chamber manufacturer, or the readjustment limit marked on the brake chamber by the chamber manufacturer. For types 16 and 20 long-stroke clamp-type brake actuators, the NPRM proposed that the pushrod stroke must be less than 51 mm (2 in.), or 80 percent of the rated stroke marked on the brake chamber by the chamber manufacturer, or the readjustment limit marked on the brake chamber by the chamber manufacturer. The NPRM did not propose to revise the Appendix G brake readjustment-limits tables.

FMCSA published the final rule on August 15, 2005 (70 FR 48007). The Agency revised § 393.47(e) as proposed, except that it incorporated by reference the July 2001 revision of SAE J1817 rather than the June 1991 edition. No commenters to the docket for that rulemaking addressed the proposed incorporation by reference of SAE J1817.

IV. CVSA's Petition

On April 16, 2007, CVSA petitioned the Agency to revise § 393.47(e). CVSA stated that, although the readjustment (or brake actuator stroke) limits of SAE J1817are consistent with those listed in Appendix G and CVSA's North American Standard Out-of-Service (OOS) Criteria, § 393.47(e) ''specifies readjustment (stroke) limits based on 80 percent of the rated (full) strokes listed in SAE J1817.'' Relying on this criterion introduces discrepancies between § 393.47(e) and SAE J1817. Although the readjustment limits listed in SAE J1817 agree with those in Appendix G and the OOS Criteria, they differ, for some brake chambers, from the ''80 percent of rated stroke'' specified in § 393.47(e). Consequently, ''[t]he enforcement and/or noting of § 393.47(e) violations by cross-referencing the regulation to 80% of SAE J1817—*Long Stroke Air-Brake Actuator Marking, July, 2001* is proving problematic for inspectors and industry.''

CVSA also pointed out that § 393.47(e) considers a brake with the stroke at the readjustment limit to be out of adjustment. In contrast, both Appendix G and the OOS Criteria state that the brake pushrod stroke must exceed the readjustment limit for the brake to be considered out of adjustment. The petitioners added that the values in both Appendix G and the OOS Criteria were established consistent with brake manufacturers' recommendations. Although the CVSA subsequently updated the OOS Criteria to include several types of long-stroke clamp-type brake chambers, FMCSA has not similarly revised the Appendix G values.

In addition, CVSA requested that FMCSA revise § 393.53, Automatic brake adjusters and brake adjustment indicators, to include references to the applicable requirements for such equipment on trailers. Sections 393.53(b) and (c) would be revised to include a reference to paragraph S5.2.2 so that the Federal Motor Vehicle Safety Standard (FMVSS) citations include the reference to trailers and read, ''49 CFR 571.121, S5.1.8 or S5.2.2.''

On June 10, 2008, CVSA amended its April 2007 petition to correct the text of the table subheadings for clamp-type and rotochamber-type chamber data in the original petition and to add tables for Bendix DD–3 and bolt-type brake chamber data. The amended petition changed the table subheadings ''Brake Chamber Pushrod Stroke Limit'' and ''RC Actuate Pushrod Stroke Limit'' to read ''Brake Adjustment Limit'' and ''Rotochamber Type Brake Chamber Data,'' respectively.

FMCSA has placed copies of CVSA's 2007 petition and 2008 correction in the docket for this rulemaking.

V. NPRM; Comments Received

In response to the CVSA petition, FMCSA published a notice of proposed rulemaking in the **Federal Register** on September 2, 2011 (76 FR 54721).

The Agency received comments from CVSA, the American Trucking Associations (ATA), the Heavy Duty Manufacturers Association (HDMA), and Meritor WABCO Vehicle Control Systems (Meritor WABCO).

1. Revise and expand the readjustment limit tables, and include in § 393.47 and Appendix G. The NPRM proposed to revise and expand the readjustment-limits tables as recommended by CVSA, and to include these revised tables in § 393.47(e) and Appendix G. The revised tables cover readjustment limits not only for clamp-, bolt-, and rotochamber-type brake chambers, but also for Bendix DD–3 chambers. The table for clamp-type brake chambers also differentiates between readjustment limits for more sizes of standard-stroke and long-stroke chambers.

All commenters supported the inclusion of the proposed readjustment limit tables in § 393.47(e) and Appendix G. Meritor WABCO stated that ''The addition of the tables will clarify the chamber stroke limits and reduce confusion in the field. Including these tables in both * * * § 393.47(e) and Appendix G will eliminate the need for cross-referencing in the regulation. The additional text (after the tables) is also appropriate to reinforce the chamber manufacturers' use of marking and labeling of their actuators with the rated or readjustment strokes.''

With regard to all proposed readjustment limit tables, CVSA suggests that the Agency consider increasing the metric conversions to tenths of a millimeter. CVSA has found that roadside enforcement officers who are trained using metric measurement (whether in Canada or other jurisdictions) benefit from the additional decimal place, especially in making conversions or comparisons from Imperial to Metric, or vice versa, when reference materials or data system entries require them. Furthermore, Canada's pending National Safety Code (NSC) Standard 11 update, to be implemented in 2013, and CVSA's Out-of-Service Criteria (OOSC) will be adopting metric conversions expressed to the tenth of a millimeter for the same reason.

CVSA advised FMCSA of a typographical error concerning the Type A chamber outside diameter. The value shown in the NPRM is 6 5/16 inch (176 mm). The correct value is 6 15/16 inch (176 mm).

Agency Response. The Agency amends § 393.47(e) and Appendix G to include readjustment limit tables. The Agency has included metric measurements to the tenth of a millimeter as suggested by CVSA, and has corrected the typographical error for the Type A chamber outside diameter.

2. *Threshold for brake adjustment violation, § 393.47(e).* The NPRM proposed changes to paragraph 1a(5) of Appendix G, ''Brake System, Service Brakes,'' to be consistent with the § 393.47(e) requirement that pushrod stroke be less than the values specified in the accompanying tables.

In support of this proposed amendment, the NPRM stated:

> An s-cam brake that is at the readjustment limit when it is cold will be beyond the readjustment limit when it gets hot. FMCSA believes that vehicles should not be dispatched with brakes at the readjustment limit, because those brakes will be found to be beyond the adjustment limit—and out of compliance with the regulations—if evaluated during a roadside inspection after the brakes have become hot due to operational use * * * The Agency believes, however, that it is appropriate to require motor carriers to take action under the requirements of § 393.47 when a brake is at the adjustment limit. * * * To avoid confusion in the enforcement community and the industry, this NPRM proposes to amend Appendix G to make its requirements consistent with those of § 393.47(e) adopted in the August 2005 rule.

Both CVSA and Meritor WABCO opposed the NPRM proposal that would require pushrod stroke to be less than the values specified in the tables. Instead, the commenters recommended that the out-of-adjustment criteria in § 393.47 be when the brake stroke is greater than the established limits, as recommended by CVSA in its original petition. In support of its position CVSA stated:

> CVSA maintains its recommendation that brake out-of-adjustment findings should be made *when pushrod stroke exceeds the limits listed* in the adjustment limit tables, rather than the proposed requirement that they must be less than established adjustment limits * * *. The reasons for this convention, now uniformly used by CVSA in training and in enforcement, are twofold. [Emphasis added.]
>
> First, consistency is important in roadside enforcement * * * The 20 percent rule gives inspectors and commercial vehicle operators clear and consistent expectations relative to proper brake adjustment and out of service conditions. Prior to the 1996 change to the OOSC, inspectors were mixed as to whether or not they determined a brake measured at the stroke limit to be the out of adjustment. The [1996] change to using brake stroke measurements found beyond the adjustment limit to be out of adjustment established much better consistency.
>
> Second, fairness and compliance with the regulation are critical for successful enforcement. * * * *By using brake stroke measurements that exceed adjustment limits as the criteria for being out of adjustment, inspectors make more consistent and, we believe, fairer assessments* * * *. [Emphasis added.]
>
> Ultimately, CVSA determined that amending the OOSC to consider brake stroke measured beyond the established limits, rather than at the limits, would address both aforementioned needs—to be both more consistent and fair in enforcement—without markedly changing the training. Indeed, we believe the move to penalizing brake stroke beyond rather than at the adjustment limits shifts out-of-service findings using the 20 percent rule to be more consistent with the intent of the rule.
>
> CVSA respectfully disagrees with the agency's reasoning for denying this part of our petition. We acknowledge that s-cam brakes, when heated, will exhibit an increase in brake stroke. However, brake stroke adjustment limits were established with reserve stroke included under SAE J1817 in order to, at least in part, accommodate for such normal in-service increases in stroke as those due to thermal expansion. Furthermore, as with all roadside enforcement determinations, inspectors can only assess the as is condition of the vehicle—not what might be the case one mile or more miles down the road.

Agency Response. Although SAE J1817 does not appear to make an explicit statement concerning reserve stroke, the concept is described in detail in the UMTRI study referenced in the NPRM (''Evaluation of Brake Adjustment Criteria for Heavy Trucks,'' FHWA–MC–94–016, March 1995). And, as FMCSA noted in the NPRM, citing that study, ''Although in some cases, the readjustment limits listed in SAE J1817 are 80 percent of the rated stroke for a given actuator, deviations exist.'' (76 FR 54721, at 54723). Because of the inherent challenge in making precise measurements of brake stroke, the proposed requirement for measured values to be ''less than'' the figures in the tables could, in practice, be taken as requiring measurements as much as 1/8 inch less than the values shown. In contrast, the CVSA's recommendation for measurements to ''not be greater than'' the value specified would require values to be less than or equal to the values shown in the table.

Based on the above, and to be clear that pushrod stroke measured to be at the adjustment limit is not considered out of adjustment, FMCSA amends the language in § 393.47(e) to read as follows: ''The pushrod stroke for clamp- and rotochamber brake actuator must

not be greater than the values specified in the following tables:''.

3. *Threshold for periodic inspection, Appendix G.* CVSA and Meritor WABCO noted that under the current wording of Section 1.a(5) of Appendix G (as well as in the proposed amendment to the same section in the NPRM), a vehicle successfully meeting the annual inspection requirements concerning brake adjustment would be issued a brake out-of-adjustment violation if inspected at roadside. Both commenters recommended dropping any reference to specific readjustment limits in Section 1.a(5) of Appendix G.

CVSA noted ''that referencing a specific length of stroke in excess of the adjustment limits for any one, or two brakes especially, may misguide maintenance personnel into not adjusting brakes that should be adjusted since a vehicle meeting the annual inspection standard as proposed would, to the contrary, already be in violation of the FMCSRs as they are enforced at roadside. As an example, a single brake measuring ⅛ inches past the adjustment limit would be considered out-of-adjustment at roadside but would meet the wording provided for in the Appendix G proposal.'' Similarly, Meritor WABCO noted that ''Further, the proposed wording in Appendix G results in confirming an acceptable maintenance inspection, allowing vehicles to be put back in service when brake strokes exceed the readjustment limit by ¼ inch or less.''

Agency Response. CVSA and Meritor WABCO are correct in stating that a CMV could pass a periodic inspection yet be found to be in violation when inspected at roadside.

To maintain consistency between § 393.47 and Appendix G, the Agency amends the Appendix G threshold to be the same as that in the amended § 393.47(e) as follows: ''Any brake stroke exceeding the readjustment limit will be rejected:''

4. Eliminate the incorporation by reference to SAE J1817 in § 393.7(b)(15). The NPRM proposed to eliminate the incorporation by reference to SAE J1817 in § 393.47(e). Inclusion of the new tables in § 393.47(e) would provide explicit readjustment limits for each type of actuator, eliminating the need for the cross-reference.

HDMA and Meritor WABCO supported this amendment, and HDMA noted that ''* * * removing the reference to SAE J1817 Long Stroke Air Brake Actuator Marking, July 2001 is appropriate and reduces future confusion between the sections involved in this NPRM.''

Agency Response. The Agency amends § 393.7 by eliminating § 393.7(b)(15).

5. Revise § 393.53 to add a cross-reference to the Federal Motor Vehicle Safety Standard applicable to trailers. The NPRM proposed to revise § 393.53(b) and (c) to add a cross-reference to FMVSS No. 121, S5.2.2. Although the introductory text of each paragraph clearly states that it is applicable to ''each commercial motor vehicle,'' § 393.53(b) and (c) omit a cross-reference to the FMVSSs applicable to trailers (S5.2.2). The NPRM proposed to add this cross-reference to eliminate potential confusion.

CVSA, Meritor WABCO, and HDMA all supported this change.

Agency Response. FMCSA amends § 393.53(b) and (c) to add a cross-reference to FMVSS No. 121, S5.2.2.

6. *Recommendation to use common terminology.* In its comment to the docket, CVSA suggested that the agency consider clarifying a number of terms used to describe brake actuator pushrod stroke and adjustment status and limits to make the meanings clearer to vehicle operators and inspectors. CVSA noted examples such as ''readjustment'' and ''adjustment;'' and ''pushrod travel'' and ''pushrod stroke.'' CVSA also believes there is an opportunity to improve the public awareness regarding the function of automatic slack adjusters, citing the National Transportation Safety Board's 2006 Safety Recommendations (H–06–001 and H–06–002) that CVSA and FMCSA should work to improve training and proficiency on brake adjustment, and specifically that brake systems with automatic slack adjusters should not be manually adjusted.

Agency Response: FMCSA has made, and continues to make, revisions to clarify its regulatory and safety outreach materials. In many cases, however, the Agency must use technical terms that are consistent with those used by other safety agencies (particularly the National Highway Traffic Safety Administration (NHTSA)) and by standards development organizations (such as SAE International). Responding to CVSA's comment, FMCSA will use the terms ''pushrod stroke'' rather than ''pushrod travel,'' and ''readjustment limit'' rather than ''adjustment limit'' in regulatory text.

Reflecting the longstanding concerns about manual adjustment of automatic brake adjusters (also known as self-adjusting brake adjusters), FMCSA advised the NTSB by letter on October 15, 2009 that, in conjunction with CVSA, the Agency had taken action to modify the North American Standard Inspection training materials to include a module about the potential safety risks associated with manually adjusting automatic slack adjusters. The NTSB acknowledged this effort and classified Safety Recommendation H–06–001 ''Closed—Acceptable Action'' on August 10, 2010.

The following language will now be used on inspection reports: ''This vehicle has brake adjustment violations. Section 393.53 of 49 CFR requires that this vehicle be equipped with a self-adjusting brake system. A qualified service technician needs to determine why the defective brake has excessive stroke and make the appropriate repair. Simply re-adjusting a self-adjusting brake adjuster, or replacing it, does not guarantee that the problem is corrected. The problem may exist in the foundation brake system. By certifying this inspection report you have indicated that this vehicle now has a properly functioning self-adjusting brake adjustment system.'' The information contained in the training materials provided in Module 6 of the North American Standard Level I—Part B (Vehicle) Inspection Course was updated in June 2007. It was also included in the Brake Check Card. In addition, FMCSA worked with the Heavy-Duty Brake Manufacturers Council (HDBMC) and the Insurance Corporation of British Columbia (ICBC) to develop a ''Brake Check Card'' for drivers and brake technicians. FMCSA has distributed some 34,000 of these cards, as well as 28 copies of the CD–ROM containing printable files to individuals and companies since November 2007. Recipients include brake suppliers, insurance companies, State commercial motor vehicle safety agencies through the CVSA, and others. The CVSA and our State partners alone distributed approximately 20,000 cards during the September 2008 Brake Safety Week. NTSB acknowledged this work and on August 10, 2010, classified Safety Recommendation H–06–002 as Open—Acceptable Alternative Response.

FMCSA also notes that the SAE International Truck and Bus Brake Actuator Committee has initiated work on a new SAE Recommended Practice, J2899, which would describe the physical characteristics of air brake actuators and define the maximum readjustment limits based on the rated stroke and type (size) of the chamber. The committee voted to develop this new J-specification to identify maximum readjustment limits independently of SAE J1817 and focus the latter on actuator long-stroke marking requirements. This project was

initiated in May 2009, and it is not known when the new recommended practice will be published. FMCSA believes that moving forward with these amendments at this time will ensure clear guidance is provided to motor carriers on the brake adjustment limits, and uniformity in the enforcement of those limits.

VI. Regulatory Analyses

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This final 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. FMCSA expects the economic impact of this rule to be minimal. The proposal affects the conditions under which motor carriers are cited for out-of-adjustment brakes during roadside inspections and CMVs are placed OOS for such violations. Each brake adjustment violation cited during a roadside inspection must be addressed by the carrier, and each OOS order results in time lost for the carrier and driver because the vehicle may not be operated until the OOS defects have been corrected. Consequently, a decrease in OOS violations cited during roadside inspections can be considered a benefit of these proposed amendments to the readjustment limits because the decrease would represent vehicles that are currently being placed out of service that do not pose a significant safety risk. Conversely, any increase in violations and OOS orders would be a cost as the increase represents vehicles that would have been allowed to remain in operation but now will be considered a significant safety risk and removed from revenue service until the brake adjustment problems are resolved. With respect to the safety impact of OOS orders for brake adjustment violations, more such orders on vehicles with defects may produce a safety benefit by reducing crashes. Neither the petitioners nor the Agency, however, are able to estimate whether the number of brake-adjustment violations resulting from this rule would increase or decrease by a significant amount. It should be noted, however, that FMCSA requires motor carriers to maintain their vehicles in safe and proper operating condition at all times and to have a systematic inspection, repair, and maintenance program to avoid dispatching CMVs with safety defects and deficiencies (*see, e.g.,* 49 CFR 396.3(a)(1) and 398.7). Therefore, the potential costs of this rule relate only to carrying out the maintenance task (e.g., readjusting the brakes or replacing an inoperable slack adjuster) at the inspection location rather than at one of the carrier's usual maintenance locations.

From 2000 to 2011, the annual number of Level I and Level V roadside inspections of CMVs—the only inspection levels that include brake stroke measurement—ranged from about 0.94 to 1.25 million, and the percentage of inspections resulting in the CMV being placed OOS for brake violations of all kinds ranged from a high of 17 percent to a low of 12 percent. Roughly half of these violations concerned out-of-adjustment brakes, but the Agency believes that the changes in this final rule will have relatively little impact on this ratio. By (1) removing from § 393.47(e) the cross-reference to the readjustment-limits tables in SAE J1817 and the requirement that pushrod stroke be less than 80 percent of the rated stroke listed in those tables, (2) incorporating into § 393.47(e) a set of tables (duplicating those in Appendix G) providing explicit readjustment limits, and (3) requiring that pushrod stroke be not greater than the values specified in those tables, the rule eliminates certain discrepancies between the brake readjustment values derived using the ''80 percent of rated stroke'' criterion under § 393.47(e) and the values specified in the SAE J1817 tables. In addition, these changes make Appendix G consistent with § 393.47(e), eliminating confusion in the enforcement community and the industry.

Although substituting the readjustment-limits tables for the cross-reference to SAE J1817 in § 393.47(e) resolves discrepancies that the cross-reference introduced, these differences are in many cases quite small. The differences vary according to the type (size) of brake chamber. Using the ''80 percent of rated stroke'' criterion may produce a value that is either more stringent or less stringent than the value specified in SAE J1817. For these reasons, FMCSA anticipates that certain brake pushrod stroke measurements that comply with the current rule could be out of compliance with the proposed standard—while the reverse could just as often be true. On the other hand, having the Appendix G amendment mirroring the § 393.47(e) requirement that pushrod stroke not be greater than the values specified in the readjustment-limits tables would have no effect on the rate of OOS violations related to brake stroke status—because roadside inspection procedures do not reference the readjustment limits in Appendix G.

In summary, although FMCSA is unable to estimate the net economic and safety impacts of the changes in this rule, the Agency believes these impacts will be minimal.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to determine whether proposed rules could have a significant economic impact on a substantial number of small entities. FMCSA estimates that the economic impact of this rule will be minimal. Consequently, I certify that this proposed action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rulemaking does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $141.3 million (which is the value of $100 million in 2010 after adjusting for inflation) or more in any 1 year.

Executive Order 12988 (Civil Justice Reform)

This proposed action 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.

Executive Order 13045 (Protection of Children)

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency determined that this rulemaking does not pose an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rulemaking does not effect a taking of private property or otherwise have takings implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

A rulemaking 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. FMCSA analyzed this action in accordance with Executive Order 13132. The rule does not have a substantial direct effect on States, nor does it limit the policymaking discretion of States. Nothing in this rulemaking preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this action.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FMCSA consider the impact of paperwork and other information collection burdens imposed on the public. The Agency has determined that this rule imposes no new information collection requirements.

National Environmental Policy Act

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published in the **Federal Register** on March 1, 2004 (69 FR 9680), that this action does not have any effect on the quality of the environment. Therefore, this rule is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(bb) of Appendix 2. The Categorical Exclusion under paragraph 6(bb) relates to ''regulations concerning vehicle operation safety standards,'' such as the amended brake inspection standards adopted in this rulemaking. A Categorical Exclusion determination is available for inspection or copying in the *Regulations.gov* Web site listed under **ADDRESSES.**

FMCSA also analyzed this rule under section 176(c) of the Clean Air Act (CAA), as amended (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.

Executive Order 13211 (Energy Effects)

FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that Executive Order because it is not economically significant and is not likely to have an adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 393

Highways and roads, Incorporation by reference, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

In consideration of the foregoing, FMCSA amends title 49, Code of Federal Regulations, subtitle B, chapter III, as follows:

PART 393 [AMENDED]

■ 1. The authority citation for part 393 is revised to read as follows:

Authority: 49 U.S.C. 31136, 31151, and 31502; Sec. 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.73.

§ 393.7 [Amended]

■ 2. In § 393.7, remove and reserve paragraph (b)(15).

■ 3. Amend § 393.47 by revising paragraph (e) to read as follows:

§ 393.47 Brake actuators, slack adjusters, linings/pads, and drums/rotors.

* * * * *

(e) *Clamp, Bendix DD–3, bolt-type, and rotochamber brake actuator readjustment limits.* (1) The pushrod stroke must not be greater than the values specified in the following tables:

CLAMP-TYPE BRAKE CHAMBERS

Type	Outside diameter	Brake readjustment limit: standard stroke chamber	Brake readjustment limit: long stroke chamber
6	4½ in. (114 mm)	1¼ in. (31.8 mm).	
9	5¼ in. (133 mm)	1⅜ in. (34.9 mm).	
12	5 11/16 in. (145 mm)	1⅜ in. (34.9 mm)	1¾ in. (44.5 mm).
16	6⅜ in. (162 mm)	1¾ in. (44.5 mm)	2 in. (50.8 mm).
20	6 25/32 in. (172 mm)	1¾ in. (44.5 mm)	2 in. (50.8 mm). 2 ½ in. (63.5 mm).[1]
24	7 7/32 in. (184 mm)	1¾ in. (44.5 mm)	2 in. (50.8 mm). 2 ½ in. (63.5 mm).[2]
30	8 3/32 in. (206 mm)	2 in. (50.8 mm)	2½ in. (63.5 mm).
36	9 in. (229 mm)	2¼ in. (57.2 mm).	

[1] For type 20 chambers with a 3-inch (76 mm) rated stroke.
[2] For type 24 chambers with a 3-inch (76 mm) rated stroke.

BENDIX DD–3 BRAKE CHAMBERS

Type	Outside diameter	Brake readjustment limit
30	8⅛ in. (206 mm)	2¼ in. (57.2 mm).

BOLT-TYPE BRAKE CHAMBERS

Type	Outside diameter	Brake readjustment limit
A	6 15/16 in. (176 mm)	1⅜ in. (34.9 mm).
B	9 3/16 in. (234 mm)	1¾ in. (44.5 mm).
C	8 1/16 in. (205 mm)	1¾ in. (44.5 mm).
D	5¼ in. (133 mm)	1¼ in. (31.8 mm).
E	6 3/16 in. (157 mm)	1⅜ in. (34.9 mm).

BOLT-TYPE BRAKE CHAMBERS—Continued

Type	Outside diameter	Brake readjustment limit
F	11 in. (279 mm)	2¼ in. (57.2 mm).
G	9⅞ in. (251 mm)	2 in. (50.8 mm).

ROTOCHAMBER-TYPE BRAKE CHAMBERS

Type	Outside diameter	Brake readjustment limit
9	4 9/32 in. (109 mm)	1½ in. (38.1 mm).
12	4 13/16 in. (122 mm)	1½ in. (38.1 mm).
16	5 13/32 in. (138 mm)	2 in. (50.8 mm).
20	5 15/16 in. (151 mm)	2 in. (50.8 mm).
24	6 13/32 in. (163 mm)	2 in. (50.8 mm).
30	7 1/16 in. (180 mm)	2¼ in. (57.2 mm).
36	7⅝ in. (194 mm)	2¾ in. (69.9 mm).
50	8⅞ in. (226 mm)	3 in. (76.2 mm).

(2) For actuator types not listed in these tables, the pushrod stroke must not be greater than 80 percent of the rated stroke marked on the actuator by the actuator manufacturer, or greater than the readjustment limit marked on the actuator by the actuator manufacturer.

* * * * *

■ 4. Amend § 393.53 by revising paragraphs (b) and (c) to read as follows:

§ 393.53 Automatic brake adjusters and brake adjustment indicators.

* * * * *

(b) *Automatic brake adjusters (air brake systems).* Each commercial motor vehicle manufactured on or after October 20, 1994, and equipped with an air brake system must meet the automatic brake adjustment system requirements of Federal Motor Vehicle Safety Standard No. 121 (49 CFR 571.121, S5.1.8 or S5.2.2) applicable to the vehicle at the time it was manufactured.

(c) *Brake adjustment indicator (air brake systems).* On each commercial motor vehicle manufactured on or after October 20, 1994, and equipped with an air brake system which contains an external automatic adjustment mechanism and an exposed pushrod, the condition of service brake under-adjustment must be displayed by a brake adjustment indicator conforming to the requirements of Federal Motor Vehicle Safety Standard No. 121 (49 CFR 571.121, S5.1.8 or S5.2.2) applicable to the vehicle at the time it was manufactured.

■ 5. Amend Appendix G to Subchapter B by revising paragraph 1.a(5) to read as follows:

Appendix G to Subchapter B of Chapter III—Minimum Periodic Inspection Standards

* * * * *

1 * * *

a. * * *

(5) Readjustment limits. (a) The maximum pushrod stroke must not be greater than the values given in the tables below and at § 393.47(e). Any brake stroke exceeding the readjustment limit will be rejected. Stroke must be measured with engine off and reservoir pressure of 80 to 90 psi with brakes fully applied.

CLAMP-TYPE BRAKE CHAMBERS

Type	Outside diameter	Brake readjustment limit: standard stroke chamber	Brake readjustment limit: long stroke chamber
6	4½ in. (114 mm)	1¼ in. (31.8 mm).	
9	5¼ in. (133 mm)	1⅜ in. (34.9 mm).	
12	5 11/16 in. (145 mm)	1⅜ in. (34.9 mm)	1¾ in. (44.5 mm).
16	6⅜ in. (162 mm)	1¾ in. (44.5 mm)	2 in. (50.8 mm).
20	6 25/32 in. (172 mm)	1¾ in. (44.5 mm)	2 in. (50.8 mm). 2 ½ in. (63.5 mm).[1]
24	7 7/32 in. (184 mm)	1¾ in. (44.5 mm)	2 in. (50.8 mm). 2 ½ in. (63.5 mm).[2]
30	8 3/32 in. (206 mm)	2 in. (50.8 mm)	2½ in. (63.5 mm).
36	9 in. (229 mm)	2¼ in. (57.2 mm).	

[1] For type 20 chambers with a 3-inch (76 mm) rated stroke.
[2] For type 24 chambers with a 3-inch (76 mm) rated stroke.

BENDIX DD–3 BRAKE CHAMBERS

Type	Outside diameter	Brake readjustment limit
30	8⅛ in. (206 mm)	2¼ in. (57.2 mm).

BOLT-TYPE BRAKE CHAMBERS

Type	Outside diameter	Brake readjustment limit
A	6 15/16 in. (176 mm)	1 3/8 in. (34.9 mm).
B	9 3/16 in. (234 mm)	1 3/4 in. (44.5mm).
C	8 1/16 in. (205 mm)	1 3/4 in. (44.5 mm).
D	5 1/4 in. (133 mm)	1 1/4 in. (31.8 mm).
E	6 3/16 in. (157 mm)	1 3/8 in. (34.9 mm).
F	11 in. (279 mm)	2 1/4 in. (57.2 mm).
G	9 7/8 in. (251 mm)	2 in. (50.8 mm).

ROTOCHAMBER-TYPE BRAKE CHAMBERS

Type	Outside diameter	Brake readjustment limit
9	4 9/32 in. (109 mm)	1 1/2 in. (38.1 mm).
12	4 13/16 in. (122 mm)	1 1/2 in. (38.1 mm).
16	5 13/32 in. (138 mm)	2 in. (50.8 mm).
20	5 15/16 in. (151 mm)	2 in. (50.8 mm).
24	6 13/32 in. (163 mm)	2 in. (50.8 mm).
30	7 1/16 in. (180 mm)	2 1/4 in. (57.2 mm).
36	7 5/8 in. (194 mm)	2 3/4 in. (69.9 mm).
50	8 7/8 in. (226 mm)	3 in. (76.2 mm).

(b) For actuator types not listed in these tables, the pushrod stroke must not be greater than 80 percent of the rated stroke marked on the actuator by the actuator manufacturer, or greater than the readjustment limit marked on the actuator by the actuator manufacturer.

* * * * *

Issued on: July 27, 2012.

William Bronrott,

Deputy Administrator.

[FR Doc. 2012–18899 Filed 8–3–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA–2012–0183]

Hours of Service of Drivers of Commercial Motor Vehicles; Regulatory Guidance for Oil Field Exceptions

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

ACTION: Notice of public listening sessions and extension of comment period.

SUMMARY: FMCSA extends the comment period for the Agency's June 5, 2012, notice concerning regulatory guidance on the applicability of the oilfield operations exceptions in the hours-of-service regulations, and announces that the Agency will hold three public listening sessions to receive comments on the issue. The Agency extends the deadline for public comments from August 6 to October 5, 2012. The listening sessions will be open to the public and webcast in their entirety.

DATES: The first two listening sessions will be held on August 17, 2012, in Denver, CO, and on August 21, 2012, in Pittsburgh, PA. Both will begin at 1:00 p.m., local time, and end at 5:30 p.m. local time, or earlier if all participants wishing to comment have expressed their views. The third listening session will be held in September 2012, in Dallas, TX on a date to be determined. FMCSA will provide details of the third session by means of a notice in the **Federal Register** and on its Web site at *www.fmcsa.dot.gov.* Written comments to the docket must be received on or before October 5, 2012.

ADDRESSES: The August 17, 2012, listening session will be held at the Embassy Suites Denver International Airport, 7001 Yampa Street, Denver, CO 80249. The August 21, 2012, session will be held at the Embassy Suites Hotel, 550 Cherrington Parkway, Coraopolis, PA 15108. The Agency will provide details on the September 2012 listening session in Dallas, TX, in a subsequent **Federal Register** notice.

Internet Address for Alternative Media Broadcasts During and Immediately After the Listening Sessions. FMCSA will post specific information on how to participate via the Internet and telephone on the FMCSA Web site at *www.fmcsa.dot.gov.*

You may submit comments identified by Federal Docket Management System Number FMCSA–2012–0183 by any of the following methods:

- *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W–12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal Holidays.

All submissions must include the Agency name and docket number. For detailed instruction on submitting comments and additional information, see the ''Public Participation'' heading below. Note that all comments received will be posted without change to *www.regulations.gov*, including any personal information provided. Please see the ''Privacy Act'' heading below.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov* at any time or to Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on December 29, 2010 (75 FR 82133), or you may visit *www.regulations.gov.*

Public Participation: The www.regulations.gov Web site is generally available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of that Web site, and at DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: For the regulatory guidance issued on June 5, 2012, concerning oilfield hours-of-service exceptions: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, phone (202) 366–4325, email *MCPSD@dot.gov.* For the listening sessions: Ms. Shannon Watson, Senior Advisor to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, phone (202) 385–2395, email *shannon.watson@dot.gov.*

If you need sign language assistance to participate in a listening session, please contact Shannon Watson at (202) 385–2395, or email *shannon.watson@dot.gov,* no later than 10 days prior to the listening session.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 2012, FMCSA published a notice in the **Federal Register** concerning regulatory guidance about the ''oilfield operations'' exceptions in 49 CFR 395.1(d) (77 FR 33098). The regulatory guidance, effective June 5, 2012, was issued to ensure consistent understanding and application of the regulatory exceptions. Several groups or organizations have requested that the Agency extend the comment period and consider holding a listening session(s). The FMCSA announces (1) an extension of the comment period for the submission of written comments in response to the June 5, 2012, notice, and (2) listening sessions on the regulatory guidance.

Listening Sessions

The listening sessions are open to the public. Speakers are requested to limit their remarks to 5 minutes, but are not required to pre-register. The public may submit material to the FMCSA staff at the session for inclusion in the docket, FMCSA–2012–0183.

Alternative Media Broadcasts During and Immediately After the Listening Sessions

FMCSA will provide webcast information for each listening session. Prior to each session, the Agency will post the web address for the live webcast, and instructions on how to participate at FMCSA's Web site, *www.fmcsa.dot.gov.* After each listening session, FMCSA will place a full transcript of the listening session in the docket referenced at the beginning of this notice.

Issued on: August 2, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–19303 Filed 8–2–12; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111213751–2102–02]

RIN 0648–XC082

Fisheries of the Exclusive Economic Zone Off Alaska; ''Other Flatfish'' in the Bering Sea and Aleutian Islands Management Area and Greenland Turbot in the Aleutian Island Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve to the initial total allowable catch (ITAC) of ''other flatfish'' in the Bering Sea and Aleutian Islands management area (BSAI) and Greenland turbot in the Aleutian Island subarea of the BSAI. This action is necessary to allow the fisheries to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the BSAI.

DATES: Effective August 1, 2012 through 2400 hrs, Alaska local time, December 31, 2012. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, August 16, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0125, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0125 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. 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) submitted voluntarily by the sender will 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: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the (BSAI) exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management

Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2012 ITAC of ''other flatfish'' in the BSAI was established as 2,720 metric tons (mt), and the 2012 ITAC of Greenland turbot in the Aleutian Island subarea was established as 2,066 mt by the final 2012 and 2013 harvest specifications for groundfish of the BSAI (77 FR 10669, February 23, 2012). In accordance with § 679.20(a)(3), the Regional Administrator, Alaska Region, NMFS, has reviewed the most current available data and finds that the ITAC for ''other flatfish'' and the ITAC for Aleutian Island subarea Greenland turbot in the BSAI needs to be supplemented from the non-specified reserve in order to promote efficiency in the utilization of fishery resources in the BSAI and allow fishing operations to continue.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions from the non-specified reserve of groundfish 480 mt to the ''other flatfish'' ITAC and 364 mt to the Aleutian Island subarea Greenland turbot ITAC in the BSAI. This apportionment is consistent with § 679.20(b)(1)(i) and does not result in overfishing of a target species because the revised ITAC is equal to or less than the specifications of the acceptable biological catch in the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012).

The harvest specification for the 2012 ITAC included in the harvest specifications for groundfish in the BSAI is revised as follows: 3,200 mt for ''other flatfish'' and 2,430 mt for Aleutian Island subarea Greenland turbot in the BSAI.

Classification

On June 27, 2012, the public in the Alaska Region was notified of the reallocation of Greenland turbot in the Aleutian Islands subarea and of ''other flatfish'' in the BSAI, through local information bulletins. This action implements those reallocations.

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the non-specified reserves of groundfish to the ''other flatfish'' fishery and the Aleutian Islands subarea Greenland turbot fishery in the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of these fisheries, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 22, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until August 16, 2012.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 1, 2012.

Lindsay Fullenkamp,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–19146 Filed 8–1–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 151
Monday, August 6, 2012

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

FEDERAL TRADE COMMISSION

16 CFR Part 312

RIN 3084–AB20

Children's Online Privacy Protection Rule

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Supplemental notice of proposed rulemaking; request for comment.

SUMMARY: The Commission is proposing to further modify the proposed definitions of *personal information, support for internal operations,* and *Web site or online service directed to children,* that the FTC has proposed previously under its Rule implementing the Children's Online Privacy Protection Act (''COPPA Rule''), and further proposes to revise the Rule's definition of *operator.* These proposed revisions, which are based on the FTC's review of public comments and its enforcement experience, are intended to clarify the scope of the Rule and strengthen its protections for children's personal information. The Commission is not adopting any final amendments to the COPPA Rule at this time and continues to consider comments submitted in response to its Notice of Proposed Rulemaking issued in September 2011.

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

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''COPPA Rule Review, 16 CFR Part 312, Project No. P104503'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/2012copparulereview,* 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 E), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Marcus or Mamie Kresses, Attorneys, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2854 or (202) 326–2070.

SUPPLEMENTARY INFORMATION:

I. Background

In September 2011, the FTC issued a Notice of Proposed Rulemaking setting forth proposed changes to the Commission's COPPA Rule. Among other things, the Commission proposed modifying the Rule's definition of *personal information* to include persistent identifiers and screen or user names other than where they are used to support internal operations, and *Web site or online service directed to children* to include additional indicia that a site or service may be targeted to children.[1] The Commission received over 350 comments, a number of which addressed the proposed changes to these two definitions.[2] After reviewing these comments, and based upon its experience in enforcing and administering the Rule, the Commission now proposes to modify the definition of *operator,* and proposes additional modifications to the definitions of *Web site or online service directed to children, personal information,* and *support for internal operations.*

The Commission proposes modifying the definition of both *operator* and *Web site or online service directed to children* to allocate and clarify the responsibilities under COPPA when independent entities or third parties, *e.g.,* advertising networks or downloadable software kits (''plug-ins''), collect information from users through child-directed sites and services. As described below, previous Commission statements suggested that the responsibility for providing notice to parents and obtaining verifiable parental consent to the collection of personal information from children rested entirely with the information collection entity and not with the child-directed site operator. The Commission now believes that the most effective way to implement the intent of Congress is to hold both the child-directed site or service *and* the information-collecting site or service responsible as covered co-operators. Sites and services whose content is directed to children, and who permit others to collect personal information from their child visitors, benefit from that collection and thus should be responsible under COPPA for providing notice to and obtaining consent from parents. Conversely, online services whose business models entail the collection of personal information and that know or have reason to know that such information is collected through child-directed properties should provide COPPA's protections.

In addition, the Commission proposes to modify the previously proposed revised definition of *Web site or online service directed to children* to permit Web sites or online services that are designed for both children and a broader audience to comply with COPPA without treating all users as children. The Commission also proposes modifying the definition of *screen or user name* to cover only those situations where a screen or user name functions in the same manner as *online contact information.* Finally, the Commission proposes to modify the revised definition of *support for internal operations* and to modify the Rule's coverage of *persistent identifiers* as *personal information.*

II. Proposed Modifications to the Rule's Definitions (16 CFR 312.2)

A. Definition of Operator

Public comments[3] and the Commission's own enforcement experience[4] highlight the need for the

[1] *Id.*

[2] Public comments in response to the Commission's September 27, 2011, **Federal Register** document are located at *http://www.ftc.gov/os/comments/copparulereview2011/.* Comments have been numbered based upon alphabetical order. Comments are cited herein by commenter name, comment number, and, where applicable, page number.

[3] *See, e.g.,* AT&T (comment 8), at 3–4; CDT (comment 17), at 3–6; CTIA (comment 32), at 16; Direct Marketing Association (comment 37), at 7; Future of Privacy Forum (comment 55), at 3; Information Technology Industry Council (comment 70), at 3–4; Interactive Advertising Bureau (comment 73), at 7; and, Tech Freedom (comment 159), at 12.

[4] *See* FTC staff closing letter to OpenFeint (''OpenFeint Letter''), *available at http://*

Continued

Commission to clarify the responsibilities of child-directed properties that integrate independent social networking or other types of ''plug-ins'' into their sites or services. These plug-ins often collect personal information directly from users of child-directed sites and services. Although the child-directed site or service benefits by incorporating the social networking or other information collection features of the plug-in, it generally has no ownership, control, or access to the personal information collected by the plug-in. In many ways, the plug-in scenario mirrors the current situation with child-directed Web sites and advertising networks: the site determines the child-directed nature of the content, but the third-party advertising network collects persistent identifiers for tracking purposes, which could be considered personal information under the proposed revised Rule.

COPPA defines *operator* in pertinent part, as

> (A) Any person who operates a Web site located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such Web site or online service, or on whose behalf such information is collected or maintained, where such Web site or online service is operated for commercial purposes, including any person offering products or services for sale through that Web site or online service, involving commerce * * *.[5]

In both the 1999 Notice of Proposed Rulemaking and the 1999 Statement of Basis and Purpose, the Commission suggested that some retention of ownership, control, or access to the personal information collected was required to make a party an operator. The Commission stated that it would look to a variety of factors—ownership, control, financial and contractual arrangements, and the role of the site or service in data collection or maintenance—to establish whether an entity was covered by or subject to COPPA's regulatory obligations.[6] The Commission also asserted that ''[w]here the Web site or online service merely acts as the conduit through which the personal information collected flows to another person or to another's Web site or online service, and the Web site or online service does not have access to the information, then it is not an operator under the proposed Rule.''[7]

At that time, the Commission did not foresee how easy and commonplace it would become for child-directed sites and services to integrate social networking and other personal information collection features into the content offered to their users, without maintaining ownership, control, or access to the personal data. Given these changes in technology, the Commission now believes that an operator of a child-directed site or service that chooses to integrate into its site or service other services that collect personal information from its visitors should be considered a covered operator under the Rule. Although the child-directed site or service does not own, control, or have access to the information collected, the personal information is collected on its behalf. The child-directed site or service benefits from its use of integrated services that collect personal information because the services provide the site with content, functionality, and/or advertising revenue.

Therefore, the Commission proposes to revise the definition of *operator* to add a proviso stating:

> Personal information is *collected or maintained on behalf of* an operator where it is collected in the interest of, as a representative of, or for the benefit of, the operator.

Neither the COPPA statute nor its legislative history make clear under what circumstances third-party data collection activities would be deemed to be conducted ''on an operator's behalf.'' Nor did the Commission previously define the phrase *on whose behalf such information is collected or maintained* in the COPPA Rule.

Congress granted the FTC broad rulemaking authority under COPPA.[8] The Commission's interpretation of the phrase *on whose behalf* is consistent both with its plain and common meaning[9] and with the Commission's advocated position on the meaning of that phrase within the Telephone Consumer Protection Act, 47 U.S.C. 227, and the position it has urged the Federal Communications Commission to adopt in the implementing regulations, 47 CFR 64.1200.[10]

In the context of COPPA's requirements, an operator of a child-directed site or service is in an appropriate position to give notice and obtain consent from parents where any personal information is being collected from its visitors on or through its site or service. The operator is in the best position to know that its site or service is directed to children and can control which plug-ins, software downloads, or advertising networks it integrates into its site. To interpret the COPPA statute's *on whose behalf* language more narrowly does not fully effectuate Congress's intent to insure that parents are consistently given notice and the opportunity to consent prior to the collection of children's personal information.

B. Definition of Web Site or Online Service Directed to Children

In the September 2011 COPPA NPRM, the Commission proposed minor changes to the definition of *Web site or online service directed to children* to include additional indicia of child-directed Web sites and online services.[11] The Commission now proposes additional modifications to this definition in order to: (1) Make clear that a Web site or online service that knows or has reason to know that it collects personal information from children through a child-directed Web site or online service is itself A''directed to children''; and (2) permit a Web site or online service that is designed for both children and a broader audience to comply with COPPA without having to treat all its users as children.

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www.ftc.gov/os/closings/120831openfeintclosingletter.pdf.

[5] 15 U.S.C. 6501(2). The Rule's definition of *operator* reflects the statutory language. *See* 16 CFR 312.2.

[6] 1999 Notice of Proposed Rulemaking and Request for Public Comment, 64 FR 22750, 22752 (Apr. 27, 1999), *available at http://www.ftc.gov/os/fedreg/1999/april/990427childrensonlineprivacy.pdf* (''In determining who is the operator for purposes of the proposed Rule, the Commission will consider such factors as who owns the information, who controls the information, who pays for the collection or maintenance of the information, the pre-existing contractual relationships surrounding the collection or maintenance of the information, and the role of the Web site or online service in collecting and/or maintaining the information'').

[7] *Id.* The Commission reiterated this view in the 1999 Statement of Basis and Purpose to the COPPA Rule (''1999 Statement of Basis and Purpose''), 64 FR 59888, 59891 (Nov. 3, 1999), *available at http://www.ftc.gov/os/1999/10/64Fr59888.pdf.*

[8] Congress delegated to the FTC the authority to promulgate regulations that require operators covered by COPPA to: Provide online notice of their information practices; obtain verifiable parental consent for the collection, use, or disclosure of personal information from children; provide parents with a means to obtain such personal information and to refuse further collection; establish and maintain adequate confidentiality and security for children's personal information; and that prohibit conditioning a child's participation online on disclosing more personal information than is necessary. *See* 15 U.S.C. 6502(b).

[9] *See Madden* v. *Cowen & Co.,* 576 F.3d 957, 974 (9th Cir. 2009).

[10] *See* Comment of the Federal Trade Commission before the Federal Communications Commission, CG Docket No. 11–50 (2011), at 7, *available at http://www.ftc.gov/os/2011/05/110516dishechostar.pdf* (stating that the common dictionary definition of ''on behalf of'' means in an entity's ''interest,'' in its ''aid,'' or for its ''benefit'').

[11] *See* 2011 COPPA NPRM, 76 FR at 59814.

1. Operators Who Collect Personal Information Through Child-Directed Web Sites or Online Services

As noted above, online services such as advertising networks or downloadable plug-ins often collect personal information from users through another's site or service, including properties directed to children.[12] When operating on child-directed properties, that portion of these services could be deemed *directed to children* and the operator held strictly liable under COPPA. This position would be consistent with previous Commission statements that the Rule covers entities collecting information through child-directed sites. In its original April 1999 Notice of Proposed Rulemaking, the Commission stated that the definition of *operator* includes ''a person who collects or maintains [personal] information through another's Web site or online service.'' [13] In the 1999 Statement of Basis and Purpose, in discussing the potential liability of network advertising companies, the Commission noted that ''[i]f such companies collect personal information directly from children who click on ads placed on Web sites or online services directed to children, then they will be considered operators who must comply with the Act, unless one of the exceptions applies.'' [14]

Several commenters in response to the 2011 COPPA NPRM, however, state that operators of online services that are designed to be incorporated into another site or service should not be covered under COPPA's requirements when they appear on child-directed sites or services.[15] For example, the Center for Democracy and Technology (''CDT'') states, ''[o]perators of analytics services, advertising networks, and social plug-ins that do not intentionally target their services to children should not have independent COPPA notice and consent obligations simply because a site directed to children has chosen to use their service.'' [16]

The COPPA statute gives the Commission broad discretion to define *Web site or online service directed to children.* Congress provided only one limitation to that discretion:

> A commercial Web site or online service, or a portion of a commercial Web site or online service, shall not be deemed directed to children solely for referring or linking to a commercial Web site or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.[17]

The Commission continues to believe that when an online service collects personal information through child-directed properties, that portion of the online service can and should be deemed *directed to children,* but only under certain circumstances. The Commission believes that the strict liability standard applicable to conventional child-directed sites and services is unworkable for advertising networks or plug-ins because of the logistical difficulties such services face in controlling or monitoring which sites incorporate their online services. Accordingly, the Commission proposes to modify the definition of *Web site or online service directed to children* to include any operator who ''knows or has reason to know'' it is collecting personal information through a host Web site or online service directed to children. The proposed new paragraph is:

> *Web site or online service directed to children* means a commercial Web site or online service, or portion thereof, that:
>
> * * * * *
>
> (d) knows or has reason to know that it is collecting personal information through any Web site or online service covered under paragraphs (a)–(c).

In choosing to use the phrase ''reason to know'' as part of the definition, the Commission is not imposing a duty on entities such as ad-networks or plug-ins to monitor or investigate whether their services are incorporated into child-directed properties;[18] however, such sites and services will not be free to ignore credible information brought to their attention indicating that such is the case.

The Commission believes that this proposed modification to the definition of *Web site or online service directed to children,* along with the proposed revisions to the definition of *operator* that would hold the child-directed property to be a co-operator equally responsible under the Rule for the personal information collected by the plug-in or advertising network, will help ensure that operators in each position cooperate to meet their statutory duty to notify parents and obtain parental consent.

2. Web Sites and Online Services Directed to Children and Families

As noted in its September 2011 NPRM, the current definition of *Web site or online service directed to children* is, at bottom, a totality of the circumstances test. In its comment, The Walt Disney Company argues that this definition does not adequately address the reality that Web sites or online services directed to children fall along a continuum, targeting or appealing to children in varying degrees. Under the Rule's current structure, regardless of where a site or service falls on this continuum, it must still treat all visitors as children. Disney argues that only sites falling at the extreme end of the ''child-directed'' continuum should have to treat all of their users as children. It urges the Commission to adopt a system that would permit Web sites or online services directed to larger audiences, specifically those directed to children and families, to differentiate among users, requiring such sites and services to provide notice and obtain consent only for users who self-identify as under age 13.[19]

The Commission finds merit in Disney's suggestion. In large measure, it reflects the prosecutorial discretion the Commission has applied in enforcing the Rule. The Commission has charged sites or services with being directed to children only where the Commission believed that children under age 13 were the primary audience.[20] If the Commission believed the site merely was likely to attract significant numbers

[12] This fact was highlighted in a recent Commission law enforcement investigation of OpenFeint, Inc., an online social gaming network available as a plug-in to mobile applications. *See* OpenFeint Letter, *supra* note 4.

[13] 1999 Notice of Proposed Rulemaking and Request for Public Comment, 64 FR 22750, 22752 (Apr. 27, 1999), *available at http://www.ftc.gov/os/fedreg/1999/april/990427childrensonlineprivacy.pdf.*

[14] Statement of Basis and Purpose to the COPPA Rule, 64 FR 59888, 59892 (Nov. 3, 1999), *available at http://www.ftc.gov/os/1999/10/64Fr59888.pdf.*

[15] *See, e.g.,* CDT (comment 17), at 5; Facebook (comment 50), at 11; Future of Privacy Forum (comment 55), at 3; TechFreedom (comment 159), at 10–11.

[16] CDT (comment 17), at 5.

[17] 15 U.S.C. 6501(10).

[18] The phrase ''reason to know'' does not impose a duty to ascertain unknown facts, but does require a person to draw a reasonable inference from information he does have. *See* Restatement (Second) of Agency § 9 cmt. d (1958); Restatement (Second) of Torts § § 12(1), 401 (1965). *See also Novicki* v. *Cook,* 946 F.2d 938, 941 (D.C. Cir. 1991) (citing the Restatement (Second) of Agency); *Alf* v. *Donley,* 666 F. Supp. 2d 60, 67 (D.D.C. 2009) (following *Novicki* v. *Cook*); *Feinerman* v. *Bernardi,* 558 F. Supp. 2d 36, 49 (D.D.C. 2008) (following *Novicki* v. *Cook*); *Topliff* v. *Wal-Mart Stores E. LP,* 2007 U.S. Dist. LEXIS 20533, 200, CCH Prod. Liab. Rep. P17,728 (N.D.N.Y Mar. 22, 2007) (''the term 'had reason to know' does not impose any duty to ascertain unknown facts, while the term 'should have known' does impose such a duty).

[19] The Walt Disney Co. (comment 170), at 5–6.

[20] *See United States* v. *Godwin, d/b/a skid-e-kids.com,* No. 1:11–cv–03846–JOF (N.D. Ga. Feb. 1, 2012) (alleging that defendant's skid-e-kids social networking Web site was *directed to children*); *United States* v. *W3 Innovations, LLC,* No. CV–11–03958 (N.D. Cal., filed Aug. 12, 2011) (alleging that defendants' ''Emily's'' apps were *directed to children*); *United States* v. *Playdom, Inc.,* No. SA CV11–00724 (C.D. Cal., May 24, 2011) (alleging that Playdom's Pony Stars online virtual world was *directed to children*).

of under 13 users, or had popular appeal with children (among others), the Commission has instead alleged that the operator had ''actual knowledge'' of collecting personal information from users who identified themselves as under 13.[21] This enforcement approach recognizes the burden imposed on operators in having to obtain notice and consent for every user when most users may be over 13, as well as the burden and restrictions imposed on users over age 13 in being treated as young children.

As noted above, Congress gave the Commission broad discretion to define *Web site or online service directed to children.* The Commission now proposes to modify that definition to implement much of what Disney has proposed and to better reflect the prosecutorial discretion it has applied. The proposed revised definition is:

Web site or online service directed to children means a commercial Web site or online service, or portion thereof, that:

(a) Knowingly targets children under age 13 as its primary audience; or,

(b) Based on the overall content of the Web site or online service, is likely to attract children under age 13 as its primary audience; or,

(c) Based on the overall content of the Web site or online service, is likely to attract an audience that includes a disproportionately large percentage of children under age 13 as compared to the percentage of such children in the general population; *provided however that* such Web site or online service shall not be deemed to be directed to children if it: (i) Does not collect personal information from any visitor prior to collecting age information; and (ii) prevents the collection, use, or disclosure of personal information from visitors who identify themselves as under age 13 without first obtaining verifiable parental consent;

* * * * *

The effect of the proposed changes would be that those sites and services at the far end of the ''child-directed'' continuum, *i.e.,* those that knowingly target, or have content likely to draw, children under 13 as their primary audience, must still treat all users as children, and provide notice and obtain consent before collecting any personal information from any user. Those sites and services with child-oriented content appealing to a mixed audience, where children under 13 are likely to be an over-represented group, will not be deemed directed to children if, prior to collecting any personal information, they age-screen *all* users. At that point, for users who identify themselves as under 13, the site or service will be deemed to have actual knowledge that such users are under 13 and must obtain appropriate parental consent before collecting any personal information from them and must also comply with all other aspects of the Rule.

The Commission recognizes that many children may choose to lie about their age. Nevertheless, the Commission believes the proposed revisions strike the correct balance. First, it has been the Commission's law enforcement experience, as demonstrated by its ''actual knowledge'' cases, that many children do truthfully provide their age in response to an age screening question on mixed audience sites.[22] Second, as noted above, as a matter of prosecutorial discretion, the Commission has not charged child-friendly mixed audience sites as being *directed to children* because of the burdens it imposes. Consequently, if those sites collected personal information without asking age, the Commission had little basis to allege that the operator had actual knowledge of any visitor's age. The proposed revisions will require operators of these child-friendly mixed audience sites to take an affirmative step to attain actual knowledge if they do not wish to treat all visitors as being under 13.

C. Definition of Personal Information

1. Screen or User Names

In the 2011 COPPA NPRM, the Commission proposed to define as *personal information* ''a screen or user name where such screen or user name is used for functions other than or in addition to support for the internal operations of the Web site or online service.''[23] This change was intended to address scenarios in which a screen or user name could be used by a child as a single credential to access multiple online properties, thereby permitting him or her to be directly contacted online, regardless of whether the screen or user name contained an email address.[24]

Several commenters expressed concern that the Commission's screen-name proposal would unnecessarily inhibit functions that are important to the operation of child-directed Web sites and online services. For example, commenters stated that many child-directed properties use a screen or user name in place of a child's real name in an effort to minimize data collection.[25] Operators also use single screen names to allow children to sign on to a single online service that runs on multiple platforms, as well as to access related properties across multiple platforms.[26] These commenters raised concerns that, with the limited carve-out for functions to support internal operations, operators might be precluded from using screen or user names *within* a Web site or online service, and would certainly be precluded from doing so across multiple platforms.

The Commission has long supported the data minimization purposes behind operators' use of screen and user names in place of individually identifiable information.[27] Indeed, the proposed changes in paragraph (d) were not intended to preclude such uses. Moreover, after reading the comments, the Commission is persuaded of the benefits of utilizing single sign-in identifiers across sites and services, for example, to permit children seamlessly to transition between devices or platforms via a single screen or user name.[28] The Commission therefore proposes that a screen or user name should be included within the definition of *personal information* only in those instances in which a screen or user name rises to the level of *online contact information.*[29] In such cases, a screen or user name functions much like an email address, an instant messaging identifier, or ''or any other substantially similar identifier that permits direct contact with a person online.''[30]

[21] *See United States* v. *Iconix Brand Group, Inc.,* No. 09 Civ. 8864 (S.D.N.Y, Nov. 5, 2009); *United States* v. *Sony BMG Music Entertainment,* No. 08 Civ. 10730 (S.D.N.Y., Dec. 15, 2008).

[22] *See United States* v. *Iconix Brand Group, Inc.;* and *United States* v. *Sony BMG Music Entertainment, supra* note 23.

[23] 2011 COPPA NPRM, 76 FR at 59810.

[24] *Id.*

[25] *See* National Cable & Telecommunications Association (comment 113), at 12 (''[A]llowing children to create a unique screen name and password at a Web site through a registration process without collecting any personally identifying information has allowed several leading children's Web sites to offer: personalized content (*e.g.,* horoscopes, weather forecasts, customized avatars for game play), attribution (*e.g.,* acknowledge for a high score or other achievement), as well as a way to express opinions and participate in online activities in an interactive fashion *(e.g.,* jokes, stories, letters to the editor, polls, challenging others to gameplay, swapping digital collectibles, participating in monitored 'chat' with celebrities''); The Walt Disney Co. (comment 170), at 21.

[26] *See* Direct Marketing Association (comment 37), at 17; Entertainment Software Association (comment 47), at 9; Scholastic (comment 144), at 12; Adam Thierer (comment 162), at 6; TRUSTe (comment 164), at 3; The Walt Disney Co. (comment 170), at 21–22.

[27] *See* 1999 Statement of Basis and Purpose, 64 FR at 59892.

[28] *See* Direct Marketing Association (comment 37), at 16–17; Entertainment Software Association (comment 47), at 9–10; Adam Thierer (comment 162), at 6; TRUSTe (comment 164), at 3–4; The Walt Disney Co. (comment 170), at 21–22.

[29] *Id.* at 59891, n.49 (''Another example of 'online contact information' could be a screen name that also serves as an email address'').

[30] *See* 2011 COPPA NPRM, 76 FR at 59810 (proposed definition of *online contact information*).

Therefore, the Commission proposes to modify paragraph (d) of the definition of *personal information* as follows:

Personal information means individually identifiable information about an individual collected online, including:

* * * * *

(d) A screen or user name where it functions in the same manner as online contact information, as defined in this Section;

* * * * *

2. Persistent Identifiers and Support for Internal Operations

In the September 2011 COPPA NPRM, the Commission proposed changes to the definition of *personal information* that, among other things, would have included ''[a] persistent identifier, including but not limited to, a customer number held in a cookie, an Internet Protocol (IP) address, a processor or device serial number, or unique device identifier, where such persistent identifier is used for functions other than or in addition to support for the internal operations of the Web site or online service.'' [31] The Commission also proposed to include in the definition of personal information ''identifiers that link the activities of a child across different Web sites or online services.'' [32] As stated in the 2011 COPPA NPRM, these changes were intended to ''require parental notification and consent prior to the collection of persistent identifiers where they are used for purposes such as amassing data on a child's online activities or behaviorally targeting advertising to the child.'' [33] By carving out exceptions for support for internal operations, the Commission stated it intended to exempt from COPPA's coverage the collection and use of identifiers for authenticating users, improving site navigation, maintaining user preferences, serving contextual advertisements, protecting against fraud or theft, or otherwise personalizing, improving upon, or securing a Web site or online service.[34]

The Commission received numerous comments on the proposed inclusion of persistent identifiers within the definition of *personal information.* Consumer advocacy organizations, including the Center for Digital Democracy (''CDD''), Consumers Union (''CU''), and the Electronic Privacy Information Center (''EPIC''), fully supported the proposal, finding that, increasingly, particular devices are associated with particular individuals, and the collection of identifiers permits direct contact with individuals online.[35] In addition to these advocacy groups, nearly 200 individual consumers filed comments supporting the inclusion of IP address within the Rule's definition of *personal information.*

By contrast, the overwhelming majority of the comments filed by Web site operators, industry associations, privacy experts, and telecommunications companies opposed the Commission's expansion of the definition of *personal information* to reach persistent identifiers, even with the limitation to activities other than or in addition to support for internal operations. Most of these commenters claimed that the collection of one or more persistent identifiers only permits online contact with a device and not with a specific individual.[36] These commenters also expressed concern about the breadth and potential vagueness of the proposed paragraph (h) defining as *personal information* ''an identifier that links the activities of a child across different Web sites or online services.'' Among the concerns raised about (h) were the lack of clarity about the term ''different Web sites or online services,'' [37] including whether this term is intended to cover identifiers collected by a single operator across multiple platforms [38] or a child's activities within or between affiliated Web sites or online services.[39]

Several commenters urged the Commission to alter its approach to persistent identifiers to focus more directly on their use, or potential misuse, rather than on their collection.[40] Moreover, several commenters maintained that the proposed definition of *support for internal operations* is too narrow to cover the very types of activities the Commission intended to permit, *e.g.,* user authentication, improving site navigation, maintaining user preferences, serving contextual advertisements, and protecting against fraud or theft.[41] Others raised concerns that it was unclear whether the collection of data within persistent identifiers for the purpose of performing site performance or functioning analyses, or analytics, would be included within the definition of *support for internal operations.*[42]

In response to these concerns, the Commission is proposing revised language for the definitions regarding persistent identifiers and *support for internal operations.* The proposed revised language is intended to: (1) Address the concerns about the confusion caused by having two different sub-definitions dealing with persistent identifiers, paragraphs (g) and (h); and (2) provide more specificity to the types of activities that will be considered support for internal operations.

The newly proposed definition regarding persistent identifiers is:

Personal information means individually identifiable information about an individual collected online, including:

(g) A persistent identifier that can be used to recognize a user over time, or across different Web sites or online services, where such persistent identifier is used for functions other than or in addition to support for the internal operations of the Web site or online service. Such persistent identifier includes, but is not limited to, a customer number held in a cookie, an Internet Protocol (IP) address, a processor or device serial number, or unique device identifier;

* * * * *

This proposal combines the two previous definitions into one and makes clear that an operator can only identify users over time or across Web sites for the enumerated activities set forth in the definition of support for internal operations.

[31] *See* 2011 COPPA NPRM, 76 FR at 59812 (proposed definition of *personal information,* paragraph (g)).

[32] *Id.* (proposed definition of paragraph (h)).

[33] *Id.*

[34] *Id.*

[35] *See* CU (comment 29), at 3; EPIC (comment 41), at 8; CDD (comment 71), at 29.

[36] *See* Computer and Communications Industry Association (comment 27), at 3–5; CTIA (comment 32), at 7–8; eBay (comment 40), at 5; Future of Privacy Forum (comment 55), at 2–3; Information Technology Industry Council (comment 70), at 3–4; Intel (comment 72), at 4–6; IAB (comment 73), at 4–6; KidSafe Seal Program (comment 81), at 6–7; TechAmerica (comment 159), at 3–5; Promotion Marketing Association (comment 133), at 10–12; TRUSTe (comment 164), at 4–6; Yahoo! (comment 180), at 7–8; Toy Industry Association (comment 163), at 8–10.

[37] *See* IAB (comment 73), at 5; KidSafe Seal Program (comment 81), at 9; Scholastic (comment 144), at 14; TRUSTe (comment 164), at 5–6; The Walt Disney Co. (comment 170), at 20–21; WiredSafety (comment 177), at 11.

[38] *See* Scholastic (comment 144), at 14; TRUSTe (comment 164), at 5.

[39] *See* The Walt Disney Co. (comment 170), at 22.

[40] ''A straightforward way to regulate the ability of operators to target children with behavioral advertising would be to simply prohibit operators from engaging in the practice as it has previously been defined by the FTC. But the FTC instead focuses on the types of information operators *collect* rather than on how operators *use* the information.'' Future of Privacy Forum (comment 55), at 2; *see also* VISA, Inc. (comment 168), at 2; WiredTrust (comment 177), at 11.

[41] *See* CTIA (comment 32), at 15; KidSafe Seal Program (comment 81), at 6–7; Scholastic (comment 144), at 13; Toy Industry Association (comment 163), at 10; TRUSTe (comment 164), at 8; The Walt Disney Co. (comment 170), at 7; WiredSafety (comment 177), at 13.

[42] Association for Competitive Technology (comment 5), at 5; CTIA (comment 32), at 14; Direct Marketing Association (comment 37), at 14–15; IAB (comment 73), at 4; NCTA (comment 113), at 15; Scholastic (comment 144), at 14; ; TechFreedom (comment 159), at 9–10; Toy Industry Association (comment 163), at 7, 9; TRUSTe (comment 164), at 5; WiredTrust (comment 177), at 11.

The newly proposed definition of *support for internal operations* is:

Support for the internal operations of the Web site or online service means those activities necessary to: (a) Maintain or analyze the functioning of the Web site or online service; (b) perform network communications; (c) authenticate users of, or personalize the content on, the Web site or online service; (d) serve contextual advertising on the Web site or online service; (e) protect the security or integrity of the user, Web site, or online service; or (f) fulfill a request of a child as permitted by '' 312.5(c)(3) and (4); so long as the information collected for the activities listed in (a)–(f) is not used or disclosed to contact a specific individual or for any other purpose.

This revision incorporates into the Rule many of the types of activities B user authentication, maintaining user preferences, serving contextual advertisements, and protecting against fraud or theft B that the Commission initially discussed as permissible in the 2011 COPPA NPRM.[43] It would also specifically permit the collection of persistent identifiers for functions related to site maintenance and analysis, and to perform network communications, that many commenters view as crucial to their ongoing operations.[44] The Commission notes the importance of the proviso at the end of the proposed definition: To be considered *support for internal operations,* none of the information collected may be used or disclosed to contact a specific individual, including through the use of behaviorally-targeted advertising, or for any other purpose.

III. Request for Comment

The Commission invites interested persons to submit written comments on any issue of fact, law, or policy that may bear upon the proposals under consideration. Please include explanations for any answers provided, as well as supporting evidence where appropriate. After evaluating the comments, the Commission will determine whether to issue specific amendments.

Comments should refer to ''COPPA Rule Review: FTC File No. P104503'' to facilitate the organization of comments. Please note that your comment B including your name and your state B will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* Comments must be received on or before September 10, 2012, to be considered by the Commission.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 10, 2012. Write ''COPPA Rule Review, 16 CFR Part 312, Project No. P104503'' on your comment. Your comment B including your name and your state B 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, such as 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, such as medical records or other individually identifiable health information. In addition, do not 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 must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[45] 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/2012copparulereview,* by following the instructions on the web-based form. If this document 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 ''COPPA Rule Review, 16 CFR Part 312, Project No. P104503'' 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 E), 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 document 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 10, 2012.[46] 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.*

Comments on any proposed recordkeeping, disclosure, or reporting requirements subject to review under the Paperwork Reduction Act should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW.,Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (''RFA''), 5 U.S.C. 601 *et seq.,* requires

[43] *See* 2011 COPPA NPRM, 76 FR at 59812.

[44] This proposed revised definition is consistent with the Commission's position in its recent privacy report that notice need not be provided to consumers regarding data practices that are sufficiently accepted or necessary for public policy reasons. *See* FTC, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers,* at 36, 38–40, *available athttp://ftc.gov/os/2012/03/120326privacyreport.pdf.*

[45] 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).

[46] Questions for the public regarding proposed revisions to the Rule are found at Part VII, *infra.*

a description and analysis of proposed and final rules that will have significant economic impact on a substantial number of small entities. The RFA requires an agency to provide an Initial Regulatory Flexibility Analysis (''IRFA'') with the proposed Rule, and a Final Regulatory Flexibility Analysis (''FRFA''), if any, with the final Rule.[47] The Commission is not required to make such analyses if a Rule would not have such an economic effect.[48]

As described below, the Commission anticipates that the proposed changes to the Rule addressed in this Revised COPPA NPRM will result in more Web sites and online services being subject to the Rule and to the Rule's disclosure, reporting, and compliance requirements. The Commission believes that a number of operators of Web sites and online services potentially affected by these revisions are small entities as defined by the RFA. It is unclear whether the Revised COPPA NPRM will have a significant economic impact on these small entities. Thus, to obtain more information about the impact of the Revised COPPA NPRM on small entities, the Commission has decided to publish the following IRFA pursuant to the RFA and to request public comment on the impact on small businesses of its Revised COPPA NPRM.

A. Description of the Reasons That Agency Action Is Being Considered

As described in Part I above, in September 2011, the Commission issued a Notice of Proposed Rulemaking setting forth proposed changes to the Commission's COPPA Rule. Among other things, the Commission proposed modifying the Rule's definitions of *personal information* to include persistent identifiers and screen or user names other than where they are used to support internal operations, and *Web site or online service directed to children* to include additional indicia that a site or service may be targeted to children. The Commission received over 350 comments on the proposed changes, a number of which addressed the proposed changes to these two definitions. After reviewing these comments, and based upon its experience in enforcing and administering the Rule, the Commission now proposes additional modifications to the definitions of *personal information, support for internal operations,* and *Web site or online service directed to children,* and also proposes to modify the definition of *operator.*

B. Succinct Statement of the Objectives of, and Legal Basis for, the Additional Proposed Modifications to the Rule's Definitions

The objectives of the additional proposed modifications to the Rule's definitions are to update the Rule to ensure that children's online privacy continues to be protected, as directed by Congress, even as new online technologies evolve, and to clarify existing obligations for operators under the Rule. The legal basis for the proposed amendments is the Children's Online Privacy Protection Act, 15 U.S.C. 6501 *et seq.*

C. Description and Estimate of the Number of Small Entities to Which the Proposed Modifications to the Rule's Definitions Will Apply

The proposed modifications to the Rule's definitions will affect operators of Web sites and online services directed to children, as well as those operators that have actual knowledge that they are collecting personal information from children. The proposed Rule amendments will impose costs on entities that are ''operators'' under the Rule.

The Commission staff is unaware of any empirical evidence concerning the number of operators subject to the Rule. However, based on the public comments received and the modifications proposed here, the Commission staff estimates that approximately 500 additional operators may newly be subject to the Rule's requirements and that there will be approximately 125 new operators per year for a prospective three-year period.

Under the Small Business Size Standards issued by the Small Business Administration, ''Internet publishing and broadcasting and web search portals'' qualify as small businesses if they have fewer than 500 employees.[49] The Commission staff now estimates that approximately 85–90% of operators potentially subject to the Rule qualify as small entities; this projection is revised upward from the Commission's prior estimate of 80% set forth in the 2011 COPPA NPRM to take into account the growing market for mobile applications, many of which may be subject to the proposed revised Rule. The Commission staff bases this revised higher estimate on its experience in this area, which includes its law enforcement activities, discussions with industry members, privacy professionals, and advocates, and oversight of COPPA safe harbor programs. The Commission seeks comment and information with regard to the estimated number or nature of small business entities on which the proposed Rule would have a significant economic impact.

D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amended Rule would impose reporting, recordkeeping, and other compliance requirements within the meaning of the Paperwork Reduction Act, as set forth in Part II of this Notice of Proposed Rulemaking. Therefore, the Commission is submitting the proposed revised modifications to the Rule's definitions to OMB for review before issuing a final rule.

The proposed revised modifications to the Rule's definitions likely would increase the number of operators subject to the proposed revised Rule's recordkeeping, reporting, and other compliance requirements. In particular, the proposed revised definition of *operator* will potentially cover additional child-directed Web sites and online services that choose to integrate other services that collect personal information from visitors. Similarly, the proposed addition of paragraph (d) to the definition of *Web site or online service directed to children,* which clarifies that the Rule covers a Web site or online service that knows or has reason to know it is collecting personal information through any Web site or online service directed to children, will potentially cover additional Web sites and online services. These proposed improvements to the Rule may entail some added cost burden to operators, including those that qualify as small entities. However, the proposed addition of paragraph (c) to the definition of *Web site or online service directed to children,* and the proposed modifications to the definitions of *personal information* and *support for internal operations,* may offset the added burdens discussed above, by potentially decreasing certain operators' recordkeeping, reporting, and other compliance requirements.

The estimated burden imposed by these proposed modifications to the Rule's definitions is discussed in the Paperwork Reduction Act section of this document, and there should be no difference in that burden as applied to small businesses. While the Rule's compliance obligations apply equally to all entities subject to the Rule, it is unclear whether the economic burden

[47] *See* 5 U.S.C. 603–04.

[48] *See* 5 U.S.C. 605.

[49] *See* U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

on small entities will be the same as or greater than the burden on other entities. That determination would depend upon a particular entity's compliance costs, some of which may be largely fixed for all entities (*e.g.,* Web site programming) and others that may be variable (*e.g.,* choosing to operate a family friendly Web site or online service), and the entity's income or profit from operation of the Web site or online service (*e.g.,* membership fees) or from related sources (*e.g.,* revenue from marketing to children through the site or service). As explained in the Paperwork Reduction Act section, in order to comply with the Rule's requirements, operators will require the professional skills of legal (lawyers or similar professionals) and technical (*e.g.,* computer programmers) personnel. As explained earlier, the Commission staff estimates that there are approximately 500 additional Web site or online services that would newly qualify as *operators* under the proposed modifications to the Rule's definitions, that there will be approximately 125 new operators per year for a three-year period, and that approximately 85–90% of all such operators would qualify as small entities under the SBA's Small Business Size standards. The Commission invites comment and information on these issues.

E. Identification of Other Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed Rule. The Commission invites comment and information on this issue.

F. Description of Any Significant Alternatives to the Proposed Modifications to the Rule's Definitions

In drafting the proposed modifications to the Rule's definitions, the Commission has attempted to avoid unduly burdensome requirements for entities. The Commission believes that the proposed modifications will advance the goal of children's online privacy in accordance with COPPA. For each of the proposed modifications, the Commission has taken into account the concerns evidenced by the record to date. On balance, the Commission believes that the benefits to children and their parents outweigh the costs of implementation to industry.

The Commission has considered, but has decided not to propose, an exemption for small businesses. The primary purpose of COPPA is to protect children's online privacy by requiring verifiable parental consent before an operator collects personal information. The record and the Commission's enforcement experience have shown that the threats to children's privacy are just as great, if not greater, from small businesses or even individuals than from large businesses.[50] Accordingly, an exemption for small businesses would undermine the very purpose of the statute and Rule.

While the proposed modifications to the Rule's definitions potentially will increase the number of Web site and online service operators subject to the Rule, the Rule continues to provide regulated entities with the flexibility to select the most appropriate, cost-effective, technologies to achieve COPPA's objective results. For example, the proposed new definition of *support for internal operations* is intended to provide operators with the flexibility to conduct their information collections in a manner they choose consistent with ordinary operation, enhancement, or security measures. Moreover, the proposed changes to *Web site or online service directed to children* would provide greater flexibility to family friendly sites and services in developing mechanisms to provide the COPPA protections to child visitors.

The Commission seeks comments on ways in which the Rule could be modified to reduce any costs or burdens for small entities.

V. Paperwork Reduction Act

The existing Rule contains recordkeeping, disclosure, and reporting requirements that constitute ''information collection requirements'' as defined by 5 CFR 1320.3(c) under the OMB regulations that implement the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.* OMB has approved the Rule's existing information collection requirements through July 31, 2014 (OMB Control No. 3084–0117).

The proposed modifications to the Rule's definitions would change the definitions of *operator* and *Web site or online service directed to children,* potentially increasing the number of operators subject to the Rule. However, the proposed modifications to the definitions of *personal information* and *support for internal operations* may offset these added burdens by potentially decreasing certain operators' recordkeeping, reporting, and other compliance requirements. Thus, the Commission is providing PRA burden estimates for the proposed modifications, set forth below.

The Commission 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 shall have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting information.

Estimated Additional Annual Hours Burden

A. Number of Respondents

Commission staff estimates that there will be approximately 500 existing operators of Web sites or online services that likely will be newly covered as a result of the modifications proposed herein. This projected number is based upon the Commission staff's expectation that altering the definitions of *operator* and *Web site or online service directed to children* will expand the pool of covered operators. Other proposed modifications, however, should offset some of this potential expansion. Specifically, these offsets include clarification of the definition of *support for internal operations* and the carve-out from the definition of *Web site or online service directed to children* of family friendly sites and services that take particular measures. The Commission also anticipates that some operators of Web sites or online services will make adjustments to their information collection practices so that they will not be collecting personal information from children, as defined by the proposed revised Rule.

Further, Commission staff estimates that 125 additional new operators per year (over a prospective three-year PRA clearance period [51]) will be covered by the Rule through the proposed modifications. This is incremental to the previously cleared FTC estimates of 100 new operators per year for the current Rule.

[50] *See, e.g., United States* v. *RockYou, Inc.,* No. 3:12–cv–01487–SI (N.D. Cal., entered Mar. 27, 2012); *United States* v. *Godwin,* No. 1:11–cv–03846–JOF (N.D. Ga., entered Feb. 1, 2012); *United States* v. *W3 Innovations, LLC,* No. CV–11–03958 (N.D. Cal., filed Aug. 12, 2011); *United States* v. *Industrious Kid, Inc.,* No. CV–08–0639 (N.D. Cal., filed Jan. 28, 2008); *United States* v. *Xanga.com, Inc.,* No. 06–CIV–6853 (S.D.N.Y., entered Sept. 11, 2006); *United States* v. *Bonzi Software, Inc.,* No. CV–04–1048 (C.D. Cal., filed Feb. 17, 2004); *United States* v. *Looksmart, Ltd.,* Civil Action No. 01–605–A (E.D. Va., filed Apr. 18, 2001); *United States* v. *Bigmailbox.Com, Inc.,* Civil Action No. 01–606–B (E.D. Va., filed Apr. 18, 2001).

[51] Under the PRA, agencies may seek a maximum of three years' clearance for a collection of information. 44 U.S.C. 3507(g).

B. Recordkeeping Hours

The proposed modifications to the Rule's definitions will not impose incremental recordkeeping requirements on operators.

C. Disclosure Hours

(1) New Operators' Disclosure Burden

Under the existing OMB clearance for the Rule, the FTC has estimated that new operators will each spend approximately 60 hours to craft a privacy policy, design mechanisms to provide the required online privacy notice and, where applicable, direct notice to parents in order to obtain verifiable consent. Several commenters noted that this 60-hour estimate failed to take into account accurate costs of compliance with the Rule.[52] None of these commenters, however, provided the Commission with empirical data or specific evidence on the number of hours such activities require. Thus, the Commission does not have sufficient information at present to revise its earlier hours estimate. Applying this estimate of 60 hours per new operator to the above-stated estimate of 125 new operators yields an estimated 7,500 additional disclosure hours, cumulatively.

(2) Existing Operators' Disclosure Burden

The proposed modifications to the Rule's definitions will not impose incremental disclosure time per entity, but, as noted above, would result in an estimated 500 additional existing operators that would be covered by the Rule. These entities will have a one-time burden to re-design their existing privacy policies and direct notice procedures that would not carry over to the second and third years of prospective PRA clearance. The Commission estimates that an existing operator's time to make these changes would be no more than that for a new entrant crafting its online and direct notices for the first time, i.e., 60 hours. Annualized over three years of PRA clearance, this amounts to 20 hours ((60 hours + 0 + 0) ÷ 3) per year. Aggregated for the estimated 500 existing operators that would be newly subject to the Rule, annualized disclosure burden would be 10,000 hours.

D. Reporting Hours

The proposed modifications to the Rule's definitions will not impose incremental reporting hours requirements.

[52] *See* Nancy Savitt (comment 142), at 1; NCTA (comment 113), at 23–24.

E. Labor Costs

(1) Recordkeeping

None.

(2) Disclosure

The Commission staff assumes that the time spent on compliance for new operators and existing operators that would be newly covered by the Rule's proposed modifications would be apportioned five to one between legal (lawyers or similar professionals) and technical (*e.g.,* computer programmers, software developers, and information security analysts) personnel.[53] Moreover, based on Bureau of Labor Statistics compiled data, FTC staff assumes for compliance cost estimates a mean hourly rate of $180 for legal assistance and $42 for technical labor support.[54]

Thus, for the estimated 125 additional new operators per year, 7,500 cumulative disclosure hours would be composed of 6,250 hours of legal assistance and 1,250 hours of technical support. Applied to hourly rates of $180 and respectively. $42, respectively, associated labor costs for the 125 additional new operators potentially subject to the proposed amendments would be $1,177,500.

Similarly, for the estimated 500 existing operators that would be newly covered by the proposed definitional changes, 10,000 cumulative disclosure hours would consist of 8,333 hours of legal assistance and 1,667 hours for technical support. Applied at hourly rates of $180 and $42, respectively, associated labor costs would total $1,569,954. Thus, cumulative labor costs for new and existing operators that would be additionally subject to the Rule through the proposed amendments would be $2,747,454.

(3) Reporting

None.

F. Non-Labor/Capital Costs

None.

[53] *See* 76 FR 7211, 7212–7213 (Feb. 9, 2011); 76 FR 31334, 31335 n. 1 (May 31, 2011) (FTC notices for renewing OMB clearance for the COPPA Rule).

[54] The estimated rate of $180 per hour is roughly midway between Bureau of Labor Statistics (BLS) mean hourly wages for lawyers ($62.74) in the most recent annual compilation available online and what Commission staff believes more generally reflects hourly attorney costs ($300) associated with Commission information collection activities. The estimate of mean hourly wages of $42 is based on an average of the salaries for computer programmers, software developers, information security analysts, and web developers as reported by the Bureau of Labor Standards. *See National Occupational and Wages—May* 2011, *available at http://www.bls.gov/news.release/archives/ocwage_03272012.pdf.*

VI. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

VII. Questions for the Proposed Revisions to the Rule

The Commission is seeking comment on various aspects of the proposed Rule, and is particularly interested in receiving comment on the questions that follow. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted in response to this notice. Responses to these questions should cite the numbers and subsection of the questions being answered. For all comments submitted, please submit any relevant data, statistics, or any other evidence upon which those comments are based.

Definition of On Whose Behalf Such Information Is Collected or Maintained

1. The Commission proposes to revise the definition of *operator* to indicate that personal information is *collected or maintained on behalf of* an operator where it is collected in the interest of, as a representative of, or for the benefit of, the operator.

a. Is the proposed language sufficiently clear to cover Web sites or online services where they permit the collection of personal information by parties such as advertising networks, providers of downloadable software kits, or ''social plug-ins''?

b. Do the proposed requirements of this provision provide sufficient guidance and clarity for an operator who does not otherwise collect personal information from children?

c. Is the proposed language sufficiently narrow to exclude entities that merely provide access to the Internet without providing content or collecting information from children?

d. Does the proposed language present any practical or technical challenges for implementation by the operator? If so, please describe such challenges in detail.

Definition of Web Site or Online Service Directed to Children

2. The Commission proposes to identify four categories of *Web sites or online services directed to children* (paragraphs (a)–(d)). Does the proposed revised definition adequately capture all

instances where a Web site or online service may be directed to children?

3. Is the newly proposed paragraph (c) within the definition of *Web site or online service directed to children* sufficiently clear to provide guidance to an operator as to when the operator is permitted to screen users for age and is required to comply with COPPA?

4. The Commission proposes to cover as a *Web site or online service directed to children* an operator who knows or has reason to know that it is collecting personal information through a child-directed site or service (paragraph (d)).

a. Is the ''knows or has reason to know'' standard appropriate in this case? Should the standard be broadened, or should it be narrowed, in any way?

b. What are the costs and benefits to operators, parents, and children of the proposed revisions?

c. Does the proposed language present any practical or technical challenges for implementation by the operator? If so, please describe such challenges in detail.

5. Is there currently technology in use or available that would enable Web sites or online services to publicly signal (through code or otherwise) that they are sites or services ''directed to children''? What are the costs and benefits of the voluntary use of such technology?

Definition of Personal Information

Screen or User Names

6. The Commission proposes revising the definition of *personal information* to include *screen or user name* where it functions in the same manner as online contact information, *i.e.,* where it acts as an identifier that permits direct contact with a person online. Are there any other instances not identified by the Commission in which a screen or user name can be used to contact a specific child?

Persistent Identifiers and Support for Internal Operations

7. The Commission proposes to combine the sub-definitions of personal information in proposed paragraphs (g) and (h) covering persistent identifiers, and to broaden the definition of *support for internal operations.*

a. Is the proposed language sufficiently clear?

b. What are the costs and benefits to operators, parents, and children of the proposed revisions?

c. Do the proposed revisions present any practical or technical challenges for implementation by the operator? If so, please describe such challenges in detail.

Paperwork Reduction Act

8. The Commission solicits comments on whether the changes to the definitions (§ 312.2) constitute ''collections of information'' within the meaning of the Paperwork Reduction Act. The Commission requests comments that will enable it to:

a. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

b. Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

c. Enhance the quality, utility, and clarity of the information to be collected; and,

d. Minimize the burden of the collections of information on those who must comply, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

VIII. Proposed Revisions to the Rule

List of Subjects in 16 CFR Part 312

Children, Communications, Consumer protection, Electronic mail, Email, Internet, Online service, Privacy, Record retention, Safety, Science and technology, Trade practices, Web site, Youth.

For the reasons discussed above, the Commission proposes to amend part 312 of Title 16, Code of Federal Regulations, as follows:

PART 312—CHILDREN'S ONLINE PRIVACY PROTECTION RULE

1. The authority citation for part 312 continues to read as follows:

Authority: 15 U.S.C. 6501–6508.

2. Amend § 312.2 by revising the definitions of *operator, personal information,* and *Web sites or online services directed to children,* and by adding after the definition of *personal information* a new definition of *support for internal operations of the Web site or online service,* to read as follows:

§ 312.2 Definitions.

* * * * *

Operator means any person who operates a Web site located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such Web site or online service, or on whose behalf such information is collected or maintained, or offers products or services for sale through that Web site or online service, where such Web site or online service is operated for commercial purposes involving commerce:

(a) Among the several States or with 1 or more foreign nations;

(b) In any territory of the United States or in the District of Columbia, or between any such territory and

(1) Another such territory, or,

(2) Any State or foreign nation; or,

(c) Between the District of Columbia and any State, territory, or foreign nation. This definition does not include any nonprofit entity that would otherwise be exempt from coverage under Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

Personal information is *collected or maintained on behalf of* an operator where it is collected in the interest of, as a representative of, or for the benefit of, the operator.

* * * * *

Personal information means individually identifiable information about an individual collected online, including:

(a) A first and last name;

(b) A home or other physical address including street name and name of a city or town;

(c) Online contact information as defined in this Section;

(d) A screen or user name where it functions in the same manner as online contact information, as defined in this Section;

(e) A telephone number;

(f) A Social Security number;

(g) A persistent identifier that can be used to recognize a user over time, or across different Web sites or online services, where such persistent identifier is used for functions other than or in addition to support for the internal operations of the Web site or online service. Such persistent identifier includes, but is not limited to, a customer number held in a cookie, an Internet Protocol (IP) address, a processor or device serial number, or unique device identifier;

(h) A photograph, video, or audio file where such file contains a child's image or voice;

(i) Geolocation information sufficient to identify street name and name of a city or town; or,

(j) Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described in this definition.

Support for the internal operations of the Web site or online service means those activities necessary to: (a)

Maintain or analyze the functioning of the Web site or online service; (b) perform network communications; (c) authenticate users of, or personalize the content on, the Web site or online service; (d) serve contextual advertising on the Web site or online service; (e) protect the security or integrity of the user, Web site, or online service; or (f) fulfill a request of a child as permitted by §§ 312.5(c)(3) and (4); so long as the information collected for the activities listed in (a)–(f) is not used or disclosed to contact a specific individual or for any other purpose.

* * * * *

Web site or online service directed to children means a commercial Web site or online service, or portion thereof, that:

(a) Knowingly targets children under age 13 as its primary audience; or,

(b) based on the overall content of the Web site or online service, is likely to attract children under age 13 as its primary audience; or,

(c) based on the overall content of the Web site or online service, is likely to attract an audience that includes a disproportionately large percentage of children under age 13 as compared to the percentage of such children in the general population; *provided however that* such Web site or online service shall not be deemed to be directed to children if it: (i) Does not collect personal information from any visitor prior to collecting age information; and (ii) prevents the collection, use, or disclosure of personal information from visitors who identify themselves as under age 13 without first obtaining verifiable parental consent; or,

(d) knows or has reason to know that it is collecting personal information through any Web site or online service covered under paragraphs (a)–(c).

In determining whether a commercial Web site or online service, or a portion thereof, is directed to children, the Commission will consider its subject matter, visual content, use of animated characters or child-oriented activities and incentives, music or other audio content, age of models, presence of child celebrities or celebrities who appeal to children, language or other characteristics of the Web site or online service, as well as whether advertising promoting or appearing on the Web site or online service is directed to children. The Commission will also consider competent and reliable empirical evidence regarding audience composition, and evidence regarding the intended audience. A commercial Web site or online service, or a portion thereof, shall not be deemed directed to children solely because it refers or links to a commercial Web site or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–19115 Filed 8–3–12; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 51

[REG–112805–10]

RIN 1545–BJ39

Branded Prescription Drug Fee; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on notice proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to the branded prescription drug fee imposed by the Affordable Care Act.

DATES: The public hearing is being held on Friday, November 9, 2012, at 10:00 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Friday, October 5, 2012.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224. Send Submissions to CC:PA:LPD:PR (REG–112805–10), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–112805–10), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (REG–112805–10).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Celia Gabrysh (202) 622–3130; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Funmi Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking by cross-reference to temporary regulations (REG–112805–10) that was published in the **Federal Register** on Thursday, August 18, 2011 (76 FR 51310).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by November 16, 2011, must submit an outline of the topics to be addressed and the amount of time to be denoted to each topic.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (room 1621) which is located at the 11th and Pennsylvania Avenue NW., entrance, 1111 constitution Avenue NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

LaNita VanDyke,

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

[FR Doc. 2012–19074 Filed 8–3–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 323

RIN 0790–AI86

[Docket ID: DOD–2012–OS–0018]

Defense Logistics Agency Privacy Program

AGENCY: Defense Logistics Agency, DoD.

ACTION: Proposed rule with request for comments.

SUMMARY: The Defense Logistics Agency (DLA) is proposing to amend the DLA Privacy Program Regulation. The DLA Privacy Offices have been repositioned under the DLA General Counsel; therefore, responsibilities have been updated to reflect the repositioning. In addition, DLA has adopted revisions to the DoD Privacy Program.

DATES: Submit comments on or before October 5, 2012.

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of This Regulatory Action

a. This rule provides policies and procedures for the Defense Logistics Agency's implementation of the Privacy Act of 1974, as amended. In addition, DLA has adopted specific sections of the DoD Privacy Program as published in 32 CFR part 310.

b. *Authority:* Privacy Act of 1974, Pub. L. 93–579, Stat. 1896 (5 U.S.C. 552a).

II. Summary of the Major Provisions of This Regulatory Action

The DLA Privacy Offices have been repositioned under the DLA General Counsel; therefore, responsibilities have been updated to reflect the repositioning.

III. Costs and Benefits of This Regulatory Action

This regulatory action imposes no monetary costs to the Agency or public. The benefit to the public is the accurate reflection of the Agency's Privacy Program to ensure that policies and procedures are known to the public.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact of entitlements, 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 these Executive orders.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 323

Privacy.

Accordingly, DoD proposes to revise 32 CFR part 323 to read as follows:

PART 323—DEFENSE LOGISTICS AGENCY PRIVACY PROGRAM

Sec.
323.1 Purpose.
323.2 Applicability.
323.3 Policy.
323.4 Responsibilities.
323.5 Access to systems of records information.
323.6 Exemption rules.

Authority: Privacy Act of 1974, Pub. L. 93–579, Stat. 1896 (5 U.S.C. 552a).

§ 323.1 Purpose.

This part sets out Defense Logistics Agency policy, assigns responsibilities, and prescribes procedures for the effective administration of the DLA Privacy Program.

§ 323.2 Applicability.

This part:

(a) Applies to Defense Logistics Agency Headquarters (DLA HQ) and all other organizational entities within the Defense Logistics Agency (hereafter referred to as ''DLA Components'').

(b) Shall be made applicable by contract or other legally binding action to U.S. Government contractors whenever a DLA contract requires the performance of any activities associated with maintaining a system of records, including the collection, use, and dissemination of records on behalf of DLA.

§ 323.3 Policy.

DLA adopts and supplements the DoD Privacy Program policy and procedures codified at 32 CFR 310.4 through 310.53, and appendices A through H of 32 CFR part 310.

§ 323.4 Responsibilities.

(a) *General Counsel.* The General Counsel, DLA, under the authority of the Director, Defense Logistics Agency:

(1) Implements the DLA Privacy Program and is hereby designated as the Component Senior Official for Privacy.

(2) Serves as the DLA Final Denial Appellate Authority.

(3) Provides advice and assistance on all legal matters arising out of, or incident to, the implementation and administration of the DLA Privacy Program.

(4) Serves as the DLA focal point on Privacy Act litigation with the Department of Justice; and will advise the Defense Privacy and Civil Liberties Office on the status of DLA privacy litigation. This responsibility may be delegated.

(5) Serves as a member of the Defense Privacy Board Legal Committee. This responsibility may be delegated.

(6) Supervises and administers the DLA FOIA and Privacy Act Office

(DGA) and assigned staff. This responsibility may be delegated.

(7) May exempt DLA systems of records.

(b) *Initial Denial Authority (IDA) at Headquarters DLA.* By this part, the DLA Director designates the Head of each Headquarters DLA Component as an IDA. Each Head may further delegate this responsibility to their Deputy. For the DLA General Counsel's Office, the Deputy General Counsel shall serve as the Initial Denial Authority (IDA).

(c) *DLA Privacy Act Office.* The DLA Privacy Act Office (DGA) staff:

(1) Formulates policies, procedures, and standards necessary for a uniform DLA Privacy Program.

(2) Serves as the DLA representative on the Defense Privacy Board and the Defense Data Integrity Board.

(3) Provides advice and assistance on privacy matters.

(4) Develops or compiles the rules, notices, and reports required under 32 CFR part 310.

(5) Assesses the impact of technology on the privacy of personal information.

(6) Conducts Privacy training for personnel assigned, employed, and detailed, including contractor personnel and individuals having primary responsibility for implementing the DLA Privacy Program.

(7) Develops forms used within the DLA Privacy Program. This part serves as the prescribing document for forms developed for the DLA Privacy Program.

(d) *DLA Components Heads.* The DLA Components Heads:

(1) Designate an individual as the point of contact for Privacy matters for their DLA Component and advise DGA of the name of official so designated. This individual also will serve as the Privacy Officer for the co-located tenant DLA organizations.

(2) Designate an official to serve as the initial denial authority for initial requests for access to an individual's records or amendments to records, and will advise DGA of the names of the officials so designated.

(e) *DLA Acquisition Management Directorate (J–7).* The DLA Acquisition Management Directorate (J–7) shall be responsible for:

(1) Developing the specific DLA policies and procedures to be followed when soliciting bids, awarding contracts or administering contracts that are subject to 32 CFR 310.12.

(2) Establishing an appropriate contract surveillance program to ensure contractors comply with the procedures established in accordance with 32 CFR 310.12.

§ 323.5 Access to systems of records information.

(a) Individuals who wish to gain access to records contained in a system of records about themselves will submit their request in writing to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221. Any written request must:

(1) Identify the particular ''system(s) of records'' to be searched;

(2) Contain the information listed under the ''Notification procedure'' or ''Record access procedures'' elements of the applicable system of records notice;

(3) Verify identity when the information sought is of a sensitive nature by submitting an unsworn declaration in accordance with 28. U.S.C. 1746 or notarized signature;

(4) Adequately explain a request for expedited processing, if applicable;

(5) State whether they agree to pay fees associated with the processing of your request; and

(6) Contain a written release authority if records are to be released to a third party. Third parties could be, but are not limited to, a law firm, a Congressman's office, a union official, or a private entity.

(b) Amendment and/or Access denials will be processed in accordance with 32 CFR 310.18 and 310.19.

(c) If an individual disagrees with the initial agency determination regarding notification, access, or amendment, he may appeal by writing to the General Counsel, Defense Logistics Agency, ATTN: DGA, Suite 1644, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221 or by emailing the appeal to *hq-foia@dla.mil* or by faxing the appeal to (703) 767–6091.

§ 323.6 Exemption rules.

(a) The Director, DLA or designee may claim an exemption from any provision of the Privacy Act from which an exemption is allowed.

(b) An individual is not entitled to access information that is compiled in reasonable anticipation of a civil action or proceeding. The term ''civil action or proceeding'' is intended to include court proceedings, preliminary judicial steps, and quasi-judicial administrative hearings or proceedings (i.e., adversarial proceedings that are subject to rules of evidence). Any information prepared in anticipation of such actions or proceedings, to include information prepared to advise DLA officials of the possible legal or other consequences of a given course of action, is protected. The exemption is similar to the attorney work-product privilege except that it applies even when the information is prepared by non-attorneys. The exemption does not apply to information compiled in anticipation of criminal actions or proceedings.

(c) Exempt Records Systems. All systems of records maintained by the Defense Logistics Agency will be exempt from the access provisions of 5 U.S.C. 552a(d) and the notification of access procedures of 5 U.S.C. 522a(e)(4)(H) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 13526 and which is required by the Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all DLA systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain isolated items of information which have been properly classified.

(d) System Identifier: S170.04 (Specific exemption).

(1) System name: Fraud and Irregularities.

(2) Exemption: (i) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). If an individual, however, is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) The specific sections of 5 U.S.C. 552a from which the system is exempt are 5 U.S.C. 552a(c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), and (I), and (f).

(3) Authorities: 5 U.S.C. 552a(k)(2) and (k)(5).

(4) Reasons: (i) From 5 U.S.C. 552a(c)(3), as granting access to the accounting for each disclosure, as required by the Privacy Act, including

the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of an investigation or prosecutive interest by DLA or other agencies. This seriously could compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or making witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From 5 U.S.C. 552a(d)(1) through (4) and (f), as providing access to records of a civil investigation, and the right to contest the contents of those records and force changes to be made to the information contained therein, would seriously interfere with and thwart the orderly and unbiased conduct of an investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would: Allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claim arising from the investigation or proceeding.

(iii) From 5 U.S.C. 552a(e)(1), as it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From 5 U.S.C. 552a(e)(4)(G) and (H), as there is no necessity for such publication since the system of records would be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments and corrections to the information in the system.

(v) From 5 U.S.C. 552a(e)(4)(I), as to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA, nevertheless, will continue to publish such a notice in broad generic terms as is its current practice.

(e) System Identifier: S500.10 (Specific exemption).

(1) System name: Personnel Security Files.

(2) Exemption: (i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(3) Authority: 5 U.S.C. 552a(k)(5).

(4) Reasons: (i) From 5 U.S.C. 552a(c)(3) and (d), when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it would impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources may be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(ii) From 5 U.S.C. 552a(e)(1), as in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

(f) System Identifier: S500.20 (Specific exemption).

(1) System name: Defense Logistics Agency (DLA) Criminal Incident Reporting System (DCIRS).

(2) Exemption: (i) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). If an individual, however, is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) The specific sections of 5 U.S.C. 552a from which the system is to be exempted are 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f).

(3) Authority: 5 U.S.C. 552a(k)(2).

(4) Reasons: (i) From subsection (c)(3), as to grant access to an accounting of disclosures as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by: Prematurely revealing its existence and nature; compromising or interfering with witnesses or making witnesses reluctant to cooperate; and leading to suppression, alteration, or destruction of evidence.

(ii) From 5 U.S.C. 552a(d) and (f), as providing access to this information could result in the concealment, destruction or fabrication of evidence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information also could reveal and render ineffectual investigative techniques, sources, and methods used by this component and could result in the invasion of privacy of individuals only incidentally related to an investigation. Investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This exemption will protect the identities of certain sources that would be otherwise unwilling to provide information to the Government. The exemption of the individual's right of access to his/her records and the reasons therefore necessitate the exemptions of this system of records from the requirements of the other cited provisions.

(iii) From 5 U.S.C. 552a(e)(1), as it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From 5 U.S.C. 552a(e)(4)(G), (H), and (I), as it will provide protection against notification of investigatory material which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place in jeopardy confidential informants who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(g) System Identifier: S500.30 (Specific exemption).

(1) System name: Incident Investigation/Police Inquiry Files.

(2) Exemption: (i) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). If an individual, however, is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information, except to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) The specific sections of 5 U.S.C. 552a from which the system is exempt are 5 U.S.C. 552a(c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), and (I), and (f).

(3) Authority: 5 U.S.C. 552a(k)(2) and (k)(5).

(4) Reasons: (i) From 5 U.S.C. 552a(c)(3), because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by: Prematurely revealing its existence and nature; compromising or interfering with witnesses or making witnesses reluctant to cooperate; and leading to suppression, alteration, or destruction of evidence.

(ii) From 5 U.S.C. 552a(d)(1) through (d)(4), and (f), as providing access to records of a civil or administrative investigation, and the right to contest the contents of those records and force changes to be made to the information contained therein, would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would: Provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claim arising from the investigation or proceeding.

(iii) From 5 U.S.C. 552a(e)(1), as it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From 5 U.S.C. 552a(e)(4)(G) and (H), as this system of records is compiled for law enforcement purposes and is exempt from the access provisions of 5 U.S.C. 552a(d) and (f).

(v) From 5 U.S.C. 552a(e)(4)(I), because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA, nevertheless, will continue to publish such a notice in broad generic terms as is its current practice.

(h) System Identifier: S500.60 (Specific exemption).

(1) System name: DLA Hotline Program Records.

(2) Exemption: (i) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). If an individual, however, is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information, except to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) The specific sections of 5 U.S.C. 552a from which the system is exempt are 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G), (H), (I), and (f).

(3) Authority: 5 U.S.C. 552a(k)(2) and (k)(5).

(4) Reasons: (i) From subsection (c)(3), as to grant access to an accounting of disclosures as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or making witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From 5 U.S.C. 552a(d)(1) through (4) and (f), as providing access to records of a civil or administrative investigation, and the right to contest the contents of those records and force changes to be made to the information contained therein, would interfere seriously with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow: Interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claim arising from the investigation or proceeding.

(iii) From 5 U.S.C. 552a(e)(1), as it is not always possible to detect the

relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From 5 U.S.C. 552a(e)(4)(G) and (H), as this system of records is compiled for law enforcement purposes and is exempt from the access provisions of 5 U.S.C. 552a(d) and (f).

(v) From 5 U.S.C. 552a(e)(4)(I), as to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA, nevertheless, will continue to publish such a notice in broad generic terms as is its current practice.

(i) System Identifier: S510.30 (Specific/General Exemption).

(1) System name: Freedom of Information Act/Privacy Act Requests and Administrative Appeal Records.

(2) Exemption: During the processing of a Freedom of Information Act/Privacy Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests), exempt materials from other systems of records may, in turn, become part of the case record in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the Defense Logistics Agency claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(3) Authority: 5 U.S.C. 552a(j)(2), (k)(1) through (7).

(4) Reasons: Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy; to avoid interference during the conduct of criminal, civil, or administrative actions or investigations; to ensure protective services provided the President and others are not compromised; to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations; to preserve the confidentiality and integrity of Federal testing materials; and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: July 9, 2012.

Patricia L. Toppings,

OSD Federal Register, Liaison Officer, Department of Defense.

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DEPARTMENT OF EDUCATION

34 CFR Chapter III

[CFDA Number: 84.373Y.]

Proposed Priority; Technical Assistance To Improve State Data Capacity—National Technical Assistance Center To Improve State Capacity To Accurately Collect and Report IDEA Data

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

ACTION: Notice.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a funding priority under the Technical Assistance (TA) on State Data Capacity program. The Assistant Secretary may use this proposed priority for competitions in fiscal year (FY) 2012 and later years. We take this action to focus attention on an identified national need to provide TA to improve the capacity of States to meet the data collection requirements of the Individuals with Disabilities Education Act (IDEA).

DATES: We must receive your comments on or before October 22, 2012.

ADDRESSES: Address all comments about this notice to Kelly Worthington, U.S. Department of Education, 400 Maryland Avenue SW., Room 4072, Potomac Center Plaza (PCP), Washington, DC 20202–2600.

If you prefer to send your comments by email, use the following address: *Kelly.Worthington@ed.gov.* You must include the term ''State Data Capacity Priority'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Kelly Worthington. Telephone: (202) 245–7581.

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:

Invitation to Comment: We invite you to submit comments regarding the proposed priority in this notice. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to clearly identify the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in Room 4072, 550 12th Street SW., Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of the IDEA, which gives the Secretary the authority to reserve funds appropriated under section 611 of the IDEA to provide TA authorized under section 616(i) of the IDEA. Section 616(i) requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 and 618 of the IDEA are collected, analyzed, and accurately reported. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements under the IDEA.

Program Authority: 20 U.S.C. 1411(c), 1416(i), and 1418(c).

Proposed Priority

This notice contains one proposed priority. The priority is:

National Technical Assistance Center To Improve State Capacity To Accurately Collect and Report IDEA Data

Background

Sections 616 and 618 of the IDEA require States to collect data and report that data to the U.S. Department of Education (Department) and to the public (generally, ''IDEA data requirements''). These data requirements apply to State agencies that administer the IDEA Part B program, under which the State must make a free appropriate public education available to children with disabilities ages 3 through 21, and the IDEA Part C program, under which the State must make early intervention services available to infants and toddlers with disabilities (birth to age 3) and their families.

Under section 618 of the IDEA, States are required to collect and report annually to the Secretary and the public primarily quantitative data on infants, toddlers, children, and students with disabilities. States must report a number of data elements, including the number of children served, the service settings or educational environments in which children with disabilities are served, the use of dispute resolution processes, assessment participation and performance for children with disabilities, reasons for children with disabilities exiting special education programs, disciplinary incidences and counts for children with and without disabilities (section 618(a) of the IDEA).[1] Data provided to the public must be reported in a manner that does not result in the disclosure of data identifiable to individual children (section 618(b) of the IDEA).

Under section 616 of the IDEA, each State must submit a State Performance Plan (SPP) and an Annual Performance Report (APR) to the Department for Part B and for Part C. In its APR, a State must report to the Secretary and the public on its progress in meeting the measurable and rigorous targets for each of the indicators established by the Secretary, currently 14 IDEA Part C indicators and 20 IDEA Part B indicators (section 616(b)(2)(C)(ii)(II) of the IDEA).[2] In addition, each State must report on its efforts to improve implementation of the requirements and purposes of the IDEA and describe how they will improve that implementation (section 616(b)(1)(A) of the IDEA). Each State's SPPs and APRs must include both quantitative information (e.g., under Part B's Indicator 1, the percent of youth with individualized education programs (IEPs) graduating with a regular high school diploma) and qualitative information about the State's efforts to improve the State's performance regarding each of the State's targets in its SPP (e.g., based on an analysis of the data available to the State, the State's explanation of, and plans to address, any progress or slippage in meeting graduation targets). Finally, each State must report to the public on implementation of the requirements and purposes of the IDEA at the local level by posting on the State agency's Web site the performance of each local educational agency (LEA) in meeting the State's targets for the Part B indicators and of each early intervention service (EIS) program in meeting the State's targets for the Part C indicators (section 616(b)(2)(C)(ii)(I) of the IDEA).

The Secretary is required to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of sections 616 and 618 of the IDEA are collected and accurately reported by States to the Department, and to provide TA, where needed, to improve the capacity of States to meet the data collection requirements (section 616(i) of the IDEA). *See also* section 618(c) of the IDEA regarding the Secretary's authority to provide TA to States to ensure compliance with the data collection and reporting requirements of the IDEA.

The Department has reviewed the data collection and analysis capacity of States to ensure that IDEA data are being collected and accurately reported to the Department and the public. As explained in more detail in the following paragraphs, the Department's assessment is that States need TA to improve their data collection capacity and their ability to analyze that data to ensure that the data are accurate and can be reported to the Department and the public, as applicable. States also need TA to help them analyze the data available to them so that they can each provide, in their SPPs and APRs, more accurate qualitative information about their efforts to improve implementation of the requirements and purposes of the IDEA, and to more accurately target future improvement activities.

Improve data infrastructures. In order to meet IDEA data requirements, States must have the capacity to collect and analyze data on a variety of data elements, including but not limited to: Child and student background characteristics (e.g., race, ethnicity, limited English proficient status, gender, disability category); early intervention service setting; percentage of time in the general education classroom; student performance on statewide assessments, including the name of each assessment; personnel serving students with disabilities and their qualifications; the use of dispute resolution processes to resolve differences between parents and program providers; the incidence of disciplinary actions; and financial data. Under IDEA, collecting and reporting accurate and timely IDEA data is the responsibility of the State agencies responsible for implementing IDEA, but, in practice, multiple offices collect and report IDEA data, and they often do not effectively share data with one another or govern the quality of the data. This reduces the accuracy and timeliness of the data ultimately reported to the Department. For example, the ED*Facts* Coordinator in each State educational agency submits IDEA child count, educational environments, personnel, exiting, discipline, and assessment data for children with disabilities to the Department, as well as required data about children with disabilities for other educational program offices. A description of ED*Facts* can be found at *www.ed.gov/edfacts.* State general education authorities, specifically State assessment offices, are responsible for collecting accurate participation and performance assessment data about students with and without disabilities for multiple State data submissions to the Department, including IDEA. State special education program offices, however, do not always have access to the IDEA data collected and submitted by other State offices, which can compromise data validity and reliability.

The Department's review of all the quantitative IDEA data revealed that IDEA assessment and IDEA discipline data have the most frequent data errors. Data elements for both of these required IDEA data collections often are in data systems that are generally not accessible to or managed by State special education offices, which points to the need to develop a coordinated IDEA data infrastructure. For example, IDEA requires that States report annually to the Secretary and the public the number

[1] The following Web links provide more information on IDEA 618 data elements: *www.ideadata.org/PartCForms.asp* and *www.ideadata.org/PartBForms.asp.*

[2] The following Web sites provide more information on the 616 SPP/APR Indicators: *www.ed.gov/policy/speced/guid/idea/capr/index.html* and *www2.ed.gov/policy/speced/guid/idea/bapr/index.html.*

and percentage of children with disabilities who are expelled as compared to children without disabilities who are expelled. Yet expulsion data for students without disabilities is not consistently collected by States, which means that required comparisons cannot be accurately reported. Improving the accuracy of IDEA discipline data about students with and without disabilities requires coordination with non-special education offices and personnel. States, therefore, need TA to build data collection and reporting capacity within the context of multiple data systems and program offices, particularly when State special education offices do not manage the operating procedures or have direct access to the data needed for IDEA reporting. States also need TA to enhance their capacity to use data systems to collect valid and reliable data; analyze data to ensure their validity and reliability; submit accurate and timely data; adjust to constantly changing technology; protect privacy, confidentiality, and security of the data; and enhance data governance strategies to resolve data issues that involve multiple State program offices. In our experience, TA provided to States is most effective when it is provided on a coordinated basis across relevant Department offices, State offices, and data TA providers (e.g., State Support Teams working with Statewide Longitudinal Data Systems that include IDEA data).

Strengthen data validation procedures. After data collection occurs at the local level and prior to the submission of IDEA data to the Department, States must have effective systematic data validation procedures to ensure the accuracy of data submitted to the Department.

Many States do not have effective data validation procedures in place. The Department has found that States frequently submit IDEA data with preventable errors such as missing data values or data that conflict with State policies (e.g., reporting 15-year-old students as exiting special education due to graduating with a regular high school diploma when the State minimum age of graduation is 17). To ensure that data are valid and reliable, it is important to build the capacity of States by providing TA prior to and immediately following their data submission to the Department. TA should be provided on matters such as (a) ensuring that State special education program staff have appropriate access to data before the data are submitted to the Department so that special education program staff can conduct thorough data validation procedures on IDEA data, (b) improving reliability across data collectors, and (c) enhancing automated validation procedures (e.g., business rules in the data system and correction of identified errors).

Ensure data are collected and reported from all relevant programs. States need TA to ensure that data from all State and local programs, districts, and schools that are providing IDEA services to children with disabilities are appropriately included in relevant data collections and that the State is reporting data at all appropriate levels (e.g., State, district, school, early intervention program) for every APR indicator and for all data required in section 618(a) of the IDEA. In its review of IDEA data, the Department found, for example, that not all State Operated Programs for children who are deaf or blind,[3] juvenile justice centers, or charter schools are included in the IDEA data reports submitted via ED*Facts.* The Department has also identified instances of State-level data omissions and duplicate reporting.

Problems with collecting and reporting data from all relevant programs has become even more evident in recent years. In 2007, the Department issued regulations[4] requiring that States submit reports in the manner prescribed by the Secretary and at the quality level (e.g., level of data accuracy and completeness) specified in the data collection instrument. The reporting system prescribed by the Secretary was ED*Facts,* and this regulation resulted in changes to the State data reporting procedures for data required in section 618 of the IDEA about children and students ages 3 through 21 (school-age). Further, in order to continue improving the quality of the IDEA data submissions, data collected by States at LEA and school levels are also reported through ED*Facts.* In 2011, data required in section 618 of the IDEA for school-age children were reported by States for nearly 15,000 LEAs and almost 100,000 schools through ED*Facts.*

Given this increase in reporting, the associated challenges of managing the submissions, and the increased use of the LEA- and school-level data by the Department for reviewing data and understanding IDEA implementation within States, it has become even more important for States to ensure that all programs, agencies, and schools serving children with disabilities collect and accurately report the required IDEA data.

Address personnel training needs. States need TA to address the diverse training needs of personnel who collect and report data about students with disabilities in all of their programs, agencies, and schools. School-, LEA-, and State-level IDEA data, as well as non-IDEA data about school-age students with disabilities, are collected and used to meet data collection requirements for multiple Department programs (e.g., Consolidated State Performance Report under the Elementary and Secondary Education Act of 1965; Civil Rights Data Collection). In its review of the data collection and analysis capacity of States, the Department found that States need TA to help them ensure that local data collectors understand the similarities and the differences between the data requirements for IDEA and non-IDEA data collections that include data elements about students with disabilities and special education personnel. For example, the Department found errors in IDEA data about special education teachers because personnel collecting and reporting local data were not clear about the differences between the number of core content classes taught by highly qualified teachers under the Elementary and Secondary Education Act of 1965, and the IDEA data about the number of special education teachers hired to provide services to students with disabilities. The Department found that some States submitted the same counts for both data collections. That is, some States reported the same number of core content classes taught by highly qualified teachers (as submitted for the Consolidated State Performance Report) as they did for the number of special education teachers who were highly qualified (as submitted for the IDEA personnel data collection). The data elements appear similar because both measure some aspect of teacher qualifications, but one is about reporting a count of core content classrooms and the other is about reporting the number of special education teachers hired. Through TA to the State, differences in reporting requirements can be clarified and corrected so that local personnel who collect, and State personnel who report, IDEA data understand and

[3] For IDEA purposes, State Operated Programs include elementary/secondary programs operated by the State for children who are deaf or blind. '' State Operated'' is defined by the National Center for Education Statistics for the Common Core of Data collection. See *http://nces.ed.gov/pubs2011/pesagencies09/glossary.asp.* Procedures for reporting IDEA data from State Operated Programs are described in the data reporting hierarchy on page 58, Section 9.1 of *www2.ed.gov/about/inits/ed/edfacts/eden/11–12-workbook-8–0.pdf.*

[4] Education Department General Administrative Regulations (EDGAR), 34 CFR 76.720.

accurately report the data to the Department.

In annual meetings with State IDEA Data Managers and ED*Facts* Coordinators, State personnel have identified an urgent need for user-friendly instructional materials about IDEA data collections that can be used within and across States to enhance the capacity of staff in agencies, programs, schools, and districts to support accurate data collection at the local level. Examples of TA products and services about IDEA data that are needed by every State include training modules and webinars that are targeted to local staff who collect data regarding children with disabilities.

Support transition of data into EDFacts. States need continued TA to accurately report all IDEA data required in section 618(a) of the IDEA in the manner prescribed by the Secretary. This includes moving Part C data reporting into ED*Facts* from a legacy data collection system that was formerly used by the Department to collect IDEA data. ED*Facts* relies on the Education Data Exchange Network (EDEN) Submission System, a centralized portal through which States submit their education data, including IDEA data, to the Department. The ED*Facts* submission procedures must be understood by the grantee who is funded so that the grantee can provide TA that enhances State capacity to collect and report timely and accurate IDEA data.

Increase State communication with local data collectors about data validation results. States need TA to strengthen the validity of data through targeted analyses of data and communication of results to local data collectors and data consumers (e.g., school boards; EIS programs and providers; parents of infants, toddlers, and children with disabilities; and the public). Currently, limited information from the State goes back to local data collectors after data have been compiled by the State. State IDEA Data Managers and ED*Facts* Coordinators note the importance of communicating results back to schools, LEAs, agencies, and EIS programs and providers in a format that is understandable to the local programs. State ED*Facts* Coordinators and IDEA Data Managers have asked for TA on ways to expand opportunities for local program staff to actively participate in data validation processes and create local processes to correct the data before it is submitted to the Department by building tools for organizing data in a meaningful way for data consumers (e.g., data dashboards for Superintendents).

Improve accuracy of qualitative information in the APRs and strengthen improvement activities. States need TA to improve the accuracy of qualitative information provided in the APR and to more clearly target future improvement activities that are based on the qualitative and quantitative IDEA data available to the State. Examples of data quality issues (e.g., States did not use the source data specified in the instructions) are included in APR summary documents that are publicly available. The 2010 Part B SPP/APR Analysis Document is available at *http://therightidea.tadnet.org/assets/1684* and the 2010 Part C SPP/APR Analysis Document is available at *http://therightidea.tadnet.org/assets/746.* Data quality issues with accompanying improvement activities are posted in individual State response letters publicly posted at *www2.ed.gov/fund/data/report/idea/partbspap/index.html.*

To meet the array of complex challenges regarding the collection, analysis, and reporting of data by States, the Office of Special Education Programs (OSEP) proposes to support the establishment and operation of a National Technical Assistance Center to Improve State Capacity to Accurately Collect and Report IDEA Data.

Proposed Priority

The Assistant Secretary proposes to fund a cooperative agreement to support the establishment and operation of a National Technical Assistance Center to Improve State Capacity to Accurately Collect and Report IDEA Data (Data Center). The Data Center will provide TA to improve the capacity of States to meet the IDEA data collection and reporting requirements by:

(a) Improving data infrastructure by coordinating and facilitating communication and effective data governance strategies among relevant State offices, LEAs, schools, EIS programs, and TA providers to improve the quality of the IDEA data;

(b) Using results from the Department's auto-generated error reports to communicate with State IDEA Data Managers and other relevant offices in the State (e.g., ED*Facts* Coordinator) about data that appear to be inaccurate and provide support to the State (as needed) to enhance current State validation procedures to prevent future errors in State-reported IDEA data;

(c) Using the results of the Department's review of State-reported data to help States ensure that data are collected and reported from all programs providing special education and related services within the State;

(d) Addressing personnel training needs by developing effective informational tools (e.g., training modules) and resources (e.g., cross-walk documents about IDEA and non-IDEA data elements) about data collecting and reporting requirements that States can use to train personnel in schools, programs, agencies, and districts;

(e) Supporting States in submitting data into ED*Facts* by coordinating with ED*Facts* TA providers (i.e., Partner Support Center; see *www2.ed.gov/about/inits/ed/edfacts/support.html*) about IDEA-specific data reporting requirements and providing ED*Facts* reports and TA to States to help them improve the accuracy of their IDEA data submissions;

(f) Improving IDEA data validation by using results from data reviews conducted by the Department to work with States to generate tools (e.g., templates of data dashboards) that can be used by States to accurately communicate data to local data-consumer groups (e.g., school boards, the general public) and lead to improvements in the validity and reliability of data required by IDEA; and

(g) Using results from the Department's review of State-reported APR data to provide intensive and individualized TA to improve the accuracy of qualitative information provided in the APR about the State's efforts to improve its implementation of the requirements and purposes of IDEA, and to more accurately target its future improvement activities.

The TA provided by the Data Center must be directed at all relevant parties within a State that can affect the quality of IDEA data and must not be limited to State special education or early intervention offices. The Data Center's TA must primarily target data issues identified through the Department's review of IDEA data. TA needs can also be identified by a State's review of IDEA data or other relevant means, but TA must be based on an identified need related to improving IDEA data accuracy or timeliness. Effectiveness of the Data Center's TA will be demonstrated through changes in a State's capacity to collect and report valid and reliable IDEA data and resolve identified data issues.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. Any projects funded under this priority also must meet the programmatic and administrative requirements specified in the priority.

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 site provides more information on logic models and lists multiple online resources: *www.cdc.gov/eval/resources/index.htm;*

(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 and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of 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) A two-day Leveraging Resources Conference in Washington, DC, during each year of the project;

(4) A two-day ED*Facts* Coordinators Meeting each year held in various locations;

(5) Up to 36 days per year on-site at the Department to participate in meetings about IDEA data; attend ED*Facts* Data Governance Board (EDGB) monthly meetings; conduct conference sessions with program staff from States, LEAs, schools, EIS programs, or other local programs who contribute to the State data system to meet IDEA data collection requirements (e.g., National Center on Education Statistics conferences); coordinate TA activities with other Department TA initiatives including, but not limited to, the Privacy TA Center (see *www2.ed.gov/policy/gen/guid/ptac/index.html*), Statewide Longitudinal Database Systems TA (see *http://nces.ed.gov/programs/slds/*), Implementation and Support Unit TA (see *www2.ed.gov/about/inits/ed/implementation-support-unit/index.html*), and ED*Facts* Partner Support Center (see *www2.ed.gov/about/inits/ed/edfacts/support.html*); and attend other meetings requested by OSEP; and

(f) A line item in the proposed budget for an annual set-aside of four 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:

Technology and Tools

(a) Assist relevant parties in the State in the development of data validation procedures and tools; and

(b) Assist States in creating or enhancing TA tools for local entities to accurately collect and report data required in section 618 of the IDEA (e.g., data reporting instructions targeted to local service providers and data collectors) and section 616 of the IDEA to accurately complete APR indicators each year; tools must be designed to improve the capacity of States to meet IDEA data requirements.

TA and Dissemination Activities

(a) Provide technical assistance to State data submitters and local data collectors on various data quality issues; topics must include summaries of data quality issues evident from data reviews that will be primarily conducted by the Department; as appropriate, technology should be used to convey information efficiently and effectively (e.g., webinars);

(b) Develop an agenda for information sessions, which can be conducted at conferences or through webinars, specific to required IDEA data and submit the agenda for approval by OSEP. The purpose of the sessions is to ensure that State IDEA Data Managers have current knowledge and tools to collect, analyze, and accurately report IDEA data to the Department and gain new knowledge and tools that can be used to build data capacity at the local level;

(c) Provide ongoing, timely TA about IDEA data requirements (e.g., how to account for students' time in school during non-academic time, such as during lunchtime, when determining how much time each student with a disability spends in the general education setting) using a toll-free number and electronic communication that is coordinated with other relevant TA providers; all TA inquiries and responses must be logged using standardized procedures that will be developed by the grantee and be accessible to the OSEP Project Officer;

(d) Provide a range of general and targeted TA products and services [5] on evidence-based practices that promote valid and reliable data and build the capacity of data collectors to collect valid and reliable data; all TA must improve the capacity of States to meet IDEA data requirements;

(e) Conduct approximately eight intensive on-site TA visits each year that will improve the capacity of States to meet IDEA data requirements. Visits should be distributed among Part C and Part B programs based on need and consultation with OSEP. On-site TA visits should be coordinated with other Department on-site visits (e.g., ED*Facts,* OSEP monitoring), to the extent that coordination will lead to improvements in the collection, analysis, and accurate reporting of IDEA Part B data at the school, LEA, and State levels and of IDEA Part C data by EIS providers and at the program and State levels. All intensive TA visits should include State Data Managers, ED*Facts* Coordinators (as appropriate), and other relevant State parties. The TA visits may include local data collectors or reporters, such as representatives from local early intervention programs and focus on: (1) An identified data validity issue or system capacity issue; (2) measurable outcomes; and (3) ''mapping'' the relationship of the data validity issue or system capacity issue with other IDEA data elements (i.e., identifying all IDEA data elements that are affected by the data validity issue or system capacity issue);

(f) Plan and conduct local-level data analytic workshops, which can be conducted at conferences or through webinars, to improve the capacity of States to meet IDEA data collection requirements. The workshops must target interdisciplinary teams of

[5] For information about universal/general, targeted/specialized, and intensive/sustained TA, see *http://tadnet.org/uploads/File/TAD%20concept%20framework%2011-18-09.swf.*

professionals from a small group of LEAs or EIS programs and providers from each participating State to analyze the validity of data about a targeted issue relevant to infants, toddlers, children, or students with disabilities (e.g., equity in disciplinary practices) and lead to plans with improvement activities that can be used by the programs or LEAs to meet IDEA data requirements, as well as inform State-level data quality initiatives;

(g) Maintain a Web site that meets government or industry-recognized standards for accessibility that is targeted to local and State data collectors. TA material developed by the Data Center must be posted on the site;

(h) Support States in verifying the accuracy and completeness of IDEA data submissions, including ensuring that data are consistent with data about students with disabilities reported in other data collections (e.g., ensure counts of students with disabilities that are reported for IDEA purposes align appropriately with counts reported for other Federal programs);

(i) Compile recommendations from States about automated data validation procedures that can be built into ED*Facts* to support States in submitting accurate data. Examples include business rules that would prevent States from submitting invalid data (e.g., greater than 100 percent of assessment participants scoring proficient) and alerts that would ask the State to verify the accuracy of improbable data prior to completion of the submission (e.g., no data where non-zero counts are expected);

(j) Quickly respond to inquiries related to correcting data validation errors, clarifying submission procedures, or identifying specific data reporting instructions. The Department estimates approximately 400 individual inquiries (e.g., phone or email) will be received each year; many of these inquiries will be immediately before the deadline for States to make a data submission;

(k) Prepare and disseminate reports, documents, and other materials on topics deemed beneficial for supporting States in accurately meeting IDEA data collection and reporting requirements;

(l) Develop guidance documents and tools to be used by States to communicate with local data collectors about new or changing data requirements using current technology;

(m) Support States in meeting APR submission requirements, including—

(1) As needed, evaluate sampling plans developed by States to report APR data based on a sample of districts, schools, or EIS programs;

(2) Evaluating the quality, accuracy, and validity of SPP and APR quantitative data and developing and providing a summary report for OSEP's annual APR Indicator Analyses report so that it can identify State TA needs for accurate collection, analysis, and reporting of IDEA data; and

(3) Using results from the Department's review of APR data to support States in their analysis of available data so that States can provide more accurate qualitative information to the Department about its efforts to improve its implementation of the requirements and purposes of the IDEA, and to more accurately target its future improvement activities.

Leadership and Coordination Activities

(a) Consult with a group of persons, including representatives from State and local educational agencies and State Part C Lead Agencies and local programs; school or district administrators; IDEA data collectors; data-system staff responsible for IDEA data quality; data system management or data governance staff; and other consumers of State-reported IDEA data, as appropriate, on the activities and outcomes of the Center and solicit programmatic support and advice from various participants 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;

(b) Communicate and coordinate, on an ongoing basis, with other Department-funded projects, including those using data to support States, to: (1) Develop products to improve data collection capacity (e.g., Doing What Works Clearinghouse); (2) support State monitoring of IDEA implementation through data use; or (3) develop and disseminate resources about privacy issues (e.g., Privacy TA Center (PTAC); see *www.ed.gov/ptac*); and

(c) Maintain ongoing communication with the OSEP Project Officer.

Types of Priorities

When inviting applications we designate the priority as absolute, competitive preference, or invitational. 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 either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the competitive preference priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Final Priority

We will announce the final priority in a notice in the **Federal Register.** We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed 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 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 on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are taking this regulatory action only on a reasoned determination that its benefits justify its 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.

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

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.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened Federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: August 1, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–19162 Filed 8–3–12; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0079; FRL–9708–6]

Approval and Promulgation of Implementation Plans; State of Alabama: General and Transportation Conformity & New Source Review Prevention of Significant Deterioration for Fine Particulate Matter ($PM_{2.5}$)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve changes to the Alabama State Implementation Plan (SIP), submitted by the Alabama Department of Environmental Management (ADEM) to EPA on May 2, 2011. The SIP revision modifies Alabama's New Source Review (NSR), Prevention of Significant Deterioration (PSD), and Nonattainment New Source Review (NNSR) programs as well as general and transportation conformity regulations. Specifically, the May 2, 2011, SIP revision adopts federal NSR permitting requirements provisions into the Alabama SIP regarding implementation of the $PM_{2.5}$ national ambient air quality standards (NAAQS), revises the State's NNSR rules, and updates the State's general and transportation conformity regulations. All changes in the May 2, 2011, SIP revision are necessary to comply with federal requirements. EPA is proposing approval of Alabama's May 2, 2011, revision to the Alabama SIP because the Agency has preliminarily determined that the changes are consistent with the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before September 5, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0079, by one of the following methods:

1. *www.regulations.gov:* Follow the online instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2012–0079 Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0079. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Alabama SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Telephone number: (404) 562–9352; email address: *bradley.twunjala@epa.gov.* For information regarding NSR, contact Mrs. Yolanda Adams, Air Permits Section, at the same address above. Telephone number: (404) 562–9214; email address: *adams.yolanda@epa.gov.* For information regarding $PM_{2.5}$ NAAQS, contact Mr. Joel Huey, Regulatory Development Section, at the same address above. Telephone number: (404) 562–9104; email address: *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What actions are EPA proposing?
II. What is EPA's proposed action for the NSR implementation requirements for the $PM_{2.5}$ NAAQS?
III. What is EPA's proposed action for changes to Alabama's general and transportation conformity regulations?
IV. Proposed Action
V. Statutory and Executive Order Reviews

I. What actions are EPA proposing?

On May 2, 2011, ADEM submitted a SIP revision to EPA for approval into the Alabama SIP to adopt federal requirements for NSR permitting, and general and transportation conformity.[1] Alabama's SIP revision makes changes to the regulations at Administrative Code for Division 3: Chapter 335–3–14—*Permits* and Chapter 335–3–17—*Conformity of Federal Actions to State Implementation Plans* to comply with federal NSR permitting and conformity regulations respectively. First, the May 2, 2011, SIP revision addresses NSR requirements amended in the May 16, 2008, final rulemaking entitled ''Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers'' (73 FR 28321) and the October 20, 2010, final rulemaking entitled ''Final Rule Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC): Final Rule, ($PM_{2.5}$ PSD Increment-SILs-SMC Rule)'' (75 FR 64864). Second, the submission revises the State's NNSR regulations to be consistent with federal NSR regulations. Lastly, Alabama's SIP revision changes the State's general and transportation conformity regulations which incorporate by reference (IBR)[2] the federal conformity updates. Pursuant to section 110 of the CAA, EPA is proposing to approve these changes, with the exception of the three elements below, into the Alabama SIP.

The three elements of ADEM's May 2, 2011, SIP revision which EPA is not proposing to approve in this action are: (1) The NNSR changes amended at rule 335–3–14–.05;[3] (2) SIL thresholds and provisions promulgated in EPA's $PM_{2.5}$ PSD Increment-SILs-SMC Rule (75 FR 64864, October 20, 2010);[4] and (3) the term ''particulate matter emissions'' when accounting for condensable particles for $PM_{2.5}$ emission limits for the definition of ''regulated NSR pollutant'' (77 FR 15656, March 16, 2012). EPA will consider action on the NNSR changes and SILs provisions separate from this rulemaking.

II. What is EPA's proposed action for the NSR implementation requirements for the $PM_{2.5}$ NAAQS?

Today's proposed action to revise Alabama's SIP relates to EPA's NSR $PM_{2.5}$ Rule and the $PM_{2.5}$ PSD Increment-SILs-SMC Rule. In the NSR $PM_{2.5}$ Rule, EPA finalized regulations to implement the NSR program for the $PM_{2.5}$ NAAQS. As a result of EPA's final NSR $PM_{2.5}$ Rule, states were required to

[1] Alabama's May 2, 2011, SIP revision also made changes to the state's New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) (at Chapters 335–3–10 and 11 respectively) and title V regulations at Chapter 335–3–16 to adopt recent federal changes to the NSPS and NESHAP and major source operating permits regulations respectively. However, EPA is not proposing action to approve these revisions as they are not part of the Alabama federally approved SIP.

[2] In this document IBR means incorporate or incorporates by reference.

[3] Alabama's May 2, 2011, SIP revision also made changes to its NNSR regulations to be consistent with federal NSR regulations including provisions promulgated in the NSR $PM_{2.5}$ Rule, $PM_{2.5}$ PSD Increment-SILs-SMC Rule and other NSR rulemakings. EPA will consider action on this portion of Alabama's May 2, 2011, SIP in a separate rulemaking.

[4] EPA's authority to implement the SILs and SMC for PSD purposes has been challenged by the Sierra Club. *Sierra Club* v. *EPA,* Case No. 10–1413 United States Court of Appeals for the District of Columbia (D.C. Circuit Court).

submit SIP revisions to EPA no later than May 16, 2011, to address these requirements for both the PSD and NNSR programs. EPA's $PM_{2.5}$ PSD Increment-SILs-SMC Rule established PSD increments, SILs and SMC which address additional components for making PSD permitting determinations for $PM_{2.5}$ NAAQS. These requirements address air quality modeling and monitoring provisions for fine particle pollution in areas protected by the PSD program (that is attainment or unclassifiable/attainment areas for the NAAQS). The $PM_{2.5}$ PSD Increment-SILs-SMC Rule required states to submit SIP revisions to adopt the required PSD increments by July 20, 2012. Together these two rules address the NSR permitting requirements needed to implement the $PM_{2.5}$ NAAQS. Alabama's May 2, 2011, SIP revision adopts into the Alabama SIP the PSD and NNSR [5] requirements promulgated in these two rules to be consistent with federal regulations. More detail on the NSR $PM_{2.5}$ Rule and the $PM_{2.5}$ PSD Increment-SILs-SMC Rule can be found in EPA's May 16, 2008 (73 FR 28321), and October 20, 2010 (75 FR 64864), final rules respectively and are summarized below.

A. Fine Particulate Matter and the NAAQS

Fine particles in the atmosphere are made up of a complex mixture of components. Common constituents include sulfate; nitrate; ammonium; elemental carbon; a great variety of organic compounds; and inorganic material (including metals, dust, sea salt, and other trace elements) generally referred to as ''crustal'' material, although it may contain material from other sources. Airborne particulate matter (PM) with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is one-millionth of a meter, and 2.5 micrometers is less than one-seventh the average width of a human hair) are considered to be ''fine particles'' and are also known as $PM_{2.5}$. ''Primary'' particles are emitted directly into the air as a solid or liquid particle (e.g., elemental carbon from diesel engines or fire activities, or condensable organic particles from gasoline engines). ''Secondary'' particles (e.g., sulfate and nitrate) form in the atmosphere as a result of various chemical reactions.

The health effects associated with exposure to $PM_{2.5}$ include potential aggravation of respiratory and cardiovascular disease (i.e., lung disease, decreased lung function, asthma attacks and certain cardiovascular issues). Epidemiological studies have indicated a correlation between elevated $PM_{2.5}$ levels and premature mortality. Groups considered especially sensitive to $PM_{2.5}$ exposure include older adults, children, and individuals with heart and lung diseases. For more details regarding health effects and $PM_{2.5}$ see EPA's Web site at *http://www.epa.gov/oar/particlepollution/* (See heading ''Health and Welfare'').

On July 18, 1997 (62 FR 38652), EPA revised the NAAQS for PM to add new standards for fine particles, using $PM_{2.5}$ as the indicator. Previously, EPA used PM_{10} (inhalable particles smaller than or equal to 10 micrometers in diameter) as the indicator for the PM NAAQS. EPA established health-based (primary) annual and 24-hour standards for $PM_{2.5}$, setting an annual standard at a level of 15.0 micrograms per cubic meter ($\mu g/m^3$) and a 24-hour standard at a level of 65 $\mu g/m^3$. At the time the 1997 primary standards were established, EPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of $PM_{2.5}$, such as visibility impairment, soiling, and materials damage. On October 17, 2006 (71 FR 61236), EPA revised the primary and secondary 24-hour NAAQS for $PM_{2.5}$ to 35 $\mu g/m^3$ and retained the existing annual $PM_{2.5}$ NAAQS of 15.0 $\mu g/m^3$.

B. What is the NSR program?

The CAA NSR program is a preconstruction review and permitting program applicable to certain new and modified stationary sources of air pollutants regulated under the CAA. The program includes a combination of air quality planning and air pollution control technology requirements. The CAA NSR program is composed of three separate programs: PSD, NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the NAAQS—''attainment areas''—as well as areas where there is insufficient information to determine if the area meets the NAAQS—''unclassifiable areas.'' The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—''nonattainment areas.'' The Minor NSR program addresses construction or modification activities that do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as the NSR program. EPA regulations governing the implementation of these programs are contained in 40 CFR sections 51.160–.166; 52.21, .24; and part 51, appendix S.

Section 109 of the CAA requires EPA to promulgate a primary NAAQS to protect public health and a secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit a SIP to EPA for approval that includes emission limitations and other control measures to attain and maintain the NAAQS. See CAA section 110. Each SIP is also required to include a preconstruction review program for the construction and modification of any stationary source of air pollution to assure the maintenance of the NAAQS. The applicability of the PSD program to a major stationary source must be determined in advance of construction and is a pollutant-specific determination. Once a major source is determined to be subject to the PSD program (and thus is a PSD source), among other requirements, it must undertake a series of analyses to demonstrate that it will use the best available control technology (BACT) and will not cause or contribute to a violation of any NAAQS or increment. Alabama's May 2, 2011, SIP submittal revises the state's PSD and NNSR permitting regulations.

C. NSR $PM_{2.5}$ Implementation Rule

On May 16, 2008, EPA finalized the NSR $PM_{2.5}$ Rule to implement the $PM_{2.5}$ NAAQS, including changes to the NSR program (73 FR 28321). The NSR $PM_{2.5}$ Rule revised the federal NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. Specifically, the NSR $PM_{2.5}$ Rule established the following NSR requirements to implement the $PM_{2.5}$ NAAQS: (1) Require NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) establish significant emission rates for direct $PM_{2.5}$ and precursor pollutants (including sulfur dioxide (SO_2) and nitrogen oxides (NOx)); (3) establish $PM_{2.5}$ emission offsets; (4) provide exceptions to PM_{10} grandfathering policy; and (5) require states to account for gases that condense to form particles (condensables) in $PM_{2.5}$ and PM_{10} emission limits in PSD or NNSR permits. Additionally, the NSR $PM_{2.5}$ Rule authorized states to adopt provisions in their NNSR rules that would allow interpollutant offset trading. Alabama's May 2, 2011, SIP revision addresses the PSD and NNSR

[5] EPA anticipates taking action on Alabama's May 2, 2011, SIP revision NNSR changes in a separate rulemaking.

requirements related to EPA's May 16, 2008, NSR $PM_{2.5}$ Rule. A few key issues described in greater detail below include the PM_{10} surrogate and grandfathering policy and the condensable provision.

1. PM_{10} Surrogate and Grandfathering Policy

After EPA promulgated the NAAQS for $PM_{2.5}$ in 1997, (62 FR 38652, July 18, 1997) the Agency issued a guidance document entitled ''Interim Implementation of New Source Review Requirements for $PM_{2.5}$.'' John S. Seitz, EPA, October 23, 1997 (the ''Seitz Memo''). The Seitz Memo was designed to help states implement NSR requirements pertaining to the new $PM_{2.5}$ NAAQS in light of technical difficulties posed by $PM_{2.5}$ at that time. Specifically, the Seitz Memo stated: ''PM–10 may properly be used as a surrogate for PM–2.5 in meeting NSR requirements until these difficulties are resolved.''

EPA also issued a guidance document entitled ''Implementation of New Source Review Requirements in PM–2.5 Nonattainment Areas'' (the ''2005 $PM_{2.5}$ NNSR Guidance'')) on April 5, 2005, the date that EPA's $PM_{2.5}$ nonattainment area designations became effective for the 1997 NAAQS. The 2005 $PM_{2.5}$ NNSR Guidance provided direction regarding implementation of the nonattainment major NSR provisions in $PM_{2.5}$ nonattainment areas in the interim period between the effective date of the $PM_{2.5}$ nonattainment area designations (April 5, 2005) and EPA's promulgation of final $PM_{2.5}$ NNSR regulations. Besides re-affirming the continuation of the PM_{10} Surrogate Policy for $PM_{2.5}$ attainment areas set forth in the Seitz Memo, the 2005 $PM_{2.5}$ NNSR Guidance recommended that until EPA promulgated the $PM_{2.5}$ major NSR regulations, ''States should use a PM_{10} nonattainment major NSR program as a surrogate to address the requirements of nonattainment major NSR for the $PM_{2.5}$ NAAQS.''

In the NSR $PM_{2.5}$ Rule, EPA required that major stationary sources seeking permits must begin directly satisfying the $PM_{2.5}$ requirements, as of the effective date of the rule, rather than relying on PM_{10} as a surrogate, with two exceptions. The first exception is the ''grandfathering'' provision in the federal PSD program at 40 CFR 52.21(i)(1)(xi). This grandfathering provision applied to sources that had applied for, but had not yet received, a final and effective PSD permit before the July 15, 2008, effective date of the May 16, 2008, final rule. The second exception was that states with SIP-approved PSD programs could continue to implement the Seitz Memo's PM_{10} Surrogate Policy for up to three years (until May 2011) or until the individual revised state PSD programs for $PM_{2.5}$ are approved by EPA, whichever came first. For additional information on the NSR $PM_{2.5}$ Rule, see 73 FR 28321.[6]

On February 11, 2010, EPA proposed to repeal the grandfathering provision for $PM_{2.5}$ contained in the federal PSD program at 40 CFR 52.21(i)(1)(xi) and to end early the PM_{10} Surrogate Policy applicable in states that have a SIP-approved PSD program. *See* 75 FR 6827. In support of this proposal, EPA explained that the $PM_{2.5}$ implementation issues that led to the adoption of the PM_{10} Surrogate Policy in 1997 have been largely resolved to a degree sufficient for sources and permitting authorities to conduct meaningful permit-related $PM_{2.5}$ analyses.

On May 18, 2011 (76 FR 28646), EPA took final action to repeal the $PM_{2.5}$ grandfathering provision at 40 CFR 52.21(i)(1)(xi). This final action ended the use of the 1997 PM_{10} Surrogate Policy for PSD permits under the federal PSD program at 40 CFR 52.21. In effect, any PSD permit applicant previously covered by the grandfathering provision (for sources that completed and submitted a permit application before July 15, 2008)[7] that did not have a final and effective PSD permit before the effective date of the repeal would no longer be able to rely on the 1997 PM_{10} Surrogate Policy to satisfy the PSD requirements for $PM_{2.5}$ unless the application included a valid surrogacy demonstration. *See* 76 FR 28646. Alabama's May 2, 2011, SIP revision did not adopt the grandfathering provision at 40 CFR 52.21(i)(1)(xi) in accordance with the repeal of the $PM_{2.5}$ grandfathering provision.

2. ''Condensable'' Provision

In the NSR $PM_{2.5}$ Rule, EPA revised the definition of ''regulated NSR pollutant'' for PSD to add a paragraph providing that ''particulate matter (PM) emissions, $PM_{2.5}$ emissions and PM_{10} emissions'' shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures and that on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, $PM_{2.5}$ and PM_{10} in permits. *See* 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(vi) and ''Emissions Offset Interpretative Ruling'' (40 CFR part 51, appendix S). A similar paragraph added to the NNSR rule does not include ''particulate matter (PM) emissions.'' *See* 40 CFR 51.165(a)(1)(xxxvii)(D).

On March 16, 2012 (77 FR 15656), EPA proposed a rulemaking to amend the definition of ''regulated NSR pollutant'' promulgated in the NSR $PM_{2.5}$ Rule regarding the PM condensable provision at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(i) and EPA's Emissions Offset Interpretative Ruling.[8] The rulemaking proposes to remove the inadvertent requirement in the NSR $PM_{2.5}$ Rule that the measurement of condensable ''particulate matter emissions'' be included as part of the measurement and regulation of ''particulate matter emissions.'' The term ''particulate matter emissions'' includes particles that are larger than $PM_{2.5}$ and PM_{10} and is an indicator measured under various New Source Performance Standards (NSPS) (40 CFR part 60).[9] Alabama's May 2, 2011, SIP revision adopts EPA's definition for regulated NSR pollutant for condensables (at 40 CFR 51.166(b)(49)(vi)), including the term ''particulate matter emissions,'' as promulgated in the NSR $PM_{2.5}$ Rule. EPA's review of Alabama's May 2, 2011, SIP revision with regard to the NSR $PM_{2.5}$ Rule condensable provision is provided below in Section II.E.

D. $PM_{2.5}$ PSD-Increment-SILs-SMC Rule

As mentioned above, EPA finalized the $PM_{2.5}$ PSD Increment-SILs-SMC Rule to provide additional regulatory requirements under the PSD program regarding the implementation of the $PM_{2.5}$ NAAQS for NSR.[10] Specifically, the rule establishes the following to implement the $PM_{2.5}$ NAAQS for the PSD program: (1) $PM_{2.5}$ increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS; (2)

[6] Additional information on this issue can also be found in an August 12, 2009, final order on a title V petition describing the use of PM_{10} as a surrogate for $PM_{2.5}$. In the Matter of *Louisville Gas & Electric Company,* Petition No. IV–2008–3, Order on Petition (August 12, 2009).

[7] Sources that applied for a PSD permit under the federal PSD program on or after July 15, 2008, are already excluded from using the 1997 PM_{10} Surrogate Policy as a means of satisfying the PSD requirements for $PM_{2.5}$. *See* 76 FR 28321.

[8] The comment period for this proposed rulemaking ended May 15, 2012.

[9] In addition to the NSPS for PM, it is noted that states regulated ''particulate matter emissions'' for many years in their SIPs for PM, and the same indicator has been used as a surrogate for determining compliance with certain standards contained in 40 CFR part 63, regarding National Emission Standards for Hazardous Air Pollutants.

[10] EPA proposed approval of the PSD Increments-SILs-SMC Rule on September 21, 2007 (72 FR 54112).

SILs used as a screening tool (by a major source subject to PSD) to evaluate the impact a proposed major source or modification may have on the NAAQS or PSD increment; and (3) a SMC, (also a screening tool) used by a major source subject to PSD to determine the subsequent level of data gathering required for a PSD permit application for emissions of $PM_{2.5}$.

Alabama's May 2, 2011, SIP revision adopts the NSR changes promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule to be consistent with the federal NSR regulations and to implement the state's NSR program for the $PM_{2.5}$ NAAQS. More detail on the $PM_{2.5}$ PSD Increment-SILs-SMC Rule can be found in EPA's final rule (75 FR 64864, October 20, 2010) and is summarized below. More details regarding Alabama's revision to its NSR regulations are also summarized below in Section II.E.2.

1. What are PSD increments?

As established in part C of title I of the CAA, EPA's PSD program protects public health from adverse effects of air pollution by ensuring that construction of new or modified sources in attainment or unclassifiable/attainment areas does not lead to significant deterioration of air quality while simultaneously ensuring that economic growth will occur in a manner consistent with preservation of clean air resources. Under section 165(a)(3) of the CAA, a PSD permit applicant must demonstrate that emissions from the proposed construction and operation of a facility ''will not cause, or contribute to, air pollution in excess of any maximum allowable increase or allowable concentration for any pollutant.'' In other words, when a source applies for a permit to emit a regulated pollutant in an area that meets the NAAQS, the state and EPA must determine if emissions of the regulated pollutant from the source will cause significant deterioration in air quality. Significant deterioration occurs when the amount of the new pollution exceeds the applicable PSD increment, which is the ''maximum allowable increase'' of an air pollutant allowed to occur above the applicable baseline concentration [11] for that pollutant. PSD increments prevent air quality in clean areas from deteriorating to the level set by the NAAQS. Therefore an increment is the mechanism used to estimate ''significant deterioration'' of air quality for a pollutant in an area.

For PSD baseline purposes, a baseline area for a particular pollutant emitted from a source includes the attainment or unclassifiable/attainment area in which the source is located as well as any other attainment or unclassifiable/attainment area in which the source's emissions of that pollutant are projected (by air quality modeling) to result in an ambient pollutant increase of at least 1 $\mu g/m^3$ (annual average). *See* 40 CFR 52.21(b)(15)(i). Under EPA's existing regulations, the establishment of a baseline area for any PSD increment results from the submission of the first complete PSD permit application and is based on the location of the proposed source and its emissions impact on the area. Once the baseline area is established, subsequent PSD sources locating in that area need to consider that a portion of the available increment may have already been consumed by previous emissions increases. In general, the submittal date of the first complete PSD permit application in a particular area is the operative ''baseline date.'' [12] On or before the date of the first complete PSD application, emissions generally are considered to be part of the baseline concentration, except for certain emissions from major stationary sources. Most emissions increases that occur after the baseline date will be counted toward the amount of increment consumed. Similarly, emissions decreases after the baseline date restore or expand the amount of increment that is available. *See* 75 FR 64864. As described in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule, pursuant to the authority under section 166(a) of the CAA, EPA promulgated numerical increments for $PM_{2.5}$ as a new pollutant [13] for which the NAAQS were established after August 7, 1977,[14] and derived 24-hour and annual $PM_{2.5}$ increments for the three area classifications (Class I, II and III) using the ''contingent safe harbor'' approach. *See* 75 FR 64864 (October 20, 2010) and table at 40 CFR 51.166(c)(1).

In addition to PSD increments for the $PM_{2.5}$ NAAQS, the $PM_{2.5}$ PSD Increment-SILs-SMC Rule amended the definition at 40 CFR 51.166 and 52.21 for ''major source baseline date'' and ''minor source baseline date'' (including trigger dates) to establish the $PM_{2.5}$ NAAQS specific dates associated with the implementation of $PM_{2.5}$ PSD increments (75 FR 64864, October 20, 2010). In accordance with section 166(b) of the CAA, EPA required the states to submit revised implementation plans to EPA for approval (to adopt the $PM_{2.5}$ PSD increments) within 21 months from promulgation of the final rule (by July 20, 2012). Each state was responsible for determining how increment consumption and the setting of the minor source baseline date for $PM_{2.5}$ would occur under its own PSD program. Regardless of when a State begins to require $PM_{2.5}$ increment analysis and how it chooses to set the $PM_{2.5}$ minor source baseline date, the emissions from sources subject to PSD for $PM_{2.5}$ for which construction commenced after October 20, 2010, (major source baseline date) consume the $PM_{2.5}$ increment and should be included in the increment analyses occurring after the minor source baseline date is established for an area under the state's revised PSD program. As discussed in detail in Section II.E.2, Alabama's May 2, 2011, SIP revision adopts the $PM_{2.5}$ increment permitting requirements promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule.

2. What are SILs and SMCs?

EPA's $PM_{2.5}$ PSD Increment-SILs-SMC Rule, also established SILs and SMC for the $PM_{2.5}$ NAAQS to address air quality modeling and monitoring provisions for fine particle pollution in areas protected by the PSD program (that is areas that are designated attainment or unclassifiable/attainment for the NAAQS). The SILs and SMC are numerical values that represent thresholds of insignificant, i.e., *de minimis,* modeled source impacts or monitored (ambient) concentrations, respectively. The *de minimis* principle is grounded in a decision described by the court case *Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360 (D.C. Cir. 1980). In this case, reviewing EPA's 1978 PSD regulations, the court recognized that ''there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value.'' 636 F.2d at 360. *See* 75 FR 64864 (October 20, 2010). EPA

[11] Section 169(4) of the CAA provides that the baseline concentration of a pollutant for a particular baseline area is generally the same air quality at the time of the first application for a PSD permit in the area.

[12] Baseline dates are pollutant specific. That is, a complete PSD application establishes the baseline date only for those regulated NSR pollutants that are projected to be emitted in significant amounts (as defined in the regulations) by the applicant's new source or modification. Thus, an area may have different baseline dates for different pollutants.

[13] EPA generally characterized the $PM_{2.5}$ NAAQS as a NAAQS for a new indicator of PM. EPA did not replace the PM_{10} NAAQs with the NAAQS for $PM_{2.5}$ when the $PM_{2.5}$ NAAQS were promulgated in 1997. EPA rather retained the annual and 24-hour NAAQS for $PM_{2.5}$ as if $PM_{2.5}$ was a new pollutant even though EPA had already developed air quality criteria for PM generally. *See* 75 FR 64864 (October 20, 2012).

[14] EPA interprets 166(a) to authorize EPA to promulgate pollutant-specific PSD regulations meeting the requirements of section 166(c) and 166(d) for any pollutant for which EPA promulgates a NAAQS after 1977.

established such values for $PM_{2.5}$ in the $PM_{2.5}$ PSD Increment-SILs-SMC rule to be used as screening tools by a major source subject to PSD to determine the subsequent level of analysis and data gathering required for a PSD permit application for emissions of $PM_{2.5}$. As part of the response to comments on October 20, 2010, final rulemaking, EPA explained that the agency agrees that the SILs and SMC used as *de minimis* thresholds for the various pollutants are useful tools that enable permitting authorities and PSD applicants to screen out ''insignificant'' activities; however, the fact remains that these values are not required by the Act as part of an approvable SIP program. EPA believes that most states are likely to adopt the SILs and SMC because of the useful purpose they serve regardless of our position that the values are not mandatory. Alternatively, states may develop more stringent values if they desire to do so. In any case, states are not under any SIP-related deadline for revising their PSD programs to add these screening tools. *See* 75 FR 64864, 64900 (October 20, 2010). EPA is not proposing to approve the SILs provisions promulgated in the PSD portion of the $PM_{2.5}$ PSD Increment-SILs-SMC Rule into the Alabama SIP PSD program in this rulemaking. EPA's authority to implement the SILs and SMC for PSD purposes has been challenged by the Sierra Club. *See Sierra Club* v. *EPA,* Case No. 10–1413 (D.C. Circuit Court).[15] More details regarding Alabama's changes to its NSR regulations are also summarized below in Section II.E.

a. Significant Impact Levels

SILs are numeric values derived by EPA that may be used to evaluate the impact a proposed major source or modification may have on the NAAQS or PSD increment. The primary purpose of the SILs is to identify a level of ambient impact that is sufficiently low relative to the NAAQS or increments that such impact can be considered insignificant or *de minimis.* EPA's policy has been to allow the use of the SILs as *de minimis* thresholds under the NSR programs at 40 CFR 51.165(b) and part 51, appendix S, to determine whether the predicted ambient impact resulting from the emissions increase at a proposed major new stationary source or modification is considered to cause or contribute to a violation of the NAAQS. EPA has also allowed the SILs under the PSD program to determine: (1) When a proposed source's ambient impacts warrants a comprehensive (cumulative) source impact analysis [16] and; (2) the size of the impact area within which the air quality analysis is completed (75 FR 64864, October 20, 2010).

In the $PM_{2.5}$ PSD Increment-SILs-SMC Rule, EPA established the SILs threshold which reflects the degree of ambient impact on $PM_{2.5}$ concentrations that can be considered *de minimis* and would justify no further analysis or modeling of the air quality impact of a source in combination with other sources in the area because the source would not cause or contribute to an exceedance of the $PM_{2.5}$ NAAQS or the $PM_{2.5}$ increments (75 FR 64864, October 20, 2010). The $PM_{2.5}$ PSD Increment-SILs-SMC Rule established SILs to evaluate the impact that a proposed new source or modification may have on the $PM_{2.5}$ NAAQS or increment. When a proposed major new source or major modification of $PM_{2.5}$ projects (using air quality modeling) has an impact less than the $PM_{2.5}$ SILs, the proposed construction or modification is considered to not have a significant air quality impact and would not need to complete a cumulative impact analysis involving an analysis of other sources in the area. Additionally, a source with a de minimis ambient impact would not be considered to cause or contribute to a violation of the $PM_{2.5}$ NAAQS or increments.

The October 20, 2010, rule established the $PM_{2.5}$ SILs at EPA's existing NNSR regulations at 51.165(b) and the PSD regulations at 40 CFR 51.166(k)(2), 52.21(k)(2) and part 51, appendix S as optional screening tools that became effective on December 20, 2010. Prior to the October 20, 2010, rule, the concept of a SIL was not previously incorporated into the PSD regulations. The regulations in 40 CFR 51.165(b) [17] establish the minimum requirements for nonattainment NSR programs in SIPs but apply specifically to major stationary sources and major modifications located in attainment or unclassifiable/attainment areas. *See* 40 CFR 51.165(b). Where a PSD source located in such areas may have an impact on an adjacent nonattainment area, the PSD source must still demonstrate that it will not cause or contribute to a violation of the NAAQS in the adjacent area. Where emissions from a proposed PSD source or modification would have an ambient impact in a nonattainment area that would exceed the SILs, the source is considered to cause or contribute to a violation of the NAAQS and may not be issued a PSD permit without obtaining emissions reductions to compensate for its impact. *See* 40 CFR 51.165(b)(2)–(3). Alabama's May 2, 2011, SIP submittal addresses the $PM_{2.5}$ SILS thresholds and provisions promulgated in the October 20, 2010, rule at 40 CFR 51.165(b)(2) and 51.166(k)(2). Further analysis of Alabama's submission is explained below in Section II.E.2.

b. Significant Monitoring Concentrations

Under the CAA and EPA regulations, an applicant for a PSD permit is required to gather preconstruction monitoring data in certain circumstances. Section 165(a)(7) calls for ''such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any areas which may be affected by emissions from such source.'' In addition, section 165(e) requires an analysis of the air quality in areas affected by a proposed major facility or major modification and calls for gathering one year of monitoring data unless the reviewing authority determines that a complete and adequate analysis may be accomplished in a shorter period. These requirements are codified in EPA's PSD regulations at 40 CFR 51.166(m) and 40 CFR 52.21(m). In accordance with EPA's Guideline for Air Quality Modeling (40 CFR part 51, Appendix W), the preconstruction monitoring data is primarily used to determine background concentrations in modeling conducted to demonstrate that the proposed source or modification will not cause or contribute to a violation of the NAAQS. *See* 40 CFR part 51, Appendix W, section 9.2. SMC are numerical values that represent thresholds of insignificant, i.e., *de minimis,* monitored (ambient) impacts on pollutant concentrations. In EPA's $PM_{2.5}$ PSD Increment-SILs-SMC Rule, EPA established a SMC of 4 $\mu g/m^3$ for $PM_{2.5}$ to be used as a screening tool by a major source subject to PSD to determine the subsequent level of data gathering required for a PSD permit application for emissions of $PM_{2.5}$.

Using the SMC as a screening tool, sources may be able to demonstrate that the modeled air quality impact of emissions from the new source or

[15] On April 6, 2012, EPA filed a brief with the D.C. Circuit court defending the Agency's authority to implement SILs and SMC for PSD purposes.

[16] A cumulative analysis is a modeling analysis used to show that the allowable emissions increase from the proposed source along with other emission increases from existing sources, will not result in a violation of either the NAAQS or increment.

[17] 40 CFR 51.165(b) require states to operate a preconstruction review permit program for major stationary sources that wish to locate in an attainment or unclassifiable area but would cause or contribute to a violation of the NAAQS.

modification, or the existing air quality level in the area where the source would construct, is less than the SMC, *i.e., de minimis,* and may be allowed to forego the preconstruction monitoring requirement for a particular pollutant at the discretion of the reviewing authority. *See* 75 FR 64864 (October 20, 2010) and 40 CFR 51.166(i)(5) and 52.21(i)(5). As mentioned above, SMCs are not minimum required elements of an approvable SIP under the CAA. This *de minimis* value is widely considered to be a useful component for implementing the PSD program, but is not absolutely necessary for the states to implement PSD programs. States can satisfy the statutory requirements for a PSD program by requiring each PSD applicant to submit air quality monitoring data for $PM_{2.5}$ without using *de minimis* thresholds to exempt certain sources from such requirements. The SMC became effective under the Federal PSD program on December 20, 2010. However, states with EPA-approved PSD programs that adopt the SMC for $PM_{2.5}$ may use the SMC, once it is part of an approved SIP, to determine when it may be appropriate to exempt a particular major stationary source or major modification from the monitoring requirements under its State PSD program. Alabama's May 2, 2011, SIP revision adopts the SMC threshold into the Alabama SIP. More detail on Alabama's SIP is discussed below in Section II.E.2

c. SILs-SMC Litigation

Recently, the Sierra Club filed suit challenging EPA's authority to promulgate the $PM_{2.5}$ SILs and SMC for PSD purposes as promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule. *Sierra Club* v. *EPA,* Case No. 10–1413 (D.C. Circuit Court). Specifically, Sierra Club claims that the SILs and SMC screening tools adopted in the October 20, 2010, rule are inconsistent with the CAA and EPA's *de minimis* authority.[18] *See Sierra Club* v. *EPA,* Case No. 10–1413 (D.C. Circuit). EPA responded to Sierra Club's claims in a Brief dated April 6, 2012, which described the Agency's authority to develop and promulgate SILs and SMC.[19] A copy of EPA's April 6, 2012, Brief can be found in the docket for today's rulemaking at *www.regulations.gov* using docket ID: EPA–R04–OAR–2012–0079.

E. What is EPA's analysis of Alabama's SIP revision adopting NSR $PM_{2.5}$ implementation provisions?

Alabama currently has a SIP-approved NSR program for new and modified stationary sources found at Chapter 335–3–14. ADEM's PSD preconstruction regulations are found at Rule 335–3–14–.04—*Air Permits Authorizing Construction in Clean Air Areas (Prevention of Significant Deterioration (PSD))* and apply to major stationary sources or modifications constructed in areas designated attainment or unclassifiable/attainment as required under part C of title I of the CAA with respect to the NAAQS.[20] Additionally, rule 335–3–14-.03 establishes general standards for granting permits in the state. ADEM's May 2, 2011, changes to Chapter 335–3–14 were submitted to adopt into the State's NSR permitting program PSD provisions promulgated in the NSR $PM_{2.5}$ Rule and the $PM_{2.5}$ PSD Increment-SILs-SMC rule. These changes to Alabama's regulations became state effective on May 23, 2011. EPA is proposing to approve the changes at rule 335–3–14–.03 and .04 into the Alabama SIP to be consistent with federal NSR regulations (at 40 CFR 51.166 and 52.21) and the CAA. As mentioned earlier, EPA anticipates taking action on the May 2, 2011, SIP revision NNSR amendments in a separate rulemaking.

1. NSR $PM_{2.5}$ Implementation Rule

Alabama's May 2, 2011, SIP revision establishes that the State's existing NSR permitting program requirements for PSD apply to the $PM_{2.5}$ NAAQS and its precursors. Specifically, the SIP revision adopts the following NSR $PM_{2.5}$ Rule PSD provisions into the Alabama SIP: (1) The requirement for NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) significant emission rates for direct $PM_{2.5}$ and precursor pollutants (SO_2 and NO_X) and (3) the requirement that conde dinsable PM be addressed in enforceable PM_{10} and $PM_{2.5}$ emission limits included in PSD permits. The May 2, 2011, SIP revision changes (1) establish that the State's NSR permitting program requirements for PSD apply to the $PM_{2.5}$ NAAQS and its precursors; (2) recognize $PM_{2.5}$ precursors at 335–3–14–.04(2)(b) and 335–3–14–.04(2)(w) (as amended at 40 CFR 51.166(b)(23)(i)); (3) sets significant emission rates for both direct $PM_{2.5}$ and $PM_{2.5}$ precursors for major modifications at existing sources at 335–3–14–.04(2)(w) (as amended at 51.166(b)(23)(i)); and (4) adopt the requirement that condensable PM_{10} and $PM_{2.5}$ emissions be accounted for in PSD applicability determinations and in establishing emissions limitations for PM at 353–14–.04(2)(ww)(5) (as amended at 40 CFR 51.166(b)(49)).

As mentioned above, Alabama's May 2, 2011, SIP revision also adopts into the State's NSR regulations the requirement to address condensable PM in making applicability determinations and in establishing enforceable emission limits in PSD permits, as required under the NSR $PM_{2.5}$ Rule. As discussed in Section II.C.2, under a separate action, EPA has proposed to correct the inadvertent inclusion of ''particulate matter emissions'' in the definition of ''regulated NSR pollutant'' as an indicator for which condensable emissions must be addressed (77 FR 75656, March 16, 2012). Further, on June 18, 2012, the State of Alabama provided a letter to EPA clarifying the State's intent in light of EPA's March 16, 2012, proposed rulemaking. A copy of this letter can be found in the docket for today's rulemaking at *www.regulations.gov* using docket ID: EPA–R04–OAR–2012–0079. Specifically, Alabama requested that EPA not approve the term ''particulate matter emissions'' (at rule 335–3–14–.04(ww)(5) and.05(ww)(2)) as part of the definition for ''regulated NSR pollutant'' regarding the inclusion of condensable emissions in applicability determinations and in establishing emissions limitations for PM. Therefore, given the State's request and EPA's intention to amend the definition of ''regulated NSR pollutant,'' EPA is not proposing action to approve the terminology ''particulate matter emissions'' into the PSD regulations of the Alabama SIP for the condensable provision in the definition of ''regulated NSR pollutant.'' EPA is, however, proposing to approve into the Alabama SIP at 335–3–14–.04(ww)(5) the remaining condensable requirement at 40 CFR 51.166(b)(49)(vi), which requires

[18] EPA interprets section 165(a)(3) of the CAA to allow the use of significance levels as a means to demonstrate that a source will not cause or contribute to any violation of the NAAQS or increments. The terms ''cause or contribute to'' and ''demonstrate'' are ambiguous and EPA reasonably interprets the statue to allow sources that do not contribute significantly to ambient air concentrations of $PM_{2.5}$ to demonstrate compliance through modeling of the source's impact measured against the SILs.

[19] Additional information on this issue can also be found in an April 25, 2010, comment letter from EPA Region 6 to the Louisiana Department of Environmental Quality regarding the SILs-SMC litigation. A copy of this letter can be found in the docket for today's rulemaking at *www.regulations.gov* using docket ID: EPA–R04–OAR–2012–0079.

[20] ADEM's Rule 335–3–14–.05—*Air Permits Authorizing Construction in or Near Non-Attainment Areas* applies to major stationary sources or modifications constructed in areas designated nonattainment as required under part D of title I of the CAA with respect to the NAAQS. However, in today's rulemaking, EPA is only proposing to take action on the PSD provision and will take action on the NNSR changes in a separate action.

that condensable emissions be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10}. Alabama's condensable provision will be consistent with the federal rule once EPA finalizes the March 16, 2012, rulemaking. EPA's May 18, 2011 (76 FR 28646), final rulemaking repealed the PM_{10} ''grandfathering'' provision, as noted in Section II.C above. Alabama's May 2, 2011, SIP revision does not address 40 CFR 52.21(i)(1)(ix) promulgated in the NSR $PM_{2.5}$ Rule and is in accordance with the repeal of the $PM_{2.5}$ grandfathering provision. EPA has preliminarily determined that Alabama's May 2, 2011, SIP revision is consistent with the NSR $PM_{2.5}$ Rule for PSD and section 110 of the CAA. *See* 73 FR 28321 (May 16, 2008).

2. $PM_{2.5}$ PSD Increment-SILs-SMC Rule Provisions

Alabama's May 2, 2011, SIP revision adopts, into the Alabama SIP, at Chapter 335–3–14 the following PSD provisions promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule: (1) PSD increments for $PM_{2.5}$ annual and 24-hour NAAQS pursuant to section 166(a) of the CAA; (2) SILs to be used as a screening tool to evaluate the impact a proposed major source or modification may have on the NAAQS or PSD increment; and (3) SMC, also used as a screening tool, to determine the level of data gathering required of a major source in support of its PSD permit application for $PM_{2.5}$ emissions.

Specifically, regarding the PSD increments, the SIP revision changes include: (1) The $PM_{2.5}$ increments as promulgated in at 40 CFR 51.166(c)(1) and (p)(4) (for Class I Variances) and (2) amendments to the terms ''major source baseline date'' (at 40 CFR 51.166(b)(14)(i)(c)) and 52.21(b)(14)(i)(c)), ''minor source baseline date''(including establishment of the ''trigger date'') and ''baseline area'' (as amended at 51.166(b)(15)(i) and (ii) and 52.21(b)(15)(i)). These changes provide for the implementation of the $PM_{2.5}$ PSD increments for the $PM_{2.5}$ NAAQS in the state's PSD program. In today's action, EPA is proposing to approve Alabama's May 2, 2011, SIP revision provisions to address the $PM_{2.5}$ PSD increment provisions promulgated in the $PM_{2.5}$ PSD Increments SILs-SMC Rule.

Regarding the SILs and SMC established in the October 20, 2010, $PM_{2.5}$ PSD Increment-SILs-SMC Rule, the Sierra Club has challenged EPA's authority to implement SILs and SMC. In a brief filed in the D.C. Circuit on April 6, 2012, EPA described the Agency's authority under the CAA to promulgate and implement the SMC and SILs *de minimis* thresholds. With respect to the SMCs, Alabama's SIP revision includes the SMC of 4 $\mu g/m^3$ for $PM_{2.5}$ NAAQS at rule 335–3–14.04(8)(h) that was added to the existing monitoring exemption at 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c). EPA is proposing to approve the $PM_{2.5}$ SMC into the Alabama SIP as EPA believes the use of the SMC is a valid exercise of the Agency's *de minimis* authority. Furthermore, Alabama's May 2, 2011, SIP revision is consistent with EPA's current promulgated provisions in the October 20, 2010, rule. However, EPA notes that future Court action may require subsequent rule revisions and SIP revisions from Alabama.

Alabama's SIP revision to adopt the new PSD requirements for $PM_{2.5}$ pursuant to the $PM_{2.5}$ PSD Increment-SILs-SMC Rule also includes the new regulatory text at 40 CFR 51.166(k)(2) and 52.21(k)(2), concerning the implementation of SILs for $PM_{2.5}$. EPA stated in the preamble to the $PM_{2.5}$ PSD Increment-SILs-SMC Rule that we do not consider the SILs to be a mandatory SIP element, but regard them as discretionary on the part of regulating authority for use in the PSD permitting process. Nevertheless, as mentioned above, the $PM_{2.5}$ SILs are currently the subject of litigation before the U.S. Court of Appeals. *(Sierra Club* v. *EPA,* Case No 10–1413, D.C. Circuit). In response to that litigation, EPA has requested that the Court remand and vacate the regulatory text in the EPA's PSD regulations at paragraph (k)(2) so that EPA can make necessary rulemaking revisions to that text. In light of EPA's request for remand and vacatur and the agency's acknowledgement of the need to revise the regulatory text presently contained at paragraph (k)(2) of sections 51.166 and 52.21, EPA does not believe that it is appropriate at this time to approve that portion of the State's implementation plan revision that contains the affected regulatory text in the State's PSD regulations, at rule 335–3–14–04(10)(b). Instead, EPA is taking no action at this time with regard to these specific provisions contained in the SIP revision. EPA anticipates taking action on the SILs portion of Alabama's May 2, 2011, SIP revision in a separate rulemaking once the issue regarding the court case has been resolved.

The $PM_{2.5}$ PSD Increment-SILs-SMC rule promulgated $PM_{2.5}$ SILs thresholds in the NNSR regulations at 40 CFR 51.165(b)(2). Alabama's May 2, 2011 submission also adopts the $PM_{2.5}$ SILs thresholds in their general permits provisions at rule 335–3–14–.03(1)(g) [21] to be consistent with amendments to 40 CFR 51.165(b) in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule. In light of the fact that EPA did not request the court to remand and vacate language at 51.165(b) and the agency has explained its authority to develop and promulgate SILs in the brief filed with the D.C. Circuit Court concerning the litigation, EPA is proposing to approve Alabama's adoption of the $PM_{2.5}$ SILs thresholds at 335–3–14–.03(1)(g). EPA notes, however, that the SILs-SMC litigation is ongoing and therefore future Court action may require subsequent rule revisions and SIP submittals from the State of Alabama.

The aforementioned amendments to Alabama's SIP provide the framework for implementation of $PM_{2.5}$ NAAQS in the states NSR permitting. Based on review and consideration of Alabama's May 2, 2011, SIP revision, EPA has made the preliminary determination to approve the aforementioned PSD permitting provisions promulgated in the NSR $PM_{2.5}$ Rule and $PM_{2.5}$ PSD Increment-SILs-SMC Rule into the Alabama SIP to implement the NSR program for the $PM_{2.5}$ NAAQS.

III. What is EPA's proposed action for changes to Alabama's general and transportation conformity regulations?

In addition to the adoption of NSR federal regulations mentioned above, Alabama's SIP revision updates the State's General Conformity regulations at Chapter 335–3–17—*Conformity of Federal Actions to State Implementation Plans* to be consistent with recent updates to federal General Conformity regulations promulgated on April 5, 2010 (75 FR 17254). Alabama's Conformity regulations at 335–3–17 include Transportation Conformity rules at 335–3–17.01 and General Conformity rules at 335–3–17.02. Pursuant to section 176(c) of the CAA, General Conformity ensures that federal actions comply with the NAAQS. In order to meet this CAA requirement, a federal agency must demonstrate that every action that it undertakes, approves, permits or supports will conform to the appropriate State, Tribal or Federal Implementation Plan.[22] Alabama IBR

[21] The provisions at 335–3–14–.03(1)(g) are consistent with SILs provisions at 40 CFR 51.165(b).

[22] In November 1993, EPA promulgated two sets of regulations to implement section 176(c). First, on November 24, EPA promulgated the Transportation Conformity Regulations (applicable to highways and mass transit) to establish the criteria and procedures for determining that transportation plans, programs, and projects which are funded under title 23 U.S.C. or the Federal Transit Act

Continued

the federal General Conformity regulations at 40 CFR 93, Subpart B. Particularly, Alabama's May 2, 2011, SIP submission updates the IBR date at 335–3–17.02 to July 1, 2010, to be consistent with federal General Conformity rules (as promulgated on April 5, 2010) and updates its Transportation Conformity SIP at 335–3–17–.01 effective May 23, 2011, to include EPA's transportation conformity rule updates regarding implementation of the $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas. EPA has preliminarily determined that Alabama's May 2, 2011, updates to Alabama's general and transportation Conformity regulations are consistent with CAA and EPA's regulations governing conformity.

IV. Proposed Action

EPA is proposing to approve portions of Alabama's May 2, 2011, SIP revision adopting federal regulations amended in the May 16, 2008, NSR $PM_{2.5}$ Rule; the October 20, 2010, $PM_{2.5}$ PSD Increment-SILs-SMC rule; and updates to the State's general and transportation conformity regulations into the Alabama SIP with the exception of the provisions listed in Section I. EPA has made the preliminary determination that this SIP revision, with regard to aforementioned proposed actions, is approvable because it is consistent with section 110 of the CAA and EPA regulations regarding NSR permitting and conformity.

V. Statutory and Executive Order Reviews

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

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

In addition, this 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, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, 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.

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conform with the SIP. *See* 58 FR 62188. On November 30, 1993, EPA promulgated regulations, known as the General Conformity Regulations (applicable to everything else), to ensure that other federal actions also conformed to the SIPs. *See* 58 FR 63214).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0444; FRL–9711–7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Fredericksburg 8-Hour Ozone Maintenance Area Revision to Approved Motor Vehicle Emissions Budgets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the Commonwealth of Virginia's State Implementation Plan (SIP) submitted by the Virginia Department of Environmental Quality (VADEQ) on September 26, 2011. The SIP revision consists of updating the 2009 and 2015 motor vehicle emission budgets (MVEBs) in the Fredericksburg 8-Hour Ozone Maintenance Area (Fredericksburg Area) by replacing the previously approved MVEBs with budgets developed using EPA's Motor Vehicle Emissions Simulator emissions model (MOVES2010a). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 5, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0444 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: mastro.donna@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0444, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0444. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information

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

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by email at *becoat.gregory@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:

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I. What action is EPA proposing to take?

EPA is proposing to approve new MOVES2010a-based motor vehicle emission budgets (''budgets'') for the Fredericksburg Area. If EPA finalizes this proposed approval, the newly submitted MOVES2010a budgets will replace the existing, MOBILE6.2-based budgets in Virginia's SIP and must then be used in future transportation conformity analyses for the area according to the transportation conformity rule (40 CFR 93.118). At that time, the previously approved budgets would no longer be applicable for transportation conformity purposes.

If EPA approves the MOVES2010a-based budgets, the regional transportation conformity grace period for using MOVES2010a for the pollutants included in these budgets will end for the Fredericksburg Area on the effective date of that final approval. See 75 FR 9411, March 2, 2010, for background and Section II.C for details.

II. What is the background for this action?

A. SIP Budgets and Transportation Conformity

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and maintenance plans for nonattainment and maintenance areas for a given national ambient air quality standard (NAAQS). These emission control strategy SIP revisions (e.g., reasonable further progress and attainment demonstration SIP revisions) and maintenance plans include budgets of on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars, trucks, and other on-road vehicles. SIP budgets are the portions of the total allowable emissions that are allocated to on-road vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. The budget serves as a ceiling on emissions from an area's planned transportation system. For more information about budgets, see the preamble to the November 24, 1993, transportation conformity rule. 58 FR 62188.

Under section 176(c) of the CAA, transportation plans, transportation improvement programs (TIPs), and transportation projects must ''conform'' to (i.e., be consistent with) the SIP before they can be adopted or approved. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or an interim milestone. The transportation conformity regulations can be found at 40 CFR Parts 51 and 93.

Before budgets can be used in conformity determinations, EPA must affirmatively find the budgets adequate. However, adequate budgets do not supersede approved budgets for the same CAA purpose. If the submitted SIP budgets are meant to replace budgets for the same CAA purpose and year(s) addressed by a previously approved SIP, as is the case with Virginia's MOVES2010a nitrogen oxides (NO_X) motor vehicle emission budgets, EPA must approve the revised SIP and budgets and can affirm the budgets are adequate at the same time. Once EPA approves the SIP, the revised budgets must be used by state and Federal agencies in determining whether transportation activities conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of budgets are set out in 40 CFR 93.118(e)(4).

B. Prior Approval of Budgets

EPA had previously approved the 1997 ozone NAAQS Fredericksburg maintenance plan and redesignation request into the Virginia SIP on December 23, 2005 (70 FR 76165). EPA also approved the MVEBs for NO_X and volatile organic compounds (VOC) during the rulemaking notice. The SIP's budgets were based on EPA's MOBILE6.2 emissions model. The approval identified NO_X and VOC MVEBs for transportation conformity purposes for the years 2004, 2009 and 2015. VADEQ chose 2009 as an interim year in the 10-year maintenance demonstration period to demonstrate that the VOC and NO_X emissions were not projected to increase above the 2004 attainment level during the time of the 10-year maintenance period. The 2004, 2009 and 2015 MVEBs for the Fredericksburg area were approvable because the MVEBs for NO_X and VOC

including the allocated safety margins continued to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

C. The MOVES Emissions Model and Regional Transportation Conformity Grace Period

The MOVES model is EPA's state-of-the-art tool for estimating highway emissions. The model is based on analyses of millions of emission test results and considerable advances in EPA's understanding of vehicle emissions. MOVES incorporates the latest emissions data, more sophisticated calculation algorithms, increased user flexibility, new software design, and significant new capabilities relative to those reflected in MOBILE6.2.

EPA announced the release of MOVES2010 in March 2010 (75 FR 9411). EPA subsequently released two minor model revisions: MOVES2010a in September 2010 and MOVES2010b in April 2012. Both of these minor revisions enhance model performance and do not significantly affect the criteria pollutant emissions results from MOVES2010.

MOVES will be required for new regional emissions analyses for transportation conformity determinations (''regional conformity analyses'') outside of California that begin after March 2, 2013 (or when EPA approves MOVES-based budgets, whichever comes first).[1] The MOVES grace period for regional conformity analyses applies to both the use of MOVES2010 and approved minor revisions (e.g., MOVES2010a and MOVES2010b). For more information, see EPA's ''Policy Guidance on the Use of MOVES2010 and Subsequent Minor Model Revisions for State Implementation Plan Development, Transportation Conformity, and Other Purposes'' (April 2012), available online at: *www.epa.gov/otaq/stateresources/transconf/policy.htm#models* (hereafter MOVES2010 Policy Guidance).

EPA encouraged areas to examine how MOVES would affect future transportation plan and TIP conformity determinations so, if necessary, SIPs and budgets could be revised with MOVES or transportation plans and TIPs could be revised (as appropriate) prior to the end of the regional transportation conformity grace period. EPA also encouraged state and local air agencies to consider how the release of MOVES would affect analyses supporting SIP submissions under development (77 FR 9411 and 77 FR 11394).

D. Submission of New Budgets Based on MOVES2010a

On September 26, 2011, VADEQ submitted a new SIP with budgets based on MOVES2010a for the years 2009 and 2015 to help ensure that the Fredericksburg area can demonstrate transportation conformity using MOVES2010a once the grace period expires. Table 1 compares the NO_X MVEBs developed using MOBILE6.2 to the inventories developed using MOVES2010a.

TABLE 1—FREDERICKSBURG MAINTENANCE AREA MOBILE SOURCE EMISSIONS COMPARISON TONS NO_X/DAY

Year	MOBILE6.2 MVEB *	MOVES2010a
2004	19.742	24.064
2009	13.062	17.615
2015	7.576	9.933

* Includes conformity buffers

III. What are the criteria for approval?

EPA has always required under the CAA that revisions to existing SIPs continue to meet applicable requirements (i.e., reasonable further progress, attainment, or maintenance). States that revise their existing SIPs to include MOVES budgets must therefore show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions contained in the budgets. The SIP must also meet any applicable SIP requirements under CAA section 110.

In addition, the transportation conformity rule (40 CFR 93.118(e)(4)(iv)) requires that ''the motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission).'' This and the other adequacy criteria found at 40 CFR 93.118(e)(4) must be satisfied before EPA can find submitted budgets adequate or approve them for conformity purposes.

In addition, EPA has stated that areas can revise their budgets and inventories using MOVES without revising their entire SIP if: (1) The SIP continues to meet applicable requirements when the previous motor vehicle emissions inventories are replaced with MOVES base year and milestone, attainment, or maintenance year inventories, and (2) the state can document that growth and control strategy assumptions for non-motor vehicle sources continue to be valid and any minor updates do not change the overall conclusions of the SIP. For example, the first criterion could be satisfied by demonstrating that the emissions reductions between the base year and attainment or maintenance year are the same or greater using MOVES than they were previously. For more information, see EPA's MOVES2010 Policy Guidance.

IV. What is EPA's analysis of the state's submittal?

A. The Revised Inventories

Virginia included the updated 2004, 2009, and 2015 NO_X MVEBs calculated using the latest planning assumptions for the Fredericksburg area and MOVES2010a in Table 2 below. Since existing VOC MVEBs using MOBILE6.2 allow a seamless transportation conformity process when using MOVES2010a, the existing VOC MVEBS were not revised in this SIP revision. More detailed information on the assumptions used in the MOVES2010a modeling, including growth assumptions, can be found in the docket prepared for this rulemaking action.

TABLE 2—NO_X MOTOR VEHICLE EMISSIONS BUDGETS CALCULATED WITH MOVES2010A

Year	NO_X Emissions tons/day
2004 Attainment year	24.064
2009 Predicted Emissions	17.615
Conformity Buffers	2.000
2009 Interim Budget Year	19.615
2015 Predicted Emissions	9.933
Conformity Buffers	3.000
2015 Final Budget	12.933

In its September 26, 2011 SIP revision submission, Virginia demonstrated how future emissions of NO_X would not exceed the level of the attainment inventory for a 10-year period following redesignation in Table 3 below. The projected emissions for the point and area source categories reflect the expected ozone season daily emissions based on the best available growth rates and projections used in the 1997 ozone NAAQS Fredericksburg maintenance plan. The nonroad category reflects emissions estimated using NONROAD2008a. More detailed information on the analyses showing

[1] Upon the release of MOVES2010, EPA established a two-year grace period before MOVES is required to be used for regional conformity analyses (75 FR 9411). EPA subsequently promulgated a final rule on February 27, 2012 to provide an additional year before MOVES is required for these analyses (77 FR 11394).

that the projected emissions from the point and area source categories do not need to be updated and continue to demonstrate that air quality will remain compliant with the 1997 ozone NAAQS through 2015 and beyond can be found in the docket prepared for this rulemaking action.

TABLE 3—FREDERICKSBURG AREA NO_X EMISSIONS FROM 2004 TO 2015

	NO_X in tons/day				
Year	Point	Area [1]	Nonroad	Mobile [2]	Total
Year 2004	0.179	3.465	4.950	24.064	32.658
Year 2009	0.180	3.926	4.286	19.615	28.007
Δ 2004–2009	0.001	0.461	−0.664	−4.449	−4.651
Year 2015	0.182	4.742	2.953	12.933	20.810
Δ 2004–2015	0.003	1.277	−1.997	−11.131	−11.848

[1] Includes selected local controls (open burning).
[2] Includes conformity buffers identified in Table 2.

B. Approvability of the MOVES2010a-Based Budgets

EPA is proposing to approve the MOVES2010a-based budgets submitted by Virginia for use in determining transportation conformity in the Fredericksburg area. EPA is making this proposal based on our evaluation of these budgets using the adequacy criteria found in 40 CFR 93.118(e)(4) and our in-depth evaluation of Virginia's submittal and compliance with SIP requirements. EPA has determined, based on its evaluation, that the area's SIP would continue to serve its intended purpose with the submitted MOVES2010a-based budgets and that the budgets themselves meet the adequacy criteria in the conformity rule at 40 CFR 93.118(e)(4). Specifically:

- The submitted SIP was endorsed and subject to a state public hearing ((e)(4)(i));
- Before the submitted SIP was submitted to EPA, consultation among Federal, state, and local agencies occurred, and full documentation was provided to EPA ((e)(4)(ii));
- The budgets are clearly identified and precisely quantified ((e)(4)(iii));
- The budgets, when considered together with all other emissions sources, are consistent with applicable requirements for reasonable further progress, attainment, or maintenance ((e)(4)(iv));
- The budgets are consistent with and clearly related to the emissions inventory and control measures in the submitted SIP ((e)(4)(v)); and
- The revisions explain and document changes to the previous budgets, impacts on point and area source emissions, changes to established safety margins, and reasons for the changes (including the basis for any changes related to emission factors or vehicle miles traveled) ((e)(4)(vi)).

The SIP revision satisfies all of the above criteria for adequacy. The updated NO_X MVEBs presented in Table 2 show that air quality in the Fredericksburg area will continue to maintain compliance with the 1997 ozone NAAQS. Similar to the previously approved budgets, the 2009 and 2015 MVEBs for the Fredericksburg area are approvable because the MVEBs for NO_X including the allocated safety margins continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations. The updated NO_X MVEBs using MOVES2010a will not negatively affect the Fredericksburg area's ability to comply with the 1997 ozone standard.

EPA has always required under the CAA that revisions to existing SIPs and budgets continue to meet applicable requirements (e.g., reasonable further progress or attainment). Therefore, states that revise existing SIPs with MOVES must show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions calculated by the new model.

To that end, Virginia's submitted SIP meets EPA's two criteria for revising budgets without revising the entire SIP because: (1) The SIP continues to meet applicable requirements when the previous motor vehicle emissions inventories are replaced with MOVES2010a base year and milestone, attainment, or maintenance year inventories, and (2) Virginia can document that growth and control strategy assumptions for non-motor vehicle sources continue to be valid and any minor updates do not change the overall conclusions of the SIP.

The VADEQ September 26, 2011 SIP revision submission updates the 2009 and 2015 MVEBs using the MOVES2010a model. EPA has articulated its policy regarding the use of MOVES2010a in SIP development in its MOVES2010 Policy Guidance. EPA's review of VADEQ's submittal indicates that Virginia has appropriately applied this policy and meets the two criteria for revising budgets without revising the entire SIP. EPA policy guidance also requires that Virginia consider whether growth and control strategy assumptions for non-motor vehicle sources (i.e., point, area, and non-road mobile sources) are still accurate at the time the proposed revision is developed. Virginia reassessed the growth and control strategy assumptions for non-motor vehicle sources and concluded that these assumptions will continue to remain compliant with the 1997 ozone NAAQS through 2015 and beyond for the Fredericksburg area. Based on our review of the SIP and the new budgets provided, EPA is proposing that the SIP will continue to meet its requirements if the revised motor vehicle emissions inventories are replaced with MOVES2010a inventories.

C. Applicability of MOBILE6.2-Based Budgets

Pursuant to Virginia's request, EPA is proposing that, if we finalize the approval of the revised budgets, the state's existing MOBILE6.2 budgets will no longer be applicable for transportation conformity purposes upon the effective date of that final approval. In addition, once EPA approves the MOVES2010a-based budgets, the regional transportation conformity grace period for using MOVES2010 (and subsequent minor revisions) for the pollutants included in these budgets will end for the Fredericksburg area on the effective date of that final approval.[2]

V. What are the effects of EPA's proposed action?

EPA is proposing in this action that the Fredericksburg's area existing approved budgets for NO_X be replaced with new budgets based on the

[2] For more information, see EPA's MOVES2010 Policy Guidance (April 2012).

MOVES2010a emissions model. If this proposal is finalized, future transportation conformity determinations would use the new, MOVES2010a-based budgets and would no longer use the existing MOBILE6.2-based budgets for applicable years. EPA is also proposing that the Fredericksburg area would continue to meet its requirements under the CAA when these new budgets are included.

VI. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *.'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude Virginia from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

VII. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule, pertaining to Virginia's update of the Fredericksburg area motor vehicle emission budgets based on MOVES2010a, 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, Nitrogen oxides, Ozone, Particulate matter, Volatile organic compounds.

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

Dated: July 26, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–19171 Filed 8–3–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 567

[Docket No. NHTSA–2012–0093, Notice 1]

RIN 2127–AL18

Vehicle Certification; Contents of Certification Labels

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to clarify the National Highway Traffic Safety Administration (NHTSA) regulations that prescribe the format and contents of certification labels that manufacturers are statutorily required to affix to motor vehicles manufactured for sale in the United States. The proposal would require specified language on the certification labels for certain types of vehicles.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than September 5, 2012.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *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. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. 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.

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

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, 1200 New Jersey Avenue SE., Washington, DC 20590; (202) 366–3151.

SUPPLEMENTARY INFORMATION: NHTSA published a final rule on February 14, 2005 (70 FR 7414) that amended title 49 of the Code of Federal Regulations with regard to the certification of vehicles. In amending the certification label requirements, the agency inadvertently omitted from 49 CFR 567.4(g)(5) the requirement that manufacturers include a specific statement in the certification labels that they affix to certain types of motor vehicles. This rulemaking corrects that inadvertent omission.

Background and Amendments: Under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, (49 U.S.C. 30112(a), 30115), a motor vehicle manufactured for sale in the United States must be manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) and bear a label certifying such compliance that is permanently affixed by the vehicle's manufacturer. The label constitutes the manufacturer's certification that the vehicle complies with the applicable standards. Under 49 CFR 567.4, the label, among other things, must identify the vehicle's manufacturer, its date of manufacture, the Gross Vehicle Weight Rating or GVWR, the Gross Axle Weight Rating or GAWR of each axle, the vehicle type classification (e.g., passenger car, multipurpose passenger vehicle, truck, bus, motorcycle, trailer, low-speed vehicle), and the vehicle's Vehicle Identification Number or ''VIN.'' The certification label must also contain a variant of the statement: ''This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above.'' For example, passenger cars are subject to safety, bumper, and theft prevention standards; therefore, a passenger car certification label must contain the statement: ''This vehicle conforms to all applicable Federal motor vehicle safety, bumper, and theft prevention standards in effect on the date of manufacture shown above.'' The expression ''U.S.'' or ''U.S.A.'' may be inserted before the word ''Federal'' as it appears in this statement.

In the final rule published on February 14, 2005 (70 FR 7414), 49 CFR 567.4(g)(5) was amended by replacing the statement ''This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above'' with the language, ''One of the following statements, as appropriate'' followed by subparagraphs i, ii, and iii, which pertain, respectively, to passenger cars, multipurpose passenger vehicles (MPVs) and trucks with a GVWR of 6,000 pounds or less, and multipurpose passenger vehicles and trucks with a GVWR of over 6,000 pounds. Manufacturers of other types of vehicles remained subject to the statutory duty to certify these vehicles to the applicable FMVSSs. And the logical certification language was for these manufacturers to state: ''This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above.'' But due to an inadvertent omission in the course of amendments to the regulations, the regulations did not specifically state that manufacturers of trailers, buses, motorcycles, and low-speed vehicles (those vehicle types not identified by subparagraphs i, ii, and iii) were required to use this specific language.

To address this lack of specificity regarding certification language for certain vehicle types, the agency proposes to amend section 567.4(g) to add a new subparagraph (iv) that would cover these vehicle types. Subparagraphs i, ii, and iii would remain unchanged.

Effective Date: The effective date of the final rule would be 30 days after its issuance.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, 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.

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking is not significant. Accordingly, the Office of Management and Budget has not reviewed this rulemaking document under Executive Order 12866. Further, NHTSA has determined that the rulemaking is not significant under Department of Transportation's regulatory policies and procedures. Manufacturers are required by statute (49 U.S.C. 30115(a)) to permanently affix a tag or label to a vehicle certifying the vehicle's compliance with applicable safety standards. The agency is not aware of any manufacturer that has discontinued inserting the certification language on the certification labels affixed to trailers, buses, motorcycles, and low-speed vehicles manufactured since the regulations were revised in 2005. Based on this, NHTSA anticipates that if made final, the costs of the proposed rule would be so minimal as not to warrant preparation of a regulatory evaluation. The action does not involve any substantial public interest or controversy. If made final, the rule would have no substantial effect upon State and local governments. There would be no substantial impact upon a major transportation safety program.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (95 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) provides that no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposed rulemaking under the Regulatory Flexibility Act, and certifies that if the proposed amendments are adopted they will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a final regulatory flexibility analysis for this proposed rulemaking. NHTSA makes these statements on the basis that covered entities have been and are subject to a statutory obligation to certify vehicles they manufacture, the proposed rulemaking merely restores text that was part of the regulation before it was last amended in 2005 and manufacturers have continued to affix labels that include the appropriate certification language on trailers, buses, motorcycles, and low-speed vehicles manufactured since then. As a consequence, this rulemaking will not impose any significant costs on anyone. Therefore, it has not been necessary for NHTSA to conduct a regulatory evaluation or Regulatory Flexibility Analysis for this proposed rulemaking.

The costs of the underlying rule were analyzed at the time of its issuance as a final rule. At that time, we explained that the rule did not impose any significant economic impact on a substantial number of small businesses. The rule did not have a significant economic impact on these entities. The agency explained that the rule would reduce burdens on final-stage manufacturers, many of which are small businesses.

The agency is not aware that any vehicle manufacturers have stopped including the certification language that is the subject of this rule on the labels they affix to trailers, buses, motorcycles, or low-speed vehicles. For this reason, we view this proposed rulemaking as merely restoring to the regulation text that was inadvertently omitted in the 2005 amendment and find that there is no change in the meaning or application of the rule as explained in the preamble at 70 FR 7414.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' Executive Order 13132 defines the term ''policies that have federalism implications'' to include regulations 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.'' Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

D. Executive Order 12988 (Civil Justice Reform)

Executive Order 12988 requires that agencies review proposed regulations and legislation and adhere to the following general requirements: (1) The agency's proposed legislation and regulations shall be reviewed by the agency to eliminate drafting errors and ambiguity; (2) The agency's proposed legislation and regulations shall be written to minimize litigation; and (3) The agency's proposed legislation and regulations shall provide a clear legal standard for affected conduct rather than a general standard, and shall promote simplification and burden reduction.

When promulgating a regulation, Executive Order 12988 specifically requires the agency to make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

NHTSA has reviewed this proposed rulemaking according to the general requirements and the specific requirements for regulations set forth in

Executive Order 12988. This proposed rulemaking simply restores text that existed before the regulation was amended in 2005 and makes clear the requirement that manufacturers include language in the certification labels that they must affix to vehicles under 49 U.S.C. 30115 and the regulations at 49 CFR part 567. This change does not result in any preemptive effect and does not have a retroactive effect. A petition for reconsideration or other administrative proceeding is not required before parties may file suit in court.

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with the base year of 1995). Before promulgating a rule for which a written assessment is needed, Section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Because a final rule based on this proposal would not require the expenditure of resources beyond $100 million annually, this action is not subject to the requirements of Sections 202 and 205 of the UMRA.

F. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the proposed rule clearly stated?
—Does the proposed rule contain technical language or jargon that is unclear?
—Would a different format (grouping and order of sections, use of heading, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposed rule includes a ''collection of information,'' as that term is defined in 5 CFR part 1320 *Controlling Paperwork Burdens on the Public,* because it requires manufactures to insert text in the certification labels they affix to trailers, buses, motorcycles, and low-speed vehicles that is not specified in the regulations as they currently exist. There is no burden on the general public.

OMB has approved NHTSA's collection of information associated with motor vehicle labeling requirements under OMB clearance no. 2127–0512, *Consolidated Labeling Requirements for Motor Vehicles (Except the Vehicle Identification Number).* NHTSA's request for the extension of this approval was granted on June 6, 2011, and remains in effect until June 30, 2014. For the following reasons, NHTSA believes that the requirements that would be imposed by this rule will not increase the information collection burden on the public. Manufacturers of all motor vehicles manufactured for sale in the United States are required by statute to certify their vehicles' compliance with all applicable Federal motor vehicle safety standards. See 49 U.S.C. 30115(a). The statute provides that ''[c]ertification of a vehicle must be shown by a label or tag permanently fixed to the vehicle.'' *Ibid.* To satisfy this requirement, manufacturers of all motor vehicles, including trailers, buses, motorcycles, and low-speed vehicles, have been affixing certification labels to those vehicles containing the required certification language even though there has been no language addressing this issue in the regulations since the regulations were amended in 2005. Reinstating the specific language into the regulations will therefore not increase the paperwork burden on those manufacturers.

H. Executive Order 13045

Executive Order 13045 applies to any rule that (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by us. This rulemaking is not economically significant and does not concern an environmental, health, or safety risk.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

In this proposed rule, we propose adding to 49 CFR 567.4(g)(5) the requirement that manufacturers include in the certification labels that they affix to certain types of motor vehicles a statement certifying that the vehicle conforms to all applicable FMVSS. This language was inadvertently omitted from the regulation in 2005 and we are proposing no substantive changes to the regulation nor do we propose any technical standards. For these reasons, Section 12(d) of the NTTAA would not apply.

J. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long. 49 CFR 553.21. We established this limit to encourage

you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the beginning of this document, under **ADDRESSES**. You may also submit your comments electronically to the docket following the steps outlined under **ADDRESSES**.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit the following to the NHTSA Office of Chief Counsel (NCC–110), 1200 New Jersey Avenue SE., Washington, DC 20590: (1) A complete copy of the submission; (2) a redacted copy of the submission with the confidential information removed; and (3) either a second complete copy or those portions of the submission containing the material for which confidential treatment is claimed and any additional information that you deem important to the Chief Counsel's consideration of your confidentiality claim. A request for confidential treatment that complies with 49 CFR Part 512 must accompany the complete submission provided to the Chief Counsel. For further information, submitters who plan to request confidential treatment for any portion of their submissions are advised to review 49 CFR part 512, particularly those sections relating to document submission requirements. Failure to adhere to the requirements of part 512 may result in the release of confidential information to the public docket. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**.

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. In accordance with our policies, to the extent possible, we will also consider comments that Docket Management receives after the specified comment closing date. If Docket Management receives a comment too late for us to consider in developing the proposed rule, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov* and follow the on-line instructions provided. You may download the comments. The comments are imaged documents, in either TIFF or PDF format. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 567

Labeling, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend part 567, Certification, in Title 49 of the Code of Federal Regulations as follows:

PART 567—CERTIFICATION

1. The authority citation continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166, 32502, 32504, 33101–33104, 33108, and 33109; delegation of authority at 49 CFR 1.50.

2. Amend § 567.4(g) by adding paragraph (g)(5)(iv) to read as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

* * * * *

(g) * * *

(5) * * *

(iv) For all other vehicles, the statement: ''This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above.'' The expression ''U.S.'' or ''U.S.A.'' may be inserted before the word ''Federal''.

* * * * *

Issued On: July 20, 2012.

Daniel C. Smith,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 2012–18338 Filed 8–3–12; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 77, No. 151
Monday, August 6, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Advisory Committee on Biotechnology and 21st Century Agriculture; Notice of Meeting

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

DATES: The meeting dates are August 27–28, 2012, 8:30 a.m. to 5 p.m. each day.

ADDRESSES: Columbia Ballroom B, Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 12th and Independence Avenue SW., Washington, DC 20250; Telephone (202) 720–3817; Fax (202) 690–4265; Email *AC21@ars.usda.gov*.

SUPPLEMENTARY INFORMATION: The next meeting of the AC21 has been scheduled for August 27–28, 2012. The AC21 consists of members representing the biotechnology industry, the organic food industry, farming communities, the seed industry, food manufacturers, state government, consumer and community development groups, as well as academic researchers and a medical doctor. In addition, representatives from the Department of Commerce, the Department of Health and Human Services, the Department of State, the Environmental Protection Agency, the Council on Environmental Quality, and the Office of the United States Trade Representative have been invited to serve as ''ex officio'' members. The Committee meeting will be held from 8:30 a.m. to 5:00 p.m. on each day. The objective for the meeting is to complete all substantive work on a report to USDA addressing the following charge from Secretary Vilsack:

1. What types of compensation mechanisms, if any, would be appropriate to address economic losses by farmers in which the value of their crops is reduced by unintended presence of GE material(s)?
2. What would be necessary to implement such mechanisms? That is, what would be the eligibility standard for a loss and what tools and triggers (e.g., tolerances, testing protocols, etc.) would be needed to verify and measure such losses and determine if claims are compensable?
3. In addition to the above, what other actions would be appropriate to bolster or facilitate coexistence among different agricultural production systems in the United States?

Background information regarding the work and membership of the AC21 is available on the USDA Web site at *http://www.usda.gov/wps/portal/usda/usdahome?contentid=AC21Main.xml&contentidonly=true*. An electronic copy of the draft report under discussion will be available on that Web site at least one week prior to the meeting. Members of the public who wish to make oral statements should also inform Dr. Schechtman in writing or via email at the indicated addresses at least three business days before the meeting. On May 29, 2012, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration.

The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Dianne Fowler at (202) 720–4074 or by Email at *Dianne.fowler@ars.usda.gov* at least 5 days prior to the meeting. Please provide your name, title, business affiliation, address, telephone, and fax number when you register. If you are a person with a disability and request reasonable accommodations to participate in this meeting, please note the request in your registration. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 27, 2012.

Catherine E. Woteki,

Under Secretary, Research, Education and Economics.

[FR Doc. 2012–19113 Filed 8–3–12; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet in Redding, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The meeting is open to the public. The purpose of this meeting is to discuss monitoring of past projects and if authorized, vote on recommendation of project proposals, the Secure Rural Schools one-year extension to the 2008–2011 RAC authorization, and recruitment of new RAC Committee members.

DATE: The meeting will be held on September 12 and 13 at 9 each day.

ADDRESSES: The meeting will be held at the USDA Service Center, 3644 Avtech Parkway, Redding, California 96002. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Susan Erwin, RAC Coordinator, at (530) 226–2360 or (530) 623–1753 or *serwin@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 For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: RAC Title II Special Projects proposal recommendations, overview of one-year extension, and new RAC committee member recruitment. An agenda of the meeting is also available at *http://www.fs.usda.gov/main/stnf/workingtogether/advisorycommittees*. The meeting is open to the public. 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. Opportunity for public input will be provided and individuals will have the opportunity to address the Trinity County Resource Advisory Committee. A summary of the meeting minutes will be posted at *http://www.fs.usda.gov/main/stnf/workingtogether/advisory committees* within 21 days of the meeting.

Dated: July 31, 2012.

Donna F. Harmon,

Designated Federal Official, Shasta-Trinity National Forest.

[FR Doc. 2012–19093 Filed 8–3–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet in Weaverville, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The meeting is open to the public. The purpose of this meeting is to discuss monitoring of past RAC projects and if authorized, vote on recommendation of project proposals, the Secure Rural Schools one-year extension to the 2008–2011 RAC authorization, and recruitment of new RAC Committee members.

DATES: Meetings will be held Monday, August 20, 2012 at 6:30 p.m. and Monday September 10, 2012 at 6:30.

ADDRESSES: The meeting will be held at the Trinity County Office of Education, 201 Memorial Drive, Weaverville, California 96093. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Susan Erwin, RAC Coordinator, at (530) 226–2360 or (530) 623–1753 or *serwin@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 accomodation for access to the facility or procedings may be made by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: RAC Title II Special Projects proposal recommendations, overview of one-year extension, and new RAC committee member recruitment. An agenda of the meeting is also available at *http://www.fs.usda.gov/main/stnf/workingtogether/advisorycommittees*. The meeting is open to the public. 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. Opportunity for public input will be provided and individuals will have the opportunity to address the Trinity County Resource Advisory Committee. A summary of the meeting minutes will be posted at *http://www.fs.usda.gov/main/stnf/workingtogether/advisory committees* within 21 days of the meeting.

Dated: July 31, 2012.

Donna F. Harmon,

Designated Federal Official, Shasta-Trinity National Forest.

[FR Doc. 2012–19095 Filed 8–3–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will meet in Hamilton, Montana. The purpose of the meeting is to review proposed projects for funding.

DATES: The meeting will be held August 21, 2012 at 6:30 p.m.

ADDRESSES: The meeting will be held at 1801 N. First Street, Hamilton, MT. Written comments should be sent to Bitterroot National Forest Supervisor's Office, Attn: Joni Lubke; 1801 N. First Street, Hamilton, MT 59840. Comments may also be sent via email to *jmlubke@fs.fed.us* or via facsimile to 406–363–7159.

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 Bitterroot National Forest Supervisor's Office. Visitors are encouraged to call ahead to 406–363–7100 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Dan Ritter at 406–777–5461 or Joni Lubke at 406–363–7100.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Mountain Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring any matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by August 15, 2012 will have the opportunity to address the Committee at those sessions.

Dated: July 31, 2012.

Julie K. King,

Forest Supervisor.

[FR Doc. 2012–19097 Filed 8–3–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Islands Region Coral Reef Ecosystems Permit Forms.

OMB Control Number: 0648–0463.

Form Number(s): NA.

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

Number of Respondents: 12.

Average Hours per Response: Coral Reef Ecosystem permits, 2 hours; appeals, 3 hours; transshipment permits, 10 minutes.

Burden Hours: 31.

Needs and Uses: This request is for revision and extension of a current information collection.

National Marine Fisheries Service (NMFS) requires, as codified under 50 CFR Part 665, any person (1) fishing for, taking, retaining, or using a vessel to fish for Western Pacific coral reef ecosystem management unit species in the designated low-use Marine Protected Areas, (2) fishing for any of these species using gear not specifically allowed in the regulations, or (3) fishing for, taking, or retaining any Potentially Harvested Coral Reef Taxa (PHCRT) in the coral reef ecosystem regulatory area, to obtain and carry a permit. A receiving vessel must also have a transshipment permit for at-sea transshipment of coral reef ecosystem management unit species (CREMUS). The permit application form provides basic information about the permit applicant, vessel, fishing gear and method, target species, projected fishing effort, *etc.,* for use by NMFS and the Western Pacific Fishery Management Council in determining eligibility for permit issuance. The information is important for understanding the nature of the fishery and provides a link to participants. It also aids in the enforcement of Fishery Ecosystem Plan measures.

Revision: NMFS is adding a transshipment permit application, where previously a separate form was not required.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

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

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

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

Dated: July 30, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–19060 Filed 8–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: Bureau of Industry and Security.

Title: Chemical Weapons Convention Provisions of the Export Administration Regulations.

OMB Control Number: 0694–0117.

Form Number(s): None.

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

Burden Hours: 36.

Number of Respondents: 10.

Average Hours per Response: 30 minutes.

Needs and Uses: The Chemical Weapons Convention (CWC) is a multilateral arms control treaty that seeks to achieve an international ban on chemical weapons (CW). The CWC prohibits the use, development, production, acquisition, stockpiling, retention, and direct or indirect transfer of chemical weapons. This collection implements the following provision of the treaty:

Schedule 1 notification and report: Under Part VI of the CWC Verification Annex, the United States is required to notify the Organization for the Prohibition of Chemical Weapons (OPCW), the international organization created to implement the CWC, at least 30 days before any transfer (export/import) of Schedule 1 chemicals to another State Party. The United States is also required to submit annual reports to the OPCW on all transfers of Schedule 1 Chemicals.

End-Use Certificates: Under Part VIII of the CWC Verification Annex, the United States is required to obtain End-Use Certificates for transfers of Schedule 3 chemicals to Non-State Parties to ensure the transferred chemicals are only used for the purposes not prohibited under the Convention.

Affected Public: Businesses and other for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

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

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov.*

Dated: August 1, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–19135 Filed 8–3–12; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Current Population Survey (CPS) School Enrollment Questions

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before October 5, 2012.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Kyra Linse, U.S. Census

Bureau, DSD/CPS HQ–7H108F, Washington, DC 20233–8400, (301) 763–9280.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance for updating the universe of collection of data concerning the school enrollment within the Current Population Survey (CPS) beginning in January 2013. Title 13, United States Code, Section 182, and Title 29, United States Code, Sections 1–9, authorize the collection of the CPS information. The Census Bureau and the Bureau of Labor Statistics (BLS) sponsor the current basic annual school enrollment questions, which have been collected annually in the CPS for 50 years.

The main school enrollment question and the two follow up questions have long been asked of people ages 16 to 24 and restricted for other ages. We would like to increase the age range for those asked these questions to 54 based on current trends in school enrollment for people over 24. This change in universe will result in the main question being asked about approximately 53,600 more people and answers for approximately 3,000 more people will need to be provided for the two follow up questions.

Raising the age of respondents to which the monthly enrollment question is provided will substantially increase the data resources with which analysts and researchers identify the effects of federal education and training policies on key, policy-relevant populations.

II. Method of Collection

The school enrollment information will be collected by both personal visit and telephone interviews. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Control Number: 0607–0049.

Form Number: There are no forms. We conduct all interviews on computers.

Type of Review: Regular submission.

Affected Public: Households.

Estimated Number of Respondents: 53,600 per month.

Estimated Time per Response: 15 seconds.

Estimated Total Annual Burden Hours: 1324.

Estimated Total Annual Cost: The only cost to the respondents is that of their time.

Respondents Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 182, and Title 29, U.S.C., Sections 1–9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Dated: July 31, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–19076 Filed 8–3–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Universal Industries Limited, Inc., 3050 SW 14th Place Unit 3, Boynton Beach, FL 33426; Order Denying Export Privileges

On August 19, 2011, in the U.S. District Court, Southern District of Florida, Universal Industries Limited, Inc. (''Universal'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2000)) (''AECA''). Specifically, Universal was convicted of knowingly and willfully attempting to export from the United States to Singapore military aircraft parts, that is approximately 200 J–85 Stage 1 engines blades, part number 6009T97PO5, which items were designated as defense articles on the United States Munitions List, without having first obtained from the Department of State a license for such export or written authorization for such export. Universal was sentenced to one year probation, a $1,000 fine and a special assessment of $400. Universal is also listed on the U.S. Department of State Debarred List.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'')[1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the [Export Administration Act (''EAA'')], the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); see also Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); see also 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of her conviction.

I have received notice of Universal's conviction for violating the AECA, and have provided notice and an opportunity for Universal to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have received and reviewed the submission from Universal and based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Universal's export privileges under the Regulations for a period of three years from the date of Universal's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Universal had an interest at the time of its conviction.

Accordingly, it is hereby ordered

I. Until August 19, 2014, Universal Industries Limited, Inc., with a last known address at: 3050 SW., 14th Place, Unit 3, Boynton Beach, Florida 33426, and when acting for or on behalf of Universal, its successors or assigns,

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2012). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2011 (76 FR 50661 (August 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)).

agents or employees, (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Universal by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until August 19, 2014.

VI. In accordance with Part 756 of the Regulations, Universal may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to the Universal. This Order shall be published in the **Federal Register**.

Issued this 27 day of July 2012.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2012–19102 Filed 8–3–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Steven Neal Greenoe, Currently Incarcerated at: Inmate #54450–056, USP Atlanta, U.S. Penitentiary, P.O. Box 1150160, Atlanta, GA 30315, and With an Address at: 8933 Windjammer Drive, Raleigh, NC 27615; Order Denying Export Privileges

On January 10, 2012, in the U.S. District Court, District of North Carolina, Steven Neal Greenoe (''Greenoe'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2000)) (''AECA''). Specifically, Greenoe was convicted of knowingly and willfully exporting and causing to be exported from the United States to England defense articles, that is, firearms which are designated as a defense article on the United States Munitions List, without having first obtained from the Department of State a license for such export or written authorization for such export. Greenoe was also convicted of engaging in international travel to deal in firearms without a license (18 U.S.C. 924(n)). Greenoe was sentenced to 120 months in prison followed by three years supervised release. Greenoe is also listed on the U.S. Department of State Debarred List.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the [Export Administration Act (''EAA'')], the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); see also Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); see also 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Greenoe's conviction for violating the AECA, and have provided notice and an opportunity for Greenoe to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Greenoe. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS,

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2012). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2011 (76 FR 50661 (August 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)).

I have decided to deny Greenoe's export privileges under the Regulations for a period of 10 years from the date of Greenoe's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Greenoe had an interest at the time of her conviction.

Accordingly, it is hereby ordered

I. Until January 10, 2022, Steven Neal Greenoe, with last known addresses at: Currently incarcerated at: Inmate #54450–056, USP Atlanta, U.S. Penitentiary, P.O. Box 1150160, Atlanta, GA, and 8933 Windjammer Drive, Raleigh, NC 27615, and when acting for or on behalf of Greenoe, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Greenoe by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until January 10, 2022.

VI. In accordance with Part 756 of the Regulations, Greenoe may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to the Greenoe. This Order shall be published in the **Federal Register**.

Issued this 27th day of July 2012.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2012–19101 Filed 8–3–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Steel Nails From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

SUMMARY: On July 25, 2012, the United States Court of International Trade (''CIT'') sustained the Department of Commerce's (''Department'') results of redetermination, which construed the scope of the *Order*[1] as including steel nails found within Target Corporation's toolkits from the People's Republic of China (''PRC''), pursuant to the CIT's remand order in *Mid Continent Nail Corp.* v. *United States,* Slip Op. 12–31, Court No. 10–00247 (March 7, 2012) (''*Mid Continent II*''). *See* May 14, 2012 ''Final Results of Second Remand Redetermination Pursuant To Remand Order'' (second remand redetermination); *Mid Continent Nail Corp.* v. *United States,* Slip Op. 12–97, Court No. 10–00247 (July 25, 2012) (''*Mid Continent III*''). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''CAFC'') in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (''*Diamond Sawblades*''), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final scope ruling and is amending its final scope ruling on certain steel nails from the PRC contained within toolkits. *See* Final Scope Ruling: Certain Steel Nails from the People's Republic of China, Request by Target Corporation, Memorandum from James C. Doyle, Director Office 9, to Edward C. Yang, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, dated August10, 2010 (''Final Scope Ruling'').

DATES: *Effective Date:* August 4, 2012.

FOR FURTHER INFORMATION CONTACT: Jamie Blair-Walker, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2615.

SUPPLEMENTARY INFORMATION: On August 10, 2010, the Department issued a final scope ruling on toolkits from the PRC

[1] *Notice of Antidumping Duty Order: Certain Steel Nails from the People's Republic of China,* 73 FR 44961 (August 1, 2008) (''*Order*'').

imported by Target Corporation. *See* Final Scope Ruling. In the Final Scope Ruling, the Department found that steel nails within Target's toolkits from the PRC were not covered by the *Order* because the toolkits themselves did not meet the description of subject merchandise. *See* Final Scope Ruling.

In *Mid Continent Nail Corp.* v. *United States,* 770 F. Supp. 2d 1372 (CIT 2011) (''*Mid Continent I*''), the CIT remanded the Final Scope Ruling to Commerce to articulate a test it would apply consistently to determine the proper focus of a mixed-media scope ruling and to identify its legal authority to do so. *See Mid Continent I,* 770 F. Supp. 2d at 1383. Commerce then issued a remand redetermination finding that, pursuant to a mixed-media analysis, the toolkits were not subject to the *Order. See Final Results of Redetermination Pursuant to Remand Order in Mid Continent Nail Corporation* v. *United States and Target Corporation,* dated October 17, 2011 (first remand redetermination).

In *Mid Continent II,* the CIT again remanded to Commerce, ordering the Department to issue a scope determination that construes the scope of the *Order* as including the steel nails found within Target Corporation's toolkits. *See Mid Continent II,* at 11. On May 14, 2012, the Department issued its second remand redetermination pursuant to *Mid Continent II.* Pursuant to the remand order in *Mid Continent II,* under protest, we construed the scope of the *Order* as including the steel nails found within toolkits, including those imported by Target Corporation. The CIT sustained the Department's remand redetermination on July 25, 2012. *See Mid Continent III.*

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC has held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's July 25, 2012, judgment sustaining the Department's second remand redetermination construing the scope of the *Order* as including the steel nails found within toolkits (including those imported by Target Corporation), constitutes a final decision of that court that is not in harmony with the Department's Final Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Scope Ruling

Because there is now a final court decision with respect to steel nails found within Target Corporation's toolkits from the PRC, the Department amends its final scope ruling and now finds that the scope of the *Order* includes steel nails found within toolkits, including those imported by Target Corporation. Accordingly, the Department will issue revised instructions to U.S. Customs and Border Protection if the Court's decision is not appealed or if it is affirmed on appeal.

This notice is issued and published in accordance with sections 516A(c)(1) of the Tariff Act of 1930, as amended.

Dated: August 1, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–19298 Filed 8–3–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from India. This review covers three respondents, Jindal Poly Films Ltd (Jindal), Polyplex Corporation Ltd. (Polyplex), and SRF Limited (SRF), producers and exporters of PET Film from India. The Department preliminarily determines that Jindal and Polyplex did not make sales of PET Film from India at below normal value (NV) during the July 1, 2010, through June 30, 2011, period of review (POR). The preliminary results are listed below in the section titled ''Preliminary Results of Review.'' Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* August 6, 2012.

FOR FURTHER INFORMATION CONTACT: Elfi Blum, or Toni Page, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0197 or (202) 482–1398, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, the Department published in the **Federal Register** the antidumping duty order on PET Film from India.[1] On July 1, 2011, the Department published a notice of opportunity to request an administrative review of the order.[2] In response, the Department received a timely request from Petitioners [3] for an antidumping administrative review of five companies: Ester Industries Limited (Ester); Garware Polyester Ltd. (Garware); Jindal; Polyplex; and SRF. The Department also received timely requests for an antidumping review from Vacmet India Ltd. (Vacmet) and Polypacks Industries of India (Polypacks). On August 26, 2011, the Department published a notice of initiation of administrative review with respect to Ester, Garware, Jindal, Polyplex, SRF, Vacmet, and Polypacks.[4] On August 23, 2011, Vacmet and Polypacks withdrew their requests for a review. The Department published a rescission, in part, of the antidumping administrative review with respect to Vacmet and Polypacks on September 20, 2011.[5] On September 1, 2011, the Department placed U.S. Customs and Border Protection (CBP) data covering the POR on the record of this review.[6] On October 21, 2011, the Department selected Jindal and Polyplex as the two

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[1] *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip from India,* 67 FR 44175 (July 1, 2002).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 38609 (July 1, 2011).

[3] Petitioners are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404 (August 26, 2011).

[5] *See Polyethylene Terephthalate Film, Sheet and Strip From India: Rescission, In Part, of Antidumping Duty Administrative Review,* 76 FR 58244 (September 20, 2011).

[6] *See* Memorandum to All Interested Parties, from Toni Page: Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: U.S. Customs Entries, dated September 1, 2011. Effective August 2011, public documents and public versions of proprietary Departmental memoranda referenced in this notice are on file electronically on Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (IA ACCESS), accessible via the Central Records Unit, Room 7046 of the main Commerce building and on the Web at *http://ia.ita.doc.gov/frn/.*

mandatory respondents in this review.[7] Subsequently, on November 25, 2011, Petitioners timely withdrew their request for administrative reviews of Ester and Garware, and the Department published a rescission, in part, of the antidumping administrative review with respect to these two companies on January 25, 2012.[8] Thus, the remaining respondents in this review are the two selected respondents Jindal and Polyplex, and the non-selected respondent, SRF.

The Department issued the original questionnaires to the two selected respondents on November 9, 2011. Jindal and Polyplex timely submitted their section A questionnaire responses on December 12, 2011 and December 13, 2011, respectively. On December 28, 2011, Jindal timely filed responses to sections B and C; on January 9, 2012 Jindal filed its section D response. Polyplex timely filed its responses to sections B, C, and D on January 5, 2012. On February 15, 2012, Petitioners filed comments on Jindal's and Polyplex's questionnaire responses. On March 12, 2012, the Department extended the time period for issuing the preliminary results of this administrative review.[9] Between March and July 2012, the Department issued several supplemental questionnaires separately on sections A, B, and C, and section D, to both Jindal and Polyplex requesting additional information. All responses were timely submitted. On July 13, 2012, Petitioners filed targeted dumping allegations for both Jindal and Polyplex. For purposes of these preliminary results the Department did not conduct a targeted dumping analysis. In calculating the preliminary weighted-average dumping margins for the mandatory respondents, the Department applied the calculation methodology adopted in *Final Modification for Reviews.*[10] In particular, the Department compared monthly weighted-average export prices (EPs) (or constructed export prices (CEPs)) 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 these administrative reviews in light of the parties' pre-preliminary comments and any comments on the issue that parties may include in their case and rebuttal briefs.

In addition, we note that serious issues with certain companies exist concerning the reconciliation of the quantities of subject merchandise suspended with the quantities reported exported, and the Department intends to investigate those issues further.

Scope of the Order

The products covered by the antidumping duty order are all gauges of raw, pretreated, or primed PET Film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET Film are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the antidumping duty order is dispositive.

Period of Review

The POR is July 1, 2010, through June 30, 2011.

Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of Jindal's and Polyplex's home market sales of the foreign like product to the volume of their U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B)(i) of the Tariff Act of 1930, as amended (the Act). Based on this comparison, we determined that both Jindal's and Polyplex's home markets were viable during the POR.

Product Comparisons

Pursuant to section 771(16)(A) of the Act, for purposes of determining appropriate product comparisons to the U.S. sales, the Department considers all products, as described in the ''Scope of the Order'' section of this notice above, that were sold in the comparison market in the ordinary course of trade. In accordance with sections 771(16)(B) and (C) of the Act, where there are no sales of identical merchandise in the comparison market made in the ordinary course of trade, we compare U.S. sales to sales of the most similar foreign like product based on the characteristics listed in sections B and C of our antidumping questionnaire: grade, specification, dimension, thickness, and surface treatment.

Comparisons to Normal Value

To determine whether sales of subject merchandise to the United States were made at less than fair value, pursuant to section 773(a)(1)(B)(ii) of the Act and 19 CFR 351.414(c)(1) and (d), we compared the respondents' monthly weighted-average EP or CEP sales made in the United States to unaffiliated customers with the monthly weighted-average NV, as described in the *United States Price* and *Normal Value* sections of this notice, below. Further, we granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.[11]

Date of Sale

The Department will normally use invoice date, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale, but may use a date other than the invoice date if it better reflects the date on which the material terms of sale are established.[12] For Jindal's sales to the United States, as in prior reviews, we preliminarily determine to use the invoice date as the date of sale. In this administrative review, Jindal requested that the Department use the purchase order date as the date of sale. According to Jindal, the material terms for all of its sales to U.S. customers are established on the purchase order date, and the terms established in the purchase order remained constant for all U.S. sales made during the POR. Jindal reported that it negotiates and finalizes the actual terms of sale depending upon market conditions prevailing at the particular point in time of negotiation. The

[7] *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, from Elfi Blum and Toni Page, Import Compliance Analysts: Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet and Strip from India: Respondent Selection Memorandum, dated October 21, 2011.

[8] *See Polyethylene Terephthalate Film, Sheet and Strip From India: Rescission, in Part, of Antidumping Duty Administrative Review,* 77 FR 3730 (January 25, 2012).

[9] *See Polyethylene Terephthalate Film, Sheet and Strip From India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 77 FR 14501 (March 12, 2012).

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

[11] *See Final Modification for Reviews.*

[12] *See* 19 CFR 351.401(i).

company then issues a pro-forma invoice within one to three days to confirm the terms of payment, delivery, *etc.,* as well as the allowable tolerances [13] with respect to quantity.[14] Any variation in quantity from the pro-forma invoice, which Jindal insists never exceeds the allowable tolerance, is reflected in the commercial invoice, which is issued 25 to 30 days after the purchase order.[15] Thus, it appears from Jindal's explanation that the pro-forma invoice, and not the purchase order, is the document that finalizes the material terms of sale, including the allowable tolerances in quantity. On this basis, we cannot rely, as Jindal has requested, on the purchase order date to establish date of sale.

Jindal's explanation provides a basis to rely on the date of the pro-forma invoice to establish the date of sale. However, Jindal did not provide the Department with the dates that the pro-forma invoices were issued to its customers for all of its sales of subject merchandise to the United States. Therefore, we preliminarily determine that Jindal has not demonstrated an alternative date on which the material terms of sale were established to warrant departure from our practice of relying on invoice date as date of sale. As such, we will continue to use the invoice date as the date of sale for Jindal's sales of subject merchandise to the United States because the record otherwise demonstrates that this is when the material terms of the sale are established.

Regarding Jindal's home market sales, Jindal reported invoice date as date of sale for the home market, and the record does not indicate that material terms of sale are established at a later or earlier date in the sales process.[16] As such, we are preliminarily relying upon invoice date as date of sale in the home market.

Polyplex reported the invoice date as the date of sale for both its home market sales and its sales of subject merchandise to the United States, and the record does not indicate that material terms of sale are established at a later or earlier date in the sales process. Therefore, for both Polyplex's home market sales and its sales to the United States, we have preliminarily determined that the invoice date is the date of sale.

Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP sale. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).[17] Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.[18] 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), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.,* NV based on either home market or third country prices),[19] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.[20]

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.,* no LOT adjustment is practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.[21]

In this administrative review, we obtained information from both respondents regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

1. Jindal

Jindal reported that it made EP sales in the U.S. market to both unaffiliated end users and to unaffiliated trading companies.[22] We examined the selling activities performed for U.S. sales for both channels of distribution and found that Jindal performed selling functions, which we have grouped into the following four activities: (1) Sales and marketing (sales forecasting, strategic/economic planning, order input/processing, *etc.*); (2) freight and delivery (including packing); (3) technical services/warranties (engineering services and technical assistance); and (4) inventory management.[23] Accordingly, based on our examination of the individual selling functions performed within those categories, we find that Jindal performed the same selling functions in all four categories to the same degree in both channels of distribution.[24] Because the selling activities to Jindal's customers did not vary for sales in the United States through its two channels of distribution, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the comparison market, Jindal reported that it made sales to both unaffiliated end users and to unaffiliated trading companies, and that most selling functions were performed at the same or similar levels of intensity in both channels of distribution.[25] We examined the following three activities performed in the comparison market: (1) Sales and marketing (sales forecasting, strategic/economic planning, order input/processing, *etc.*); (2) freight and delivery (including packing); and (3) inventory management. We find that Jindal performed the same selling functions in all three categories to the same or

[13] A tolerance is an allowable, but *non-deliberate,* amount of variation from a physical quantity.

[14] *See* Jindal's Original Questionnaire Response of December 28, 2011, sections B to C, at 4, section C (Jindal's Original Response B to C), and Jindal's First Supplemental Response to sections A to C of March 28, 2012, at 13, 50–53 (Jindal's First Supplemental Response A to C).

[15] *Id.* Jindal's First Supplemental Response A to C at 51.

[16] *See* Jindal's Original Response B to C, at B–19.

[17] *See* 19 CFR 351.412(c)(2).

[18] *See Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part,* 75 FR 50999, 51001 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

[19] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

[20] *See Micron Tech., Inc.* v. *United States,* 243 F.3d 1301, 1314–16 (Fed. Cir. 2001) (*Micron Tech*).

[21] *See, e.g., OJ from Brazil,* 75 FR at 51001.

[22] *See* Jindal's Original Questionnaire Response of December 12, 2011, Section A, at 14 (Original Response, Section A), and Jindal's Original Response B to C, at C–11.

[23] *See* Jindal's Original Response, Section A, at Exhibit A–5 and 14–22, and Jindal's First Supplemental Response A to C, at 36.

[24] *Id.*

[25] *Id.,* at Exhibit A–5.

similar degree in both channels of distribution.[26] Accordingly, based on these selling functions noted above, we find that Jindal performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for all comparison market sales. Although the comparison market sales are made through two channels of distribution, because the selling activities to Jindal's customers did not vary between theses channels, we preliminarily determine that there is one LOT in the comparison market for Jindal.

Finally, we compared the EP LOT to the comparison market LOT and found that the selling functions performed for U.S. and comparison market customers do not differ significantly, as Jindal performed the same selling functions at the same or similar level of intensity in both markets. With regard to the one difference in the reported level of intensity, while Jindal did not provide technical services/warranties in the comparison market as it did in the United States market, Jindal performs this selling function at a low intensity level (rarely or seldom) in the United states market. Therefore, we determine that sales to the U.S. and comparison market during the POR were made at the same LOT and, as a result, no LOT adjustment is warranted.[27]

2. Polyplex

Polyplex reported that it made CEP sales in the U.S. market to its U.S. affiliate Polyplex (America), Inc. (PA). We examined the selling activities performed for U.S. sales for all three channels of distribution (Polyplex to PA, Polyplex to un-affiliated U.S. customers, and PA to un-affiliated U.S. customers) and found that Polyplex performed selling functions, which we grouped into the following four activities: (1) Sales and marketing (sales forecasting, strategic/economic planning, order input/processing, etc.); (2) freight and delivery (including packing); (3) technical services/warranties (engineering services and technical assistance); and (4) inventory management.[28] Because the first two channels of distribution represent selling functions performed by Polyplex in the U.S. market, the Department is preliminarily collapsing these two channels into one for analysis purposes,[29] and creating one channel of distribution in the U.S. market. Based on our examination of the individual selling functions performed within the aforementioned categories, we find that Polyplex performed the same selling functions in all four categories to varying degrees in both channels of distribution.[30] Even though the degree to which Polyplex performed certain selling functions varied across both channels, the differences were not significant enough to constitute a different LOT in the United States. Therefore, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the comparison market, Polyplex reported that it made sales to both end users and to distributors. We examined the following three activities performed in the comparison market: (1) Sales and marketing (sales forecasting, strategic/economic planning, order input/processing, etc.); (2) freight and delivery (including packing); (3) technical services/warranties (engineering services and technical assistance); and (4) inventory management. We find that Polyplex performed the same selling functions in all four categories to varying degrees in both channels of distribution.[31] Even though the degree to which Polyplex performed certain selling functions varied across the two channels, the differences were not significant enough to constitute a different LOT in the comparison market.[32] Therefore, we preliminarily determine that there is one LOT in the comparison market for Polyplex.

Finally, we compared the CEP LOT to the comparison market LOT. In accordance with *Micron Tech,* we removed the selling activities as set forth in section 772(d) of the Act from the U.S. LOT prior to performing the LOT analysis. After removing the appropriate selling activities, we compared the U.S. LOT to the comparison market LOT. Based on our analysis, we preliminarily find that the U.S. sales are at a less advanced LOT than the comparison market sales.[33]

As stated previously, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.,* no LOT adjustment is possible), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. Therefore, we are preliminarily granting to Polyplex a CEP offset.

United States Price

1. Jindal

We used EP methodology for Jindal's U.S. sales, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise warranted based on the evidence on the record. In accordance with sections 772(a) and (c) of the Act, we calculated EP based on packed prices, adding excess and/or separately recovered freight Jindal charged its unaffiliated customer. We made deductions from the starting price for discounts, in accordance with 19 CFR 351.401(c). We also made deductions from the starting price, where applicable, for movement expenses, including domestic inland freight and insurance, domestic brokerage and handling, international freight and marine insurance, and U.S. inland freight, in accordance with section 772(c)(2) of the Act and 19 CFR 351.401(e).

2. Polyplex

In accordance with section 772(b) of the Act, CEP 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, Polyplex classified all of its export sales of PET Film to the United States as CEP sales. During the POR, Polyplex made sales in the United States through its U.S. affiliate PA, which then resold the merchandise to unaffiliated customers. The Department calculated CEP based on packed prices to customers in the United States. We made deductions from the starting price for discounts, in accordance with 19 CFR 351.401(c). We also made deductions for movement expenses (foreign and U.S. movement, U.S. customs duty and brokerage, as well as foreign and U.S. warehousing), in accordance with section 772(c)(2) of

[26] *Id.,* at Exhibit A–5.

[27] *See* Memorandum to Nicholas Czajkowski from Elfi Blum: Analysis Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: Jindal Poly Films Ltd. (Jindal), dated July 30, 2012 (Jindal Preliminary Calculation Memorandum).

[28] *See* Polyplex's Section A Questionnaire Response at 15–20 and Exhibit A–8 (December 13, 2011) and Polyplex's First Supplemental Response A to C at Revised Exhibit A–8 (April 4, 2012).

[29] *See* Memorandum to Nicholas Czajkowski from Toni Page: Analysis Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: Polyplex Corporation Ltd. (Polyplex), dated July 30, 2012 (Polyplex Preliminary Calculation Memorandum).

[30] *Id.*

[31] *Id.*

[32] *See* Polyplex Preliminary Calculation Memorandum.

[33] *Id.*

the Act and 19 CFR 351.401(e). In addition, because Polyplex reported CEP sales, in accordance with section 772(d)(1) of the Act, we deducted from the starting price, credit expenses, late payment fees, and indirect selling expenses, including inventory carrying costs, incurred in the United States and India and associated with economic activities in the United States.

In accordance with section 772(c)(1)(C) of the Act, we will adjust Jindal's and Polyplex's U.S. price to account for countervailing duties attributable to subject merchandise in order to offset export subsidies received by Jindal and Polyplex.

Information about the specific adjustments and our analysis of the adjustments is business proprietary, and is detailed in the ''Adjustments'' section of the preliminary calculation memoranda.[34]

Cost of Production Analysis

For both Jindal and Polyplex, the Department disregarded sales below cost of production (COP) in the most recently completed administrative antidumping duty review.[35] We therefore have reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below COP. Thus, pursuant to section 773(b)(1) of the Act, we examined whether Jindal's and Polyplex's sales in the home market were made at prices below the COP during the POR.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated Jindal's and Polyplex's COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for selling, general and administrative (SG&A), interest expenses, and home market packing costs. *See* ''Results of the COP Test'' section below for treatment of home market selling expenses. We examined the cost data and determined that our quarterly cost methodology is not warranted and, therefore, we have applied our standard methodology of using annual costs based on the reported data as adjusted below.

Based on our analysis of Jindal's questionnaire responses, we determined that no adjustments to Jindal's reported COP were necessary.[36] Based on our analysis of Polyplex's questionnaire responses, we made the following adjustments to Polyplex's reported COP: (1) We revised the G&A expense rate to include company-wide G&A expenses, other expenses, and depreciation in the numerator of the calculation, and depreciation in the cost of goods sold (COGS) denominator; and (2) we revised the financial expense rate to include scrap sales in the COGS denominator.[37]

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, discounts and rebates, movement charges, and actual direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made: (1) Within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the POR are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POR are at prices less than the COP, we disregard those sales of that product, because we determine that in such instances the below-cost sales represent substantial quantities within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. Because we are applying our standard annual-average cost test in these preliminary results, we have also applied our standard cost-recovery test with no adjustments.

We found that, for certain specific products, more than 20 percent of Polyplex's home market sales during the POR were at prices less than the COP and, in addition, the below-cost sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act. Our cost test for Jindal revealed that none of Jindal's sales for any of its models were at prices below the COP.

Normal Value

Price-to-Price Comparison

We based NV on the starting prices of Jindal's and Polyplex's sales to unaffiliated home market customers, pursuant to sections 773(a)(1)(A) and 773(a)(1)(B)(i) of the Act. Pursuant to section 773(a)(6)(B)(ii) of the Act, we made deductions from NV for movement expenses (*i.e.,* inland freight and inland insurance) where appropriate. In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made, where indicated, circumstance-of-sale adjustments for home market direct selling expenses, including imputed credit expenses, and for discounts and rebates. We also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not the other. Specifically, because commissions were paid only in the home market, we made an upward adjustment to NV for the lesser of: (1) The amount of commission paid in the home market; or (2) the amount of the indirect selling expenses incurred in the home market on U.S.

[34] *See* Jindal Preliminary Calculation Memorandum; *see also* Polyplex Preliminary Calculation Memorandum.

[35] See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 45699, 45701 (August 6, 2008), at ''B. Cost of Production Analysis,'' unchanged Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Antidumping Duty Administrative Review, 73 FR 71601 (November 25, 2008); *see also* Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 71 FR 18715, 18719 (April 12, 2006) at ''Normal Value, C. Cost of Production (COP) Analysis,'' unchanged in Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Antidumping Duty Administrative Review, 71 FR 47485 (August 17, 2006).

[36] *See* Memorandum to Neal M. Halper, Director, Office of Accounting from Christopher Zimpo, Case Accountant, Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strips from India, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Jindal Poly Films Ltd, dated July 30, 2012.

[37] *See* Memorandum to Neal M. Halper, Director, Office of Accounting from Angie Sepulveda, Case Accountant, Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strips from India, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Polyplex Corporation Ltd., dated July 30, 2012.

sales.[38] In accordance with sections 773(a)(6)(A) and (B) of the Act, we also deducted home market packing costs and added U.S. packing costs. We also made adjustments for differences in costs attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act.[39]

Constructed Value-To-Price Comparison

After disregarding certain sales as below cost, as described above, home market sales of contemporaneous identical and similar products existed that allowed for price-to-price comparisons for all margin calculations. Therefore, it was not necessary for the Department to rely on CV for any comparisons for these preliminary results.

Use of Facts Otherwise Available

Section 776(a) the Act provides 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 and 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 be used, can be used without undue difficulties, 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 supplied.

For the reasons discussed below, the Department determines that, in accordance with section 776(a)(2)(A) of the Act, the use of facts otherwise available is appropriate for the preliminary results with respect to Polyplex's sales of non-prime merchandise in the United States.

Polyplex reported POR sales and production of non-prime merchandise under the product code TFOG (Transparent Film Other Grade).[40] Polyplex reported TFOG sales in the United States and home markets during the POR.[41] This TFOG merchandise is considered by the company to be a basket category, as it includes PET Film of different product characteristics. Polyplex explains that the product characteristics (*e.g.,* grade, specification, dimension, thickness, and surface treatment) of TFOG cannot be identified because this merchandise is a mix of various film product types.[42] Therefore, in its questionnaire responses, Polyplex did not identify TFOG sales based on individual product characteristics.

Polyplex explained that the TFOG merchandise is a mixture of different grades of films for which specific TFOG characteristics cannot be provided. However, the Department finds that the use of facts otherwise available is appropriate for the preliminary results with respect to Polyplex, in accordance with section 776(a)(2)(B) of the Act, because Polyplex has not provided information requested for purposes of these preliminary results. A review of the record indicates that: (1) Merchandise reported as TFOG is in fact prime merchandise; and (2) Polyplex has the capabilities to provide the specific information regarding the product characteristics of its TFOG sales. As such, the Department finds that Polyplex has withheld information that is necessary a comparison of sales in the U.S. and home markets.

As an initial matter, Polyplex has indicated that PET Film that is reported as TFOG is in fact actually prime merchandise. Specifically, Polyplex stated there are three circumstances where it will re-classify prime merchandise as TFOG: (1) Off cut rolls; (2) downgraded rolls; and (3) slow moving/non-moving inventory. Polyplex has reported that in two of these scenarios (off cut rolls and slow/non-moving inventory), the company considers the goods to be prime merchandise.[43] In addition, the Department finds that the company is re-classifying some of its subject merchandise as TFOG after production. For example, Polyplex stated that prime merchandise from off cut rolls may be re-classified for specific end-users.[44] Given that Polyplex is able to provide product characteristics for its prime merchandise, the Department finds that Polyplex is aware of the product characteristics of this merchandise when re-classifying it as TFOG. In addition, the Department finds that a portion of Polyplex's sales reported as TFOG are in fact prime merchandise.

Finally, Polyplex has provided sample documentation for two of its TFOG sales in the United States during the POR.[45] These documents clearly include product characteristics for these two TFOG sales.[46] As such, we preliminarily conclude that Polyplex can identify, by product characteristics, the products classified as TFOG.

Therefore, for the purposes of these preliminary results, the Department is treating Polyplex's U.S. TFOG sales as prime merchandise. The Department is re-classifying all TFOG sales in the United States as prime merchandise and assigning them CONNUMs based on the product characteristics shown in the sample documents described above. These re-classified sales are in-turn being appropriately matched to identical or similar prime merchandise sales in the home market.[47]

Currency Conversions

Pursuant to section 773A(a) of the Act and 19 CFR 351.415, we made currency conversions for Jindal's and Polyplex's sales based on the daily exchange rates in effect on the dates of the relevant U.S. sales as certified by the Federal Reserve Bank of New York.

Non-Selected Respondent

With regard to determining an appropriate rate to be applied to the non-selected respondent SRF, the statute and the Department's regulations

[38] *See* 19 CFR 351.410(e).

[39] *See* Jindal Preliminary Calculation Memorandum; *see also* Polyplex Preliminary Calculation Memorandum.

[40] *See* Polyplex's Section A Questionnaire Response at 29 (December 13, 2011); *see also* Polyplex's First Supplemental Response A to C at Exhibit BS–2.

[41] *See e.g.,* Polyplex's Third Supplemental Response at 4 (July 18, 2012).

[42] *See* Polyplex's Third Supplemental Response at 4.

[43] *See* Polyplex's First Supplemental Response A to C at 16–17.

[44] *See* Polyplex's First Supplemental Response A to C at 16.

[45] *See* Polyplex's First Supplemental Response A to C at 35, Exhibits CS–04 and CS–04A.

[46] A full discussion of these business proprietary documents is set forth in the Polyplex Preliminary Calculation Memorandum.

[47] *See* Polyplex Preliminary Calculation Memorandum.

do not directly address the establishment of a rate to be applied to companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection of respondents has been to look for guidance in section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. The Department generally weight-averages the rates calculated for the mandatory respondents, excluding zero and *de minimis* rates and rates based entirely on facts available, and applies that resulting weighted-average margin to non-selected respondents.[48] Section 735(c)(5)(B) of the Act provides that where all margins are zero rates, *de minimis* rates, or rates based entirely on facts available, the Department may use ''any reasonable method'' for assigning the rate to non-selected respondents.

In this review, we have preliminarily calculated zero or *de minimis* weighted-average dumping margins for all companies selected as mandatory respondents. In previous cases, the Department has determined that a ''reasonable method'' to use when the rates of the respondents selected for individual examination are zero or *de minimis* is to apply to those companies not selected for individual examination the average of the most recently determined rates that are not zero, *de minimis,* or based entirely on facts available (which may be from a prior review or new shipper review).[49] If a non-selected company had its own calculated rate that is contemporaneous with or more recent than such prior determined rates, however, the Department has applied such individual rate to the non-selected company, including when that rate is zero or *de minimis.*[50]

The Department has stated that it will no longer use its zeroing methodology in administrative reviews with preliminary determinations issued after April 16, 2012.[51] Therefore, the Department will normally not apply any rates calculated in prior reviews using the zeroing methodology to the non-selected companies in these reviews. However, the Department conducted a new shipper review (NSR) of SRF, in which the Department calculated a zero rate for SRF and this rate is contemporaneous with the most recently completed administrative review.[52] In addition, in the NSR, SRF had one sale of subject merchandise to the United States during the POR, and the calculated margin was zero. Thus, the Department calculated this margin without the application of the zeroing methodology. Based on this, and in accordance with the statute, a reasonable method for determining the weighted-average dumping margin for SRF is to use the rate calculated for SRF in the NSR because this rate was calculated without the Department's zeroing methodology and the NSR in which the rate was calculated is contemporaneous with the most recently completed administrative review.

Preliminary Results of Review

We preliminarily determine the following weighted-average dumping margins exist for the period July 1, 2010, through June 30, 2011.

Manufacturer/exporter	Weighted-average margin (percent)
Jindal Poly Films Limited	0.00
Polyplex Corporation Limited	0.00
SRF Limited	0.00

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. We will instruct CBP to liquidate entries of merchandise produced and/or exported by Jindal, Polyplex, and SRF. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. For assessment purposes, where the respondent reported the entered value for its sales, we calculated importer-specific (or customer-specific) *ad valorem* assessment rates based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales.[53] However, where the respondent did not report the entered value for its sales, we will calculate importer-specific (or customer-specific) per-unit duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any per-unit duty assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* at or above 0.50 percent). For any individually examined respondents whose weighted-average dumping margin is above *de minimis* in the final results, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the importer's examined sales to the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).[54] Pursuant to 19 CFR 351.106(c)(2), we intend to instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is zero or *de minimis* (*i.e.,* less than 0.50 percent).[55]

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of PET Film from the India entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for company under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required); (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, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and, (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review,

[48] *See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review,* 73 FR 8273 (February 13, 2008), unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review,* 73 FR 49162 (August 20, 2008).

[49] *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

[50] *Id.*

[51] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[52] *See Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Antidumping Duty New Shipper Review,* 76 FR 30908 (May 27, 2011).

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

[54] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Final Modification for Reviews, i.e.,* on the basis of monthly average-to-average comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons.

[55] *See* 19 CFR 351.106(c)(1).

the cash deposit rate will be the all others rate for this proceeding, 5.71 percent. These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**.[56] Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[57] If a hearing is requested, the Department will notify interested parties of the hearing schedule. Oral presentations will be limited to issues raised in the briefs.

Interested parties are invited to comment on the preliminary results of this review. The Department typically requests that interested parties submit case briefs within 30 days of the date of publication of this notice. However, we plan to issue a post-preliminary supplemental questionnaire and, therefore, will be extending the case brief deadline. The Department will inform interested parties of the updated briefing schedule when it has been confirmed. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed not later than five days after the time limit for filing case briefs.[58] Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Executive summaries should be limited to five pages total, including footnotes.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, unless otherwise extended. *See* section 751(a)(3)(A) of the Act.

Notification to Importers

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

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–19170 Filed 8–3–12; 8:45 am]

BILLING CODE 3510–DS–P

[56] *See* 19 CFR 351.310.

[57] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed.

[58] *See* 19 CFR 351.309(c) and (d) (for a further discussion of case briefs and rebuttal briefs, respectively).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta From Turkey: Notice of Preliminary Results of the 2010–2011 Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain pasta (pasta) from Turkey for the period of review (POR) July 1, 2010, through June 30, 2011. The Department initiated the review covering TAT Makarnacilik Sanayi ve Ticaret A.S. (TAT) and Marsan Gida Sanayi ve Ticaret A.S (Marsan) and its claimed affiliates Birlik Pazarlama Sanayi ve Ticaret A.S. (Birlik), Bellini Gida Sanayi A.S. (Bellini), and Marsa Yag Sanayi ve Ticaret A.S. (Marsa Yag). We preliminarily determine that during the POR, TAT did not sell subject merchandise at less than normal value (NV). In addition, we preliminarily determine that Birlik, Bellini, and Marsan did not sell subject merchandise at less than NV.

If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. *See* ''Preliminary Results of Review'' section of this notice.

DATES: *Effective Date:* August 6, 2012.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Victoria Cho, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2011, the Department issued a notice of opportunity to request an administrative review of this order for the POR of July 1, 2010, through June 30, 2011.[1] On July 29, 2011, we received a request to conduct a review with respect to Marsan and its claimed affiliates: Birlik, Bellini, and Marsa Yag. We also received a request from TAT for the Department to conduct an administrative review of TAT.

On August 3, 2011, the Department provided Marsan with an opportunity to comply with the recently revised certification requirements with respect to its request for review.[2] On August 10, 2011, Marsan resubmitted its request for administrative review with the requisite certification language.

On August 26, 2011, the Department published the notice of initiation of this antidumping duty administrative review covering the period July 1, 2010, through June 30, 2011.[3]

On September 14, 2011, the Department issued initial questionnaires covering sections A, B, C, and D to Marsan and sections A, B, and C to TAT with a due date of October 21, 2011. Because the Department disregarded below-cost sales in the most recently completed segment of the proceeding in which sales were reviewed for Marsan,[4]

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 76 FR 38609 (July 1, 2011).

[2] *See* 19 CFR 351.303(g)(1) and (g)(2).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404 (August 26, 2011).

[4] *See Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta from Turkey,* 64 FR 69493 (December 13, 1999) (*97/98 Review Final*). In June 2009, the Department found that Marsan was the successor-in-interest to Gidasa Sabanci Gida Sanayi ve Ticaret AS (Gidasa). *See Certain Pasta from Turkey: Notice of Final Results of Antidumping Duty Changed Circumstances*

we had reasonable grounds to believe or suspect that home market sales of the foreign like product by Marsan were made at prices below the cost of production (COP) during the POR, in accordance with section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Act), and therefore, included section D in the questionnaire to Marsan. After granting extensions to Marsan, the sections A, B, and C questionnaire responses were submitted on November 4, 2011, and the section D questionnaire response was submitted on November 18, 2011. On November 22, 2011, petitioners submitted deficiency comments on sections A through D of Marsan's initial questionnaire response.[5] The Department issued supplemental questionnaires to Marsan between January 13, 2012, and May 3, 2012. Responses to the Department's supplemental questionnaires were received from Marsan between January 23, 2012, and July 2, 2012.

After granting extensions to TAT, TAT's sections A, B, and C questionnaire responses were submitted on November 9, 2011. On Novmeber 28, 2011, February 27, 2012, and May 1, 2012, petitioners submitted deficiency comments for TAT. On February 23, 2012, petitioners submitted its comments requesting that the Department rescind this administrative review for TAT because TAT lacked a reviewable entry. Petitioners urged that the Department request CBP to investigate any entries of subject merchandise, negligence in importations, and/or customs fraud made by TAT. The Department issued several supplemental questionnaires to TAT and we received responses to the Department's supplemental questionnaires on December 15, 2011, January 10, 2012, March 29, 2012, and June 15, 2012.

On February 24, 2012, the Department published a notice extending the time period for issuing the preliminary results of the administrative review from April 1, 2012, to July 30, 2012.[6]

Period of Review

The POR covered by this review is July 1, 2010, through June 30, 2011.

Targeted Dumping Allegations

Petitioners contend that it conducted its own targeted dumping analysis of Marsan's U.S. sales using the Department's targeted dumping methodology as applied in *Steel Nails* and modified in *Wood Flooring.*[7] Based on their analysis, petitioners argue the Department should conduct a targeted dumping analysis and employ average-to-transaction comparisons without offsets should the Department find that the record supports its allegation of targeted dumping. Marsan did not comment on the targeted dumping allegations submitted by the petitioners.

For purposes of these preliminary results, the Department did not conduct a targeted dumping analysis. In calculating the preliminary weighted-average dumping margin, the Department applied the calculation methodology adopted in the *Final Modification for Reviews.*[8] In particular, the Department compared monthly, weighted-average export prices with monthly, weighted-average normal values, and granted offsets for negative comparison results in the calculation of the weighted-average dumping margins.[9] 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.

Scope of the Order

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions. Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Affiliation and Collapsing

As discussed above, in its request for review, Marsan requested a review of itself and three companies (Birlik, Bellini, and Marsa Yag) which it claimed as affiliates. In the instant review, the Department preliminarily finds that Birlik, Bellini and Marsa Yag are affiliated in accordance with sections 771(33)(E) and (F) of the Act based on ownership structure and major shareholder controlling interest in these three subsidiaries.[10] At the outset of the POR, Birlik operated the pasta production facility, but Bellini took over operation of the pasta production facility in October 2010.[11] Because Birlik and Bellini operated the pasta production facility during different periods and both companies were not producing subject merchandise at the same time, the Department preliminarily determines that it is not appropriate to treat these companies as a single entity pursuant to 19 CFR 351.401(f).[12]

Consistent with our findings in the prior review,[13] the Department finds that Marsan was not affiliated with Birlik or Bellini, prior to June 2, 2011.[14] However, as discussed in more detail in the Affiliation/Collapsing Memo, the Department preliminarily determines

Review, 74 FR 26373 (June 2, 2009). In July 2003, the Department found that Gidasa was the successor-in-interest to Maktas Makarnacilik ve Ticaret AS (Maktas). *See Notice of Final Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Reviews: Certain Pasta From Turkey,* 68 FR 41554 (July 14, 2003). Maktas was the reviewed company in the *97/98 Review Final.*

[5] Petitioners are New World Pasta Company, Dakota Growers Pasta Company, and American Italian Pasta Company.

[6] *See Certain Pasta From Turkey: Extension of Time Limit for the Preliminary Results of the Countervailing Duty Administrative Review,* 77 FR 11065 (February 24, 2012).

[7] *See* Petitioners' Allegation of Targeted Dumping with respect to Marsan, dated June 15, 2012 (citing *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) (*Steel Nails*), and accompanying Issues and Decision Memorandum at Comment 8 (*Steel Nails*); *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318 (Oct. 18, 2011) (*Wood Flooring*), and accompanying Issues and Decision Memorandum at Comment 4.

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

[9] *See id.* at 8102.

[10] *See* Memorandum to Melissa Skinner, Office Director, Office 3 from the Team, titled ''Whether to Treat Marsan and its Claimed Affiliates as a Single Entity for Margin Calculation Purposes,'' dated July 30, 2012 (Affiliation/Collapsing Memo).

[11] *See* Marsan's November 4, 2011, questionnaire response at 7.

[12] *See* Affiliation/Collapsing Memo.

[13] *See Certain Pasta From Turkey: Notice of Final Results of the 14th Antidumping Duty Administrative Review,* 76 FR 68339 (November 4, 2011) (*14th Review Final Results*), and accompanying Issues and Decision Memorandum (I&D Memo) at Comments 1 and 2.

[14] *See* Affiliation/Collapsing Memo.

that effective June 2, 2011, Marsan and Bellini became affiliated persons within the meaning of section 771(33)(F) of the Act.[15]

Upon finding Bellini to be affiliated with Marsan for the last month of the POR, the Department has also considered whether to treat Bellini and Marsan as a single entity for that month pursuant to 19 CFR 351.401(f). Based upon the level of common ownership and the intertwining of the production and distribution operations of these companies after the acquisition of Marsan, the Department preliminarily finds there to be significant potential for manipulation of price or production of subject merchandise and has thus treated Bellini and Marsan as a single entity for the last month of the POR, referred to hereafter as Marsan/Bellini.[16]

Nature of TAT's Sales

Petitioners have raised various concerns about the nature of TAT's sales of subject merchandise to the United States, including whether TAT has reviewable entries and whether its sales prices are consistent with normal commercial practices.[17] Record information indicates that TAT has at least one reviewable entry, allowing the Department to continue with its review of TAT.[18] With respect to petitioners' concerns about the nature of TAT's sales, the Department does not find support for those allegations in record evidence at this time because they are mainly premised upon petitioners' contentions that TAT does not have any reviewable entries subject to antidumping duty liability,[19] which the Department preliminarily finds not to be case as addressed above. Petitioners also question whether TAT's sales to its U.S. customers were conducted at arm's length.[20] Record evidence, however, establishes that TAT is not affiliated with its U.S. customers [21] and petitioners have not identified information on the record demonstrating otherwise. However, we will continue to consider this matter. Should we determine that petitioners' concerns have merit we will further investigate in the context of this administrative review and, if necessary, conduct an analysis of whether TAT's sales are bona fide.

Product Comparisons

For purposes of calculating NV, section 771(16) of the Act defines ''foreign like product'' as merchandise which is either (1) identical or (2) similar to the merchandise sold in the United States. When no identical products are sold in the home market, the products which are most similar to the product sold in the United States are identified. For the non-identical or most similar products which are identified based on the Department's product matching criteria, an adjustment is made to the NV for differences in cost attributable to differences in the actual physical differences between the products sold in the United States and the home market.[22]

In accordance with section 771(16) of the Act, we first attempted to match contemporaneous sales of products sold in the United States and comparison markets that were identical with respect to the following characteristics: (1) Pasta shape; (2) wheat species; (3) milling form; (4) protein content; (5) additives; and (6) enrichment. Where there were no sales of identical merchandise in the comparison market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority.

Fair Value Comparisons

To determine whether sales of certain pasta from Turkey were made in the United States at less than NV, we compared the export price (EP) to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In particular, the Department compared monthly, weighted-average export prices with monthly, weighted-average normal values, and granted offsets for negative comparison results in the calculation of the weighted-average dumping margins.[23]

Based on our affiliation and collapsing preliminary determinations, as discussed above, we separately calculated weighted-average dumping margins for: (1) Birlik for the period July 2010 through September 2010; (2) Bellini for the period October 2010 through May 2011; and (3) Marsan/Bellini (the collapsed entity of Bellini and Marsan) for the month of June 2011. For each of the respondents, we compared the respective monthly weighted-average NVs to monthly, weighted-average export prices.[24]

Export Price

For the price to the United States, we used EP, as defined in section 772(a) of the Act. Section 772(a) defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. We calculated EP for each of the respondents' U.S. sales because they were made to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States and constructed export price (CEP) was not otherwise warranted based on the facts on the record.

In accordance with section 772(c)(2)(A) of the Act, we made deductions, where appropriate, for movement expenses including foreign inland freight from plant/warehouse to customer. In addition, when appropriate, we increased EP by an amount equal to the countervailing duty (CVD) rate attributed to export subsidies in the most recently completed CVD administrative review, in accordance with section 772(c)(1)(C) of the Act.[25]

Normal Value

A. Selection of Comparison Market

Section 773(a)(1) of the Act directs that NV be based on the price of the foreign like product sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for

[15] *See* Marsan's November 4, 2011, questionnaire response at 9 and Exhibit 4, and Affiliation/Collapsing Memo.

[16] *See* Affiliation/Collapsing Memo.

[17] *See, e.g.,* Petitioners' February 23, 2012, submission.

[18] *See, e.g.,* TAT's March 29, 2012, submission at Attachment 1.

[19] *See* Petitioners' February 23, 2012, submission at 3–5.

[20] *See id.*

[21] *See* TAT's November 9, 2011, section A questionnaire response at 9–13.

[22] *See* 19 CFR 351.411 and section 773(a)(6)(C)(ii) of the Act.

[23] *See Final Modification for Reviews.*

[24] *See* Affiliation/Collapsing Memo; *see also* Preliminary Results in the 10/11 Administrative Review on Certain Pasta from Turkey: Calculation Memorandum for Birlik/Bellini (Preliminary Calculation Memo Birlik/Bellini). As noted above, for these these preliminary results, the Department has applied the weighted-average dumping margin calculation method adopted in *Final Modification for Reviews.* Note that the Department did not calculate a rate for Marsan Yag because they are collapsed into the gourp Bellini and Marsan and are not a producer.

[25] *Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Turkey,* 61 FR 30366 (June 14, 1996).

calculating NV, we used the combined home market sales volume for Marsan, Birlik and Bellini, and TAT's volume of home market sales of the foreign like product to the volume of their U.S. sales of the subject merchandise.

Pursuant to section 773(a)(1)(B) of the Act, because the respondents had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.[26]

B. Arm's-Length Sales

We included in our analysis the respondents' home market sales to affiliated customers only where we determined that such sales were made at arm's-length prices, *i.e.,* at prices comparable to prices at which identical merchandise was sold to their unaffiliated customers. To test whether the sales to affiliates were made at arm's-length prices, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts, and packing. Where the prices to that affiliated party were, on average, within a range of 98 to 102 percent of the prices of comparable merchandise sold to unaffiliated parties, we determined that the sales made to the affiliated party were at arm's-length.[27] Conversely, where we found that the sales to an affiliated party did not pass the arm's-length test, then all sales to that affiliated party have been excluded from the dumping analysis.[28]

C. Cost of Production Analysis

As discussed above, because the Department disregarded below-cost sales in the most recently completed segment of the proceeding in which sales were reviewed for Marsan,[29] we had reasonable grounds to believe or suspect that home market sales of the foreign like product by Marsan were made at prices below the COP during the POR, in accordance with section 773(b)(2)(A)(ii) of the Act. Pursuant to section 773(b)(1) of the Act, the Department conducted a COP investigation of sales in the home market by Marsan. Therefore, we required Marsan to submit a response to section D of the Department's questionnaire. As discussed above and in the Affiliation/Collapsing Memo, the Department has preliminarily determined to collapse Marsan and Bellini and, therefore, we have relied on the cost data from both of these entities.

1. Calculation of COP

We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative (SG&A) expenses and packing, in accordance with section 773(b)(3) of the Act. Except as noted below, the Department relied on the COP data submitted by Marsan and Bellini—the affiliated party we preliminarily determined to collapse with Marsan.

We have applied our standard methodology of using annual costs based on the reported data. We relied on the COP data submitted by Marsan on May 9, 2012, for Bellini, except for the following adjustments: For Bellini, we adjusted the per-unit material costs for one CONNUM sold but not produced during the POR to account for the cost of bran consumed. We adjusted Bellini's reported total cost of manufacturing (TCOM) to account for an unreconciled difference between the total cost of sales in the audited financial statements and the extended total cost of manufacturing captured in the reported cost file.[30]

2. Test of Comparison Market Prices

We compared the weighted-average COPs for the collapsed Marsan/Bellini entity to their home market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.,* normally a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model-specific basis, we compared the COP to the home market prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.[31]

3. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of the respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because: (1) They were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that Marsan/Bellini made sales below cost and we disregarded such sales where appropriate.[32]

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-works, free on board (FOB) or delivered prices to comparison market customers. Pursuant to 19 CFR 351.401(c), we made deductions from the starting price, when appropriate, for discounts and rebates. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively. We also deducted home market movement expenses pursuant to section 773(a)(6)(B) of the Act. In addition, for comparisons made to EP sales, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b). Specifically, we made adjustments to NV for comparison to respondents' EP transactions by deducting direct selling expenses incurred for home market sales (*i.e.,* credit expenses) and adding U.S. direct selling expenses (*i.e.,* credit expenses). *See* section 773(a)(6)(C)(iii) of the Act, and 19 CFR 351.410(c).[33]

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing

[26] *See* TAT's November 9, 2011, section A response at 3 and *also see* Marsan's November 4, 2011, section A response at 4 and Exhibit A–1.

[27] *See* 19 CFR 351.403(c).

[28] *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69187 (November 15, 2002); TAT's November 9, 2011, section B response at B–3; and *also see* Marsan's November 4, 2011, section B response at 7 and 8.

[29] *See 97/98 Review Final.* Marsan is the successor-in-interest to Gidasa, who was the successor-in-interest to Maktas, the company subject to the 97/98 review cited in this notice.

[30] *See* Memorandum to Neal M. Halper, Director, Office of Accounting through Taija A. Slaughter, Lead Accountant from Robert B. Greger, Senior Accountant, titled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Bellini,'' dated July 30, 2012.

[31] *See* Marsan's Preliminary Calculation Memo Birlik/Bellini.

[32] *See* Preliminary Calculation Memo Marsan/Bellini.

[33] *See Id.*

(VCOM) for the foreign like product and subject merchandise, using weighted-average costs.[34]

E. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP and/or CEP sales, to the extent practicable. When there are no sales at the same LOT, we compare U.S. sales to comparison market sales at a different LOT. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.

Pursuant to 19 CFR 351.412(c)(2), to determine whether comparison market sales were at a different LOT, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length affiliated) customers. The Department identifies the LOT based on: the starting price or constructed value (for normal value); the starting price (for EP sales); and the starting price, as adjusted under section 772(d) of the Act (for CEP sales). If the comparison-market sales were at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we will make an LOT adjustment under section 773(a)(7)(A) of the Act.

During the POR, TAT reported that all of its sales were EP sales. TAT produced and sold pasta to affiliated and unaffiliated wholesalers/distributors and retailers in the home market. TAT sold pasta through two channels of distribution in the home market. TAT sold pasta to unaffiliated wholesalers/distributors in the U.S. market and sold pasta through one channel of distribution. TAT claimed that there were no differences in levels of trade between sales in the home market and sales to the United States, and thus TAT did not provide a selling functions chart in its Section A Response.[35] Therefore, we preliminarily determine that no level of trade adjustment is warranted.

Birlik and Bellini produced and sold the subject merchandise to both affiliated and unaffiliated companies in the home and U.S. markets during the POR. Marsan, an unaffiliated company purchased pasta from Birlik and Bellini and sold the purchased pasta to unaffiliated customers in the home market and U.S. market. Birlik, Bellini, and Marsan claimed that there were no differences in levels of trade between sales in the home market and sales to the United States.[36] Therefore, we preliminarily determine that no level of trade adjustment is warranted,

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average percentage margins exist for the period July 1, 2010, through June 30, 2011:

Manufacturer/exporter	Margin (percent)
Birlik	0.00
Bellini	0.00
Bellini/Marsan	0.00
TAT	0.00

Disclosure

In accordance with 19 CFR 351.224(b), we intend to disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice.

Comments and Hearing

Interested parties are invited to comment on the preliminary results. Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 5 days after the time limit for filing the case briefs in accordance with 19 CFR 351.309(d). As specified by 19 CFR 351.309(c)(2), parties who submit arguments are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Written arguments should be submitted via the Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS).[37]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs.

The Department intends to publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any written comments or hearing, within 120 days from publication of this notice, in accordance with section 751(a)(3)(A) of the Act, unless the time limit is extended.

Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Act and 19 CFR 351.212(b)(1). The Department calculated importer-specific duty assessment rates on the basis of the ratio of the total antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer.[38] Where the assessment rate is above *de minimis,* we will instruct CBP to assess duties on all entries of subject merchandise by that importer.[39] Where the importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[40] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Assessment of Antidumping Duties.* This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States.[41] In such instances, we

[34] *See* Marsan's November 4, 2011, section B response at 44.

[35] *See* TAT's November 9, 2011, section B questionnaire response at 26.

[36] *See* Marsan's November 4, 20111, section B questionnaire response at 29.

[37] *See generally* 19 CFR 351.303.

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

[39] *See id.*

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

[41] As in the *14th Review Final Results,* we preliminarily determine that, for the first eleven months of the POR when Marsan was not affiliated with Birlik or Bellini, Marsan was not the first party in the transaction chain to have knowledge that the merchandise was destined for the United States. *See* Marsan's November 4, 2011 questionnaire

will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain pasta from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Marsan/Bellini and TAT will be the rates established in the final results of this review (except, if the rates are zero or *de minimis,* then zero cash deposit will be required); (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, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation conducted by the Department, the cash deposit rate will be 51.49 percent, the All-Others rate established in the LTFV.[42] Because we preliminarily determine that as of June 2, 2011, neither Birlik nor Bellini continue to exist as independent pasta producers, we are not establishing a cash deposit rate for these entities. These cash deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing 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 and/or countervailing duties occurred and the subsequent assessment of double antidumping and/or increase the antidumping duty by the amount of the countervailing duties.

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

Dated: July 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–19157 Filed 8–3–12; 8:45 am]

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response at 17. Thus, Marsan is not considered the exporter of subject merchandise during the first eleven months of the POR for purposes of this review.

[42] *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey,* 61 FR 38545 (July 24, 1996).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Preliminary Results of Review

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

SUMMARY: As discussed below, the U.S. Department of Commerce (''the Department'') preliminarily determines that Dongtai Peak Honey Industry Co., Ltd. (''Peak'') failed to cooperate to the best of its ability and is, therefore, applying adverse facts available (''AFA''). If these preliminary results are adopted in the final results of review, the Deparment will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR'').

DATES: *Effective Date:* August 6, 2012.

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

SUPPLEMENTARY INFORMATION:

Case Timeline

On January 31, 2012, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on honey from the People's Republic of China (''PRC'') covering the period December 1, 2010, through November 30, 2011.[1]

On March 2, 2012, the Department issued an antidumping duty questionnaire to Peak.[2] On March 23, 2012, Peak responded to Section A of the Department's questionnaire.[3] On April 9, 2012, Peak submitted a request for a one-day extension of the deadline to file its response to Sections C and D of the Department's questionnaire, less than 6 minutes before the deadline,[4] which would make the new deadline April 10, 2012. When the Department granted Peak's extension request, the Department advised Peak to file any future extension requests as soon as it suspects additional time may be necessary.[5] On April 9, 2012, Peak responded to Sections C and D of the Department's questionnaire.[6] On April 3, 2012, the Department issued Peak a supplemental Section A questionnaire with a deadline of April 17, 2012.[7] Peak did not submit a response nor request an extension by April 17, 2012. Instead, on April 19, 2012, Peak submitted a request for an extension of 10 days, which would have made the new due date April 27, 2012. On April 20, 2012, the American Honey Producers Association and Sioux Honey Association (collectively ''Petitioners'') submitted an objection to the untimely extension request by Peak.[8] On April 24, 2012, Peak submitted a rebuttal to Petitioners Objection to Untimely Extension Request.[9] On April 27, 2012, Peak requested a second extension of one day, until April 28, 2012, and submitted its supplemental Section A response after the close of business on April 27, 2012. On May 22, 2012, the

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 77 FR 4759 (January 31, 2012) (''*Initiation Notice*'').

[2] *See* Letter from Catherine Bertrand, Program Manager, Office 9, to Peak, ''Honey from the People's Republic of China (''PRC''): Non-Market Economy Questionnaire'' (March 2, 2012).

[3] *See* Letter from Peak to the Secretary of Commerce regarding Section A Response (March 23, 2012).

[4] *See* Memo to the File from Kabir Archuletta, International Trade Analyst, Office 9, ''IA ACCESS Submission Confirmation for Dongtai Peak Honey Industry Co., Ltd., Section C and D Questionnaire Response Extension'' dated concurrently with this notice.

[5] *See* Memo to the File from Kabir Archuletta, International Trade Analyst, Office 9, ''Dongtai Peak Honey Industry Co., Ltd., Questionnaire Extension'' (April 9, 2012) (''April 9 Extension Memo'').

[6] *See* Letter from Peak to the Secretary of Commerce regarding Section C and D Response (April 9, 2012).

[7] *See* Letter from Catherine Bertrand, Program Manager, Office 9, to Peak regarding Supplemental Section A Questionnaire (April 3, 2012) (''Peak Supplemental Section A'').

[8] *See* Letter from Petitioners to the Secretary of Commerce regarding objection to extension request by Peak (April 20, 2012) (''Petitioners Objection to Untimely Extension Request'').

[9] *See* Letter from Peak to the Secretary of Commerce regarding Peak's rebuttal to Petitioners' objection (April 24, 2012) (''Peak's Rebuttal to Petitioners' Objection'').

Department rejected, and removed from the record, both of Peak's untimely filed extension requests and its untimely filed supplemental Section A response pursuant to 19 CFR 351.302(d).[10] On April 16, 2012, Petitioners withdrew their request for an administrative review for all companies under review except Peak.[11] On May 1, 2012, the Department rescinded the review with respect to Anhui Honghui, Foodstuff (Group) Co., Ltd., Shanghai Bloom International Trading Co., Ltd., Shanghai Taiside Trading Co., Ltd., Tianjin Eulia Honey Co., Ltd., and Wuhan Bee Healthy Co., Ltd., as these companies have a separate rate. The Department stated it would address the disposition of the remaining withdrawn companies that do not have a separate rate in the preliminary results of this review.[12]

Scope of the Order

The products covered by the order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to the order is currently classifiable under subheadings 0409.00.00, 1702.90.90, 2106.90.99, 0409.00.0010, 0409.00.0035, 0409.00.0005, 0409.00.0045, 0409.00.0056, and 0409.00.0065 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Withdrawal of Requests for Review

As stated above, on April 16, 2012, Petitioners withdrew their request for an administrative review for all companies under review except Peak. The Department previously rescinded those companies which had a separate rate and stated that we would address the disposition of the remaining withdrawn companies that did not have a separate rate at the preliminary results of this review.[13] We note that the deadline to file a separate rate application, separate rate certification, or a notification of no sales, exports or entries, is 60 days after the initiation of the administrative review,[14] which in this case was March 31, 2012. Therefore, as of April 1, 2012, the remaining companies under review that did not demonstrate eligibility for a separate rate effectively became part of the PRC-wide entity. Accordingly, while the requests for review of those companies were withdrawn by Petitioners on April 16, 2012, those withdrawn companies remain under review as part of the PRC-wide entity and the Department will make a determination with respect to the PRC-wide entity at these preliminary results and the final results.[15]

Facts Otherwise Available

Section 776(a) of the Tariff Act of 1930, as amended (''the Act''), provides that the Department shall use facts otherwise available if necessary information is not otherwise available on the record of the antidumping proceeding. Specifically, section 776(a)(2) of the Act provides that where an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching its determination.

As explained above, the Department cautioned Peak in its April 9 Extension Memo with respect to timely extension requests, and advised Peak that the Department must be afforded adequate time to fully consider such requests. Further, we note that the instructions in the Section A supplemental questionnaire issued to Peak, which it failed to timely submit, stated that a response or extension request must be received by close of business on the day of the deadline or the Department may resort to the use of facts available.[16] As noted above, Peak did not timely respond to the supplemental Section A questionnaire issued by the Department on April 3, 2012 and the Department rejected Peak's untimely filed extension requests and its untimely filed supplemental Section A response pursuant to 19 CFR 351.302(d).

We note that in *Grobest,* the Court of International Trade (''CIT'' or the ''Court'') recently held that rejecting a separate rate certification (''SRC'') that was three months late was an abuse of discretion because, *inter alia,* the certification had been submitted early in the proceeding, the respondent was diligent in attempting to correct the error, and the burden on the agency to consider the certification would have been minimal.[17] The Court noted that the facts of that case suggested that the administrative burden of reviewing the SRC rejected by the Department would not have been great because the Department had granted the respondent company separate-rate status in the preceding three administrative reviews without needing to conduct a separate-

[10] *See* Letter from Catherine Bertrand, Program Manager, Office 9, to Peak ''Tenth Administrative Review of Honey from the People's Republic of China (''PRC''): Rejection of Supplemental Section A Questionnaire Response and Removal from the Record'' (May 22, 2012) (''Untimely Extension Request Rejection Letter''). On June 7, 2012, Peak filed a request for reconsideration of the Department's decision to reject Peak's submissions, which we are declining to do at this time. *See* Letter from Peak to the Secretary of Commerce regarding Peak's request for reconsideration of rejected documents (June 7, 2012).

[11] *See* Letter from Petitioners to the Secretary of Commerce ''Petitioners' Partial Withdrawal of Request for Tenth Administrative Review'' (April 16, 2012).

[12] *See Honey From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review,* 77 FR 25682 (May 1, 2012).

[13] *See id.*

[14] *See Initiation Notice* 77 FR at 4759–4760.

[15] Ahcof Industrial Development Corp., Ltd.; Alfred L. Wolff (Beijing) Co., Ltd.; Anhui Changhao Import & Export Trading; Anhui Honghui Import & Export Trade Co., Ltd.; Anhui Cereals Oils and Foodstuffs I/E (Group) Corporation; Anhui Hundred Health Foods Co., Ltd.; Anhui Native Produce Imp & Exp Corp.; APM Global Logistics (Shanghai) Co.; Baiste Trading Co., Ltd.; Cheng Du Wai Yuan Bee Products Co., Ltd.; Chengdu Stone Dynasty Art Stone; Damco China Limited Qingdao Branch; Eurasia Bee's Products Co., Ltd.; Feidong Foreign Trade Co., Ltd.; Fresh Honey Co., Ltd. (formerly Mgl. Yun Shen); Golden Tadco Int'l.; Hangzhou Golden Harvest Health Industry Co., Ltd.; Hangzhou Tienchu Miyuan Health Food Co., Ltd.; Haoliluck Co., Ltd.; Hengjide Healthy Products Co. Ltd.; Hubei Yusun Co., Ltd.; Inner Mongolia Altin Bee-Keeping; Inner Mongolia Youth Trade Development Co., Ltd.; Jiangsu Cereals, Oils Foodstuffs Import Export (Group) Corp.; Jiangsu Kanghong Natural Healthfoods Co., Ltd.; Jiangsu Light Industry Products Imp & Exp (Group) Corp.; Jilin Province Juhui Import; Maersk Logistics (China) Company Ltd.; Nefelon Limited Company; Ningbo Shengye Electric Appliance; Ningbo Shunkang Health Food Co., Ltd.; Ningxia Yuehai Trading Co., Ltd.; Product Source Marketing Ltd.; Qingdao Aolan Trade Co., Ltd.; QHD Sanhai Honey Co., Ltd.; Qinhuangdao Municipal Dafeng Industrial Co., Ltd.; Renaissance India Mannite; Shaanxi Youthsun Co., Ltd.; Shanghai Foreign Trade Co., Ltd.; Shanghai Hui Ai Mal Tose Co., Ltd.; Shanghai Luyuan Import & Export; Shine Bal Co., Ltd.; Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd.; Sichuan Hasten Imp Exp. Trading Co. Ltd.; Silverstream International Co., Ltd.; Sunnice Honey; Suzhou Aiyi IE Trading Co., Ltd.; Suzhou Shanding Honey Product Co., Ltd.; Tianjin Weigeda Trading Co., Ltd.; Wanxi Haohua Food Co., Ltd.; Wuhan Shino-Food Trade Co., Ltd.; Wuhu Anjie Food Co., Ltd.; Wuhu Deli Foods Co. Ltd.; Wuhu Fenglian Co., Ltd.; Wuhu Qinshi Tangye; Wuhu Xinrui Bee-Product Co., Ltd.; Xinjiang Jinhui Food Co., Ltd.; Youngster International Trading Co., Ltd.; and, Zhejiang Willing Foreign Trading Co.

[16] *See* Letter from Catherine Bertrand, Program Manager, Office 9, to Peak regarding Supplemental Section A Questionnaire (April 3, 2012), at 2.

[17] *See Grobest & I-Mei Industrial (Vietnam) Co., Ltd.,* v. *United States,* 815 F. Supp. 2d 1342, 1367 (CIT 2012) (*''Grobest''*).

rate analysis.[18] Therefore, but for the untimeliness of its submission, the respondent would likely have received a separate rate in the segment in question, with minimal administrative burden imposed upon the Department, and, as a result of its rejected submission, was likely assigned an inaccurate and disproportionate margin.[19] The CIT further held that, while the Department has discretion both to set deadlines and to enforce those deadlines by rejecting untimely filings, that discretion is not absolute and the Court will evaluate ''on a case-by-case basis whether the interests of accuracy and fairness outweigh'' the Department's administrative burden and interest in finality.[20]

In this case, the Department has considered Peak's untimely requests for extension, and determined that Peak has not provided good cause for submitting its extension requests in an untimely manner. As noted by the Court in *Grobest,* the Department has the discretion to ''set and enforce deadlines.'' [21] The Departments regulations provide that the agency ''may, for good cause, extend any time limit established by this part.'' [22] Parties requesting an extension are required to submit a written request ''before the time limit specified'' by the Department, and must ''state the reasons for the request.'' In its Supplemental Section A Extension Request Peak explained that it was requesting an extension of the deadline for filing its supplemental Section A response due to unexpected computer failures and difficulties communicating with management who were away on business.[23] However, Peak provided no explanation as to why it was unable to file the actual extension request in a timely manner prior to the deadline for its questionnaire response, as required by section 19 CFR 351.302(c).[24] This deficiency was also pointed out by Petitioners in their objection to Peak's extension request: ''* * *the request fails to explain in any manner why it was not filed prior to the deadline.'' [25] In Peak's Rebuttal to Petitioners' Objection, Peak again failed to address this deficiency, merely reiterating that the Department's regulations and long-standing policy allow it to extend any deadline for good cause, explaining that the ''circumstances surrounding the unanticipated delay in the preparation of the Supplemental Questionnaire at issue were caused by unexpected computer failures and the difficulties in communicating with the management personnel who were traveling in remold areas for business.'' [26] While the Department may extend deadlines, it does so ''for good cause,'' in accordance with 19 CFR 351.302(b). Because Peak did not provide any explanation for why it did not submit its extension request in a timely manner, the Department determined that Peak had not provided good cause pursuant to 19 CFR 351.302(b) for the Department to extend retroactively its deadline for the extension request and rejected Peak's two untimely extension requests and its supplemental Section A response.[27]

The Department set deadlines in this proceeding after careful consideration of the time and resources that were needed to complete a review of Peak's sales during the POR. Peak's U.S. sales have been found to be non-*bona fide* in two prior reviews,[28] a determination that requires careful consideration of the totality of circumstances, including: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arms-length basis; [29] (6) as well as the business practices of the importer and U.S. customers.[30] The supplemental Section A questionnaire that Peak failed to timely submit would have provided information regarding Peak's reported quantity and value, its separate rate status, structure and affiliations, sales process, accounting and financial practices, and merchandising. This information has proven vital to the Department's prior non-*bona fide* analyses. Moreover, the Department requires a significant amount of time and effort to gather the necessary information, consider the facts of the record, and provide interested parties with an appropriate period for comments and rebuttal comments. For example, in the ninth administrative review of this proceeding the Department issued its initial questionnaire to Peak in February 2011, and continued to request and receive supplemental questionnaire responses until December 13, 2011, just 10 days before the preliminary results were signed.[31] In order to properly analyze and consider submissions from Peak and Petitioners, and provide an opportunity for interested parties to comment, the Department was required to extend both its preliminary and final results.[32] The establishment of deadlines for submission of factual information in an antidumping duty review is not arbitrary. Rather, deadlines are specifically designed to allow a respondent sufficient time to prepare responses to detailed requests for information, and to allow the Department to analyze and verify that information, within the statutorily-mandated timeframe for completing the review. The Department recognizes that respondents may encounter difficulties in meeting certain deadlines in the course of any segment; indeed, the Department's regulations specifically address the requirements governing requests for extensions of specific time limits (*i.e.,* 19 CFR 351.302(c)). While the Department may extend deadlines when possible, and where there is good cause, here Peak submitted no explanation for why it was unable to submit its extension requests in a timely manner.

As noted above, Peak, had previously requested an extension for its Section C and D response before the applicable deadline, albeit very close to that deadline, and the Department advised

[18] *See id.*

[19] *See Grobest,* 815 F. Supp. 2d at 1366–1367.

[20] *See Grobest,* 815 F. Supp. 2d at 1367.

[21] *See Grobest,* 815 F. Supp. 2d at 1365.

[22] *See* 19 CFR 351.302(b).

[23] *See* Peak's Rebuttal to Petitioners' Objection, at 2.

[24] *See id.*

[25] *See* Petitioners Objection to Untimely Extension Request, at 2.

[26] *See* Peak's Rebuttal to Petitioners' Objection, at 2.

[27] *See* Untimely Extension Request Rejection Letter, at 2.

[28] *See Administrative Review of Honey from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review, In Part,* 75 FR 24880, 24881 (May 6, 2010); *Honey from the People's Republic of China: Final Rescission of Antidumping Duty Administrative Review,* 77 FR 34343, 34344 (June 11, 2012) (''*PRC Honey AR9 Final*'').

[29] *See Tianjin Tiancheng Pharmaceutical Co., Ltd.* v. *United States,* 366 F. Supp. 2d 1246, 1250 (CIT 2005) (''*TTPC*'').

[30] *See New Donghua,* 374 F. Supp. 2d at 1343–44.

[31] *See Honey From the People's Republic of China: Preliminary Rescission of the Administrative Review,* 77 FR 79, 80 (January 3, 2012) (''*PRC Honey AR9 Prelim*'') (''While the Department continued to receive submissions from both Petitioners and {Peak} through December, we were unable to take submissions submitted on or after December 13, 2011, into consideration for these preliminary results due to the close proximity to statutory deadlines'').

[32] *See Ninth Administrative Review of Honey From the People's Republic of China: Extension of Time Limit for the Preliminary Results,* 76 FR 47238 (August 4, 2011) (''The Department requires more time to gather and analyze surrogate value information, and to review questionnaire responses and issue supplemental questionnaires.''); *Honey From the People's Republic of China: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review,* 77 FR 11489 (February 27, 2012) (''The Department requires additional time to complete this review because the Department must fully analyze and consider significant issues regarding whether the respondent's sales were *bona fide.* Further, the Department extended the due date for submission of the rebuttal comments to the case briefs at the request of an interested party.'').

Peak at that time that extension requests must be made well before the applicable deadline.[33] Accordingly, it was important for Peak to provide the Department adequate notice that it required additional time to submit the supplemental Section A questionnaire response in the current administrative review. Rather than doing so, Peak submitted two untimely extension requests, without providing any explanation or ''good cause'' within the meaning of section 351.302(b), for why it was unable to submit an extension request in a timely manner. The Department notes that Peak did so despite being cautioned on at least two occasions that all extension requests must be submitted before the deadline for the requested information. Peak's supplemental Section A response was submitted eleven days after the original deadline, without the Department having granted Peak's two untimely extension requests.[34] Therefore, we rejected Peak's supplemental Section A response as untimely pursuant to 19 CFR 351.302(d).[35] Furthermore, the Department's decision to reject the submissions at issue is consistent with the general practice of rejecting untimely filed questionnaire responses.[36] The Department establishes appropriate deadlines to ensure that its ability to complete the proceeding is not jeopardized. We note that the CIT has long recognized the need to establish, and enforce, time limits for filing questionnaire responses, the purpose of which is to aid the Department in the administration of the dumping laws.[37]

Accordingly, because the record lacks a complete Section A response[38] from Peak, which has contained information vital to our analyses of this respondent in prior reviews, the Department finds that the information necessary to calculate an accurate margin is not available on the record of this review. Further, because we issued questions regarding Peak's separate rate status[39] to which Peak did not timely respond, Peak did not establish its eligibility in this segment of the proceeding for a separate rate. As a result, we preliminarily find Peak to be part of the PRC-wide entity. Because the entity, which includes Peak, did not cooperate to the best of its ability, the record lacks the requisite data that is needed to reach a determination. Accordingly, the Department finds that the necessary information to calculate an accurate and reliable margin is not available on the record of this proceeding. The Department finds that because Peak, as part of the PRC-wide entity, failed to submit its response to the Department's Supplemental Section A questionnaire, the PRC-wide entity withheld the requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act. On this basis, the Department finds that it must rely on the facts otherwise available to determine a margin for the PRC-wide entity in accordance with section 776(a) of the Act.[40]

Adverse Facts Available

Section 776(b) of the Act states 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 from the administering authority * * * {the Department} * * * may use an inference that is adverse to the interests of the party in selecting from among the facts otherwise available.''[41] Adverse inferences are appropriate to ''ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.''[42] In selecting an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.[43]

The Department determines that the PRC-wide entity, which includes Peak due to its failure to respond to all of the Department's questionnaires, has failed to cooperate to the best of its ability in providing the requested information. Accordingly, pursuant to sections 776(a)(2)(A), (B), and (C) and section 776(b) of the Act, we find it appropriate to apply a margin to the PRC-wide entity based entirely on the facts available, and to apply an adverse inference.[44] By doing so, we ensure that the PRC-wide entity, which includes Peak, will not obtain a more favorable result by failing to cooperate than had it cooperated fully in this review.

The Department's practice is to select an AFA rate that is sufficiently adverse as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner and that ensures that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.[45] Specifically, the Department's practice in reviews, when selecting a rate as total AFA, is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated.[46] The CIT and the U.S. Court of Appeals for the Federal Circuit (''Federal Circuit'') have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.[47] Therefore, we

[33] *See* April 9 Extension Memo.

[34] *See* Untimely Extension Request Rejection Letter at 1.

[35] *See id.* at 2.

[36] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Ukraine,* 66 FR 50401 (October 3, 2001), and accompanying Issues and Decision Memorandum at Comment 5; *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China,* 69 FR 67313 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 82.

[37] *See e.g. Nippon Steel Corp.* v. *United States,* 118 F. Supp. 2d 1366, 1377 (CIT 2000); and *Seattle Marine Fishing Supply, et al.* v. *United States,* 679 F. Supp. 1119, 1128 (CIT 1998) (it was not unreasonable for the Department to refuse to accept untimely filed responses, where ''the record displays the ITA followed statutory procedure'' and the respondent ''was afforded its chance to respond to the questionnaires, which it failed to do.'')

[38] The supplemental questionnaire to which Peak failed to respond requested explanations and clarifying information regarding its quantity and value, separate rate status, structure and affiliations, sales process, accounting and financial practices, and merchandising. *See* Peak Supplemental Section A.

[39] *See id.,* at 4–6.

[40] *See Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 71 FR 69546 (December 1, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

[41] *See also* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No., 103–316 at 870 (1994) (''SAA'').

[42] *See id.*

[43] *See* section 776(b) of the Act.

[44] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review,* 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME-wide entity), unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Administrative Review and First New Shipper Review,* 72 FR 52052 (September 12, 2007).

[45] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8911 (February 23, 1998); *see also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review,* 70 FR 69937, 69939 (November 18, 2005), and SAA at 870.

[46] *See Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 15930, 15934 (April 8, 2009), unchanged in *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 41121 (August 14, 2009); *see also Fujian Lianfu Forestry Co., Ltd.* v. *United States,* 638 F. Supp. 2d 1325, 1336 (CIT August 10, 2009) (''Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.'').

[47] *See, e.g., KYD, Inc.* v *United States,* 607 F.3d 760, 766–767 (CAFC 2010) (''*KYD*''); *see also NSK*

are assigning the PRC-wide entity, which includes Peak, a rate of $2.63 per kilogram, which is the highest rate on the record of this proceeding and which was the rate assigned to the PRC-wide entity in the seventh administrative review of this proceeding, the most recent review that was not rescinded.[48]

Corroboration

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. To be considered corroborated, the Department must find the information has probative value, meaning that the information must be both reliable and relevant.[49] Secondary information is ''{i}nformation 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 {of the Act} concerning the subject merchandise.''[50] Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated margins. Thus, in an administrative review, if the Department chooses, as AFA, a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin.[51]

The Department considers the AFA rate calculated for the current review as both reliable and relevant. On the issue of reliability, the adverse rate selected was calculated for another respondent, Anhui Native Produce Import & Export Corporation, during the sixth administrative review.[52] No information has been presented in the current review that calls into question the reliability of this information. With respect to the relevance, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico,* the Department disregarded the highest margin in that case as best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin.[53] This rate was assigned to the PRC-wide entity in a prior review which demonstrates its relevance to the PRC-wide entity. Furthermore, the selected AFA margin is based upon the calculated rate for another respondent in sixth administrative review of this proceeding, and thus reflects the commercial reality of a competitor in the same industry.[54] There is no information on the record to indicate that this rate is not relevant, as was the case in *Fresh Cut Flowers from Mexico.* For all these reasons, the Department finds that this rate is also relevant.

Given that the PRC-wide entity, which includes Peak, failed to cooperate to the best of its ability in this administrative review, it is appropriate to select an AFA rate that serves as an adequate deterrent in order to induce cooperation in the proceeding. The Federal Circuit held in *KYD,* that selecting the highest prior margin reflects ''a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer knowing of the rule, would have produced current information showing the margin to be less.''[55] Here, Peak did not produce current information in a timely manner, as noted above. On this basis, we find that selecting the highest calculated rate of this proceeding is sufficiently relevant to the commercial reality for the PRC-wide entity, which includes Peak. Furthermore, there is no information on the record of this review that demonstrates that this rate is uncharacteristic of the industry, or otherwise inappropriate for use as AFA. Based upon the foregoing, we determine this rate to be relevant.

As the $2.63 per kilogram AFA rate is both reliable and relevant, we determine that it has probative value and is corroborated to the extent practicable, in accordance with section 776(c) of the Act. Therefore, we have assigned this rate as AFA to exports of the subject merchandise by the PRC-wide entity, which includes Peak.

Preliminary Results of Review

We preliminarily determine that the following antidumping duty margin exists:

Manufacturer/Exporter	Margin (dollars per kilogram)
PRC-wide entity (which includes Dongtai Peak Honey Industry Co., Ltd.)	$2.63

Briefs and Public Hearing

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited, in accordance with 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, pursuant to the Department's e-filing regulations located at *https://iaaccess.trade.gov/help/IA%20ACCESS%20User%20Guide.pdf.* Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing

Ltd. v. *United States,* 346 F. Supp. 2d 1312, 1335 (CIT 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin calculated for a different respondent in the investigation).

[48] *See Administrative Review of Honey from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review, In Part,* 75 FR 24880, 24882 (May 6, 2010).

[49] *See* SAA at 870; *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).

[50] *See* SAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308 (d).

[51] *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part,* 69 FR 55581 (September 15, 2004), and accompanying Issues and Decision Memorandum at Comment 18.

[52] *See Honey From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 796 (January 8, 2009) (''*PRC Honey AR6*'').

[53] *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (''*Fresh Cut Flowers from Mexico*'') cited in *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review,* 77 FR 21734, 21737 (April 11, 2012).

[54] *See PRC Honey AR6.*

[55] *See KYD, Inc.* v. *United States,* 607 F.3d 760, 766 (Fed. Cir. 2010) citing *Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1190 (CAFC 1990).

will be limited to those raised in the respective case briefs.

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

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. In accordance with 19 CFR 351.212(b)(1), we will calculate importer- (or customer-) specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we will calculate importer- (or customer-) specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). Where an importer- (or customer-) specific ad valorem rate is greater than de minimis, we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR, pursuant to 19 CFR 351.212(b)(1).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or de minimis, *i.e.,* less than 0.5 percent, no cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of $2.63 per kilogram; and, (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–19151 Filed 8–3–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–837]

Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from Taiwan. The period of review (POR) is July 1, 2010, through June 30, 2011. This review covers respondents Shinkong Synthetic Fibers Corporation (SSFC) and its subsidiary Shinkong Materials Technology Co. Ltd. (SMTC) (collectively, Shinkong), and Nan Ya Plastics Corporation, Ltd. (Nan Ya), producers and exporters of PET Film from Taiwan. The Department preliminarily determines that Nan Ya made and Shinkong did not make sales of PET Film from Taiwan below normal value (NV). The preliminary results are listed below in the section titled ''Preliminary Results of Review.'' Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* August 6, 2012.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Milton Koch, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 428–3964, or (202) 482–2584, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, the Department published in the **Federal Register** the antidumping duty order on PET Film from Taiwan.[1] On July 1, 2011, the Department published a notice of opportunity to request an administrative review of the order.[2] In response, on July 29, 2011, Petitioners[3] requested that the Department conduct an administrative review of Nan Ya's and Shinkong's sales of PET Film from Taiwan to the United States. Also on July 29, Shinkong requested that the Department conduct an administrative review of its sales. On August 1, 2011, Nan Ya requested that the Department conduct an administrative review of its sales.[4] On November 25, 2011, Petitioners withdrew their request for an administrative review of Nan Ya. However, because Nan Ya requested a review of itself, there was no basis to rescind the review of Nan Ya.

On August 26, 2011, the Department initiated an administrative review of Shinkong and Nan Ya (collectively, the respondents).[5] On September 9, 2011, the Department issued an antidumping duty questionnaire to the respondents. On October 21 and 24, 2011, respectively, Shinkong and Nan Ya timely filed their Section A response. On November 14 and 18, 2011,

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[1] *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan,* 67 FR 44174 (July 1, 2002), as corrected in 67 FR 46566 (July 15, 2002).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review,* 76 FR 38609, 38610 (July 1, 2011).

[3] Petitioners are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc.

[4] This request was timely because July 31, 2011 was a Sunday. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,*70 FR 24533 (May 10, 2005).

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation In Part,* 76 FR 53404, 53406 (August 26, 2011).

respectively, Shinkong and Nan Ya timely filed their Section B, C, and D responses. On March 27, 2012, the Department extended the time period for issuing the preliminary results of this administrative review.[6]

On April 11, 2012, Petitioners filed comments on Nan Ya's questionnaire response. Between April and July 2012, the Department issued several supplemental questionnaires separately on sections A, B, and C, and section D, to both Shinkong and Nan Ya requesting additional information. All responses were timely submitted. On July 9, 2012, Petitioners filed comments on both Nan Ya's and Shinkong's questionnaire responses. On July 17, 2012, Petitioners filed targeted dumping allegations for both Nan Ya and Shinkong.

For purposes of these preliminary results the Department did not conduct a targeted dumping analysis. In calculating the preliminary weighted-average dumping margins for the mandatory respondents, the Department applied the calculation methodology adopted in *Final Modification for Reviews.*[7] In particular, the Department compared monthly weighted-average export prices (EPs) (or constructed export prices (CEPs)) with monthly weighted-average NVs 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 these administrative reviews in light of the parties' pre-preliminary comments and any comments on the issue that parties may include in their case and rebuttal briefs.

Scope of the Order

The products covered by the antidumping duty order are all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of polyethylene terephthalate film, sheet, and strip are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the antidumping duty order is dispositive.

Period of Review

The POR for this administrative review is July 1, 2010, through June 30, 2011.

Use of Facts Otherwise Available

Section 776(a) of the Act provides 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.

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 be used, can be used without undue difficulties, 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 supplied.

For the reasons discussed below, the Department determines that, in accordance with section 776(a)(1) of the Act, the use of facts otherwise available is appropriate for the preliminary results with respect to Nan Ya's sales to certain importers in the United States. Because Nan Ya reported these sales as CEP sales, and we are treating these sales as EP sales for purposes of these preliminary results (*see* ''Affiliation of Nan Ya with U.S. Customers''), necessary information, the invoice date of these sales, is not available on the record.

Collapsing SSFC and SMTC

The Department will treat two or more affiliated producers as a single entity where: (1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility; and (2) there is a significant potential for manipulation of price or production pursuant to 19 CFR 351.401(f)(1) and (2). Consistent with the most recently completed administrative review, the Department preliminarily determines that SSFC and SMTC should be treated as a single entity (*i.e.,* Shinkong) for purposes of calculating an antidumping margin pursuant to 19 CFR 351.401(f).[8]

SMTC was established in October 2004 and it is a subsidiary of SSFC. In the past, SSFC and SMTC both produced similar or identical merchandise, including subject merchandise. At the start of the current POR, on July 1, 2010, SSFC sold its equipment and machinery to its subsidiary SMTC, and SSFC stopped producing subject merchandise.[9] However, the equipment remained at SSFC's facility and SSFC charged SMTC a plant management fee. Similar to the structure of companies the Department found affiliated in *Pipe Fittings from Italy*[10] and *Shrimp from Brazil,*[11] because SSFC is the majority shareholder of SMTC, the level of common ownership between SSFC and SMTC is such that operations are so intertwined that they are integral to the operations of each other. Shinkong reported that the management of the two companies is commingled and that SSFC and SMTC are effectively managed and operated as one company.[12] Thus, we find that the two

[6] *See Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 76 FR 13128 (March 10, 2011).

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

[8] *See Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 47540, 47541 (August 5, 2011) (''*PET Film Prelim 09–10''*) unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review;* 76 FR 76941 (December 9, 2011) (''*PET Film Review 09–10''*).

[9] *See* Shinkong's October 21, 2011 submission at 1.

[10] *See Stainless Steel Butt-Weld Pipe Fittings From Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination,* 76 FR 79655 (December 22, 2011) (*Pipe Fittings from Italy*), unchanged in *Stainless Steel Butt-Weld Pipe Fittings From Italy: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination,* 77 FR 24459 (April 24, 2012).

[11] *See Final Results of the Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from Brazil,* 69 FR 76910 (December 23, 2004).

[12] *See* Shinkong's October 21, 2011 submission at 7.

companies could switch roles and restructure manufacturing priorities such that there is a significant potential for the manipulation of price or production and that, according to our practice, they satisfy the first criteria of 19 CFR 351.401(f)(1). With regard to the significant potential for manipulation pursuant to 19 CFR 351.401(f)(2), we find that, because SMTC has a fully functioning facility for producing the subject merchandise, which is located on the same premises and is controlled by SSFC,[13] the role of producer and seller could easily switch from SMTC to SSFC without substantial retooling at either company. We also found that the majority ownership of SMTC by SSFC demonstrates a significant potential for manipulation of price or production between the two companies. In addition, the sale of the production equipment to SMTC without its relocation; the imposition of a plant management fee by SSFC on SMTC; and, the provision of major inputs at cost by SSFC to SMTC demonstrate that production operations are intertwined. Furthermore, the commingled management highlights that the companies are effectively operated and managed as one. Therefore, because both 19 CFR 351.401(f)(1) and (2) are met, we are continuing to collapse SSFC and SMTC, and treat them as a single entity, Shinkong, for these preliminary results.

Affiliation of Nan Ya With U.S. Customers

In the less-than-fair-value investigation [14] and subsequent administrative reviews,[15] the Department determined that Nan Ya, through a family grouping, was in a position of legal and operational control of three of its U.S. customers, in accordance with section 771(33)(F) of the Tariff Act of 1930, as amended (the Act). We found that members of a family involved in the ownership and management of Nan Ya also shared ownership and management of three U.S. importers, and that this family possessed the potential to act in concert or act out of common interest to exert restraint or direction over the activities of these U.S. companies.

In the last administrative review that analyzed Nan Ya's affiliation with these three U.S. importers that purchased and sold the subject merchandise, Nan Ya reported that the 2008 death of its Chairman, Mr. Y.C. Wang, dissolved the family ties and common ownership interests such that there was no longer an affiliation between Nan Ya and these three U.S. importers. However, the Department found that Nan Ya had not provided sufficient information to warrant the reconsideration of our prior affiliation finding.[16] Nan Ya now has provided information in the instant review regarding both the disposition of Mr. Y.C. Wang's assets and the current ownership and corporate structure of Nan Ya and the three U.S. importers that the Department found affiliated in past proceedings.[17] Our analysis of this information indicates that following the death of the Chairman, and distribution of his assets to his heirs, there was no longer any evidence of control of Nan Ya by the family unit. Therefore, we preliminarily determine that Nan Ya is no longer affiliated with these three U.S. customers; as such, we are treating all of Nan Ya's U.S. sales as EP sales. For further discussion of the business proprietary ownership information, *see* the Nan Ya affiliation memorandum.[18]

Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of Shinkong's and Nan Ya's home market sales of the foreign like product to the volume of their U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B)(i) of the Act and 19 CFR 351.401(b). Based on this comparison, we found that both companies' 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, and have determined that both Shinkong's and Nan Ya's home markets were viable during the POR for comparison purposes.

Comparisons to Normal Value

To determine whether sales of PET Film were made at less than NV, we compared the respondents' EP sales made in the United States to unaffiliated customers to NV, as described below in the ''United States Price'' and ''Normal Value'' sections of this notice. In accordance with section 773(a)(1)(B)(ii) of the Act and 19 CFR 351.414(c)(1) and (d), we compared EP to NV of the foreign like product in the appropriate corresponding calendar month where there were sales made in the ordinary course of trade, as described in the ''United States Price'' and ''Normal Value'' sections of this notice. Further, we granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.[19]

Product Comparisons

Pursuant to section 771(16) of the Act, we determined that products sold by the respondents, as described in the ''Scope of the Order'' section above, in Taiwan during the POR are foreign like products for purposes of determining appropriate product comparisons to U.S. sales. For product comparisons, we relied on five criteria to match U.S. sales of subject merchandise to comparison-market sales (in order of importance): grade, specification, thickness, thickness range, and surface treatment.[20] Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed above.

Date of Sale

The Department normally uses invoice date as date of sale, consistent with 19 CFR 351.401(i). In prior

[13] *See* Shinkong's June 18, 2012 submission at 3.

[14] *See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan,* 67 FR 35474 (May 20, 2002) (''*PET Film from Taiwan Investigation''*).

[15] *See Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Final Results of Antidumping Duty Administrative Review,* 69 FR 50166 (August 13, 2004) and the accompanying Issues and Decision Memorandum at Comments 1 and 3; *see also Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Preliminary Results of Antidumping Duty Administrative Review*(''*Pet Film Prelim 08–09''*), 75 FR 49902 (August 16, 2010), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review,* 76 FR 9745 (February 22, 2011) (''*Pet Film Review 08–09''*).

[16] *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, ''Affiliation of Nan Ya Plastics Corporation, Ltd. (Nan Ya) with Certain U.S. Customers,'' dated August 9, 2010, and attached to the Nan Ya affiliation memorandum for the 2010–11 review period as Exhibit 1.

[17] *See* Nan Ya's Supplemental Questionnaire Response of June 29, 2012 at Questions 12–14 and Exhibits SE5–Exhibits 12–1 through 12–4.

[18] *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, ''Affiliation of Nan Ya Plastics Corporation, Ltd. (Nan Ya) with Certain U.S. Customers,'' dated July 30, 2012.

[19] In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Final Modification for Reviews.* In particular, the Department compared monthly weighted-average EPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.

[20] *See* the Department's September 9, 2011 Antidumping Duty Questionnaire, issued to Shinkong and Nan Ya respectively, at sections B and C; *see also PET Film Prelim 09–10,* 76 FR at 47572, unchanged in *PET Film Review 09–10.*

administrative reviews,[21] the Department used invoice date as the date of sale. In this review, and as explained further below, the Department continues to find that invoice date should be used as the date of sale for both respondents.

With respect to the specific invoice date the Department is using for Shinkong, this respondent reported that, on occasion, before subject merchandise was shipped, changes to the terms of sale occurred at the customer's request or because of Shinkong's production capacity. According to Shinkong, during the POR, for home market sales and for sales to the United States, the terms of sale were finalized in the Government Uniform Invoice (GUI).[22] As such, we preliminarily determine that for sales in the home market, and for sales to the United States made through domestic trading companies, the GUI date is the date on which the material terms of sale are finalized.[23] Therefore, this invoice date is the most appropriate date to use as Shinkong's date of sale. For sales made directly to U.S. customers, Shinkong explained that it issues its commercial invoice after production of subject merchandise is completed, at which time the terms of sale have been finalized.[24] Therefore, we preliminarily determine that, for sales made directly to the U.S. market, the commercial invoice date is the most appropriate invoice date to use as Shinkong's date of sale in accordance with 19 CFR 351.401(i), except when shipment date predates invoice date. In those instances, and consistent with the Department's practice, we have used shipment date instead of invoice date as the date of sale.[25]

Nan Ya reported the GUI invoice date as the date of sale in the home market during the POR, because Nan Ya allows the customer to change the order quantity after the date of the confirmed purchase order.[26] As such, we preliminarily determine that for sales in the home market, the GUI date is the invoice date on which the material terms of sale are finalized, and is therefore the most appropriate date to use as Nan Ya's date of sale.

Nan Ya requested that the Department use the sales confirmation date as the date of sale for its reported EP sales because, according to Nan Ya, that is the date on which the material terms of sale are established (*i.e.,* price and major product characteristics such as specification, thickness, and surface treatment).[27] In addition, Nan Ya reported that it establishes a sales confirmation ceiling for total weight by always entering 19,000 kg., which represents the capacity of one order container as a cushion for changes in production conditions. This allows importers to change the width and length of the product, and in rare cases, to add an additional roll, provided that the resulting weight is within the ceiling established on the sales confirmation.[28] Nan Ya also reported that there were a number of instances of sale changes by type and frequency for its reported U.S. sales that included other changes in addition to the product's width and length.[29]

The Department's regulation establishes a presumption for invoice date which may be overcome when a party demonstrates that the material terms of sale such as price and quantity are established on another date. Nan Ya has not demonstrated that the material terms of sale are established on sales confirmation date. Nan Ya allows for changes after the sales confirmation that alters the product, which occurs after the sales confirmation date. Indeed, the record evidence demonstrates that all final alterations to the product and the actual weight are determined at the time of invoicing when the product is released to the customer.[30] Thus, we preliminarily determine that the invoice date is the appropriate date to use as Nan Ya's date of sale in accordance with 19 CFR 351.401(i).

As noted above in the ''Affiliation of Nan Ya with U.S. Customers'' section, the Department has preliminarily determined that Nan Ya is no longer affiliated with certain U.S. importers and we now find all of Nan Ya's U.S. sales to be EP sales. However, because Nan Ya reported some of these sales as CEP sales, it did not provide its invoice date for these sales but provided the date of the purchase order between the U.S. importers and their unaffiliated customers as the date of sale. Because we have determined that the invoice date is the most appropriate date to use as Nan Ya's date of sale, necessary information, the invoice date of these sales, is missing from the record for NanYa's reported CEP sales, and we must rely on the facts available pursuant to section 776(a) of the Act.

As facts available, we have constructed an invoice date using the adjusted purchase order date as explained below. For the sales it had identified as CEP sales, Nan Ya reported the date of the purchase order between the U.S. importers and their unaffiliated customers as the date of sale. In addition, Nan Ya explained that for all of its U.S. importers, ''{o}nce a purchase order is issued by the U.S. customer of the importer to the importer, the latter will place purchase orders via email or facsimile with Nan Ya.''[31] Therefore, we have relied on the date of the purchase order between the U.S. customer and the importer to establish the date on which Nan Ya's U.S. importers issued purchase orders to Nan Ya. In order to derive the date on which Nan Ya issued its invoice for these sales, we relied on information on the record that indicates that Nan Ya issues its invoice when the merchandise is released to the customer, which is generally 30 to 60 days after the confirmed export order.[32] For purposes of these preliminary results, we have derived Nan Ya's invoice date for these sales by adding 45 days to the date on which the purchase order was received by Nan Ya from these U.S. importers. Because this change affects the calculation of credit expenses for some of the reported CEP sales that have been reclassified as EP sales, we have used, as facts available, the average credit expense for all reported EP sales to reflect this expense if it was incurred by the U.S. importer when purchasing subject merchandise from Nan Ya. After these preliminary results, we intend to gather information from Nan Ya to establish the actual date of Nan Ya's invoice and credit expenses for these sales.

United States Price

In calculating the U.S. price for Shinkong and Nan Ya, we used EP, as defined in section 772(a) of the Act, because sales to the first unaffiliated U.S. customer occurred before

[21] *See PET Film Prelim 09–10,* 76 FR at 47542, unchanged in *PET Film Review 09–10.*

[22] *See* Shinkong's October 21, 2012 submission at 17.

[23] *Id.*

[24] *Id.*

[25] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 7244, 7251(February 18, 2010), unchanged in *Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 41808 (July 19, 2010).

[26] *See* Nan Ya's Section B Questionnaire Response of November 22, 2011 at 14–15.

[27] *See* Nan Ya's Section A Questionnaire Response of October 24, 2011 at 20.

[28] *See* Nan Ya's Section C Questionnaire Response of November 22, 2011 at 14.

[29] *See* Nan Ya's Supplemental Questionnaire Response of June 5, 2012 at Exhibit SE2 14.a. ''Sales Change Type and Frequency in the U.S. Sales.''

[30] *See* Nan Ya's Section C Questionnaire Response of November 22, 2011 at 15.

[31] *See* Nan Ya's Section A Questionnaire Response of October 24, 2011 at 16.

[32] *See* Nan Ya's Section C Questionnaire Response of November 22, 2011 at 15.

importation.[33] We based EP on packed prices to customers in the United States. We made deductions from U.S. price for the following movement expenses in accordance with section 772(c)(2)(A) of the Act: domestic inland freight from plant to port of exportation, brokerage and handling incurred in the country of manufacture, marine insurance, and international freight.

Cost of Production Analysis

Pursuant to 773(b)(2)(A)(ii) of the Act, because the Department disregarded certain of Shinkong's and Nan Ya's sales in the most recently completed reviews of this order,[34] the Department had reasonable grounds to believe or suspect that Shinkong and Nan Ya made home market sales at prices below the cost of production (COP) in this review. As a result, the Department is directed under section 773(b) of the Act to determine whether Shinkong and Nan Ya made home market sales during the POR at prices below COP.

1. Calculation of COP

The Department's normal practice is to calculate an annual weighted-average cost for the entire POR.[35] This methodology is predictable and generally applicable in all proceedings. However, the Department recognizes that distortions may result if our normal annual average cost method is used during a period of significant cost changes. Under such circumstances, in determining whether to deviate from our normal methodology of calculating an annual weighted average cost, the Department has evaluated the case-specific record evidence using two primary factors: (1) Whether the change in the cost of manufacturing (COM) experienced by the respondent during the POR is significant; and (2) whether the record evidence indicates that sales prices during the shorter averaging periods could be reasonably linked with the COP or constructed value (CV) during the same shorter averaging periods.[36]

a. Significance of Cost Changes

Record evidence shows that Shinkong and Nan Ya experienced significant changes in the total COM during the POR and that the changes in COM are primarily attributable to the price volatility for purified terephthalic acid (PTA) and mono ethylene glycol (MEG),[37] the main inputs consumed in the production of the merchandise under consideration. Specifically, the record data shows that the percentage difference between the high and low quarterly COM exceeded 25 percent during the POR. As a result, we have determined that for these preliminary results the changes in COM for Shinkong and Nan Ya are significant.

b. Linkage Between Cost and Sales Information

The Department also evaluates whether there is evidence of linkage between the cost changes and the sales prices for the given POR. Absent a surcharge or other pricing mechanism, the Department may alternatively look for evidence of a pattern that changes in selling prices reasonably correlate to changes in unit costs.[38] To determine whether a reasonable correlation existed between the sales prices and underlying costs during the POR, we compared weighted-average quarterly prices to the corresponding quarterly COM for the control numbers with the highest volume of sales in the comparison market and in the United States. Our comparison revealed that the quarterly cost and quarterly sales prices for Shinkong and Nan Ya appear to be reasonably correlated during this period of significant cost changes.

In light of the two factors, we preliminarily find that it is appropriate to rely on a quarterly costing approach with respect to both Shinkong and Nan Ya. Thus, we used quarterly average PTA and EG costs and annual weighted-average fabrication costs in the COP calculations. For further discussion of this issue, *see* the Shinkong and Nan Ya cost adjustments memoranda.[39]

2. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated quarterly COP based on the sum of Shinkong's and Nan Ya's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A), interest expenses and home market packing costs. These calculations include revisions by the Department to the COP information reported by Shinkong and Nan Ya, consistent with Department practice.[40]

On a product-specific basis, we compared the revised COP figures to home market prices net of applicable billing adjustments, discounts and rebates, movement charges, selling expenses, and packing to determine whether home market sales had been made at prices below COP. In the last review for Shinkong, we ignored the grade product characteristic reported by Shinkong when calculating product-specific costs, as grade differences are the result of inadvertent errors in production that lead to different qualities of PET Film and not the result of variances in production processes or costs. However, in this review, Shinkong reports a difference in grade based on internal PET film cost codes and therefore, different grades result in different weighted average unit COP.[41] Thus, we have included the grade product characteristic in calculating product-specific costs.

In determining whether to disregard Shinkong's and Nan Ya's home market sales that were made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with section 773(b)(2)(C) of the Act, where less than 20 percent of a given

[33] As noted above in the ''Affiliation of Nan Ya with U.S. Customers'' section, the Department has preliminarily determined that Nan Ya is no longer affiliated with certain U.S. customers and we now find all of Nan Ya's U.S. sales to be EP sales.

[34] In the most recent review, only Shinkong was reviewed. *See PET Film Prelim 09–10,* 76 FR at 47543, unchanged in *PET Film Review 09–10.* Nan Ya was most recently reviewed in the 2008–2009 Administrative Review. *See PET Film Prelim 08–09,* 75 FR at 49905, unchanged in *PET Film Review 08–09.*

[35] *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta from Italy,* 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18; *see also Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada,* 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period).

[36] *See Final Results of the Antidumping Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey,* 76 FR 76939 (December 9, 2011), and accompanying Issues and Decision Memorandum at Comment 1.

[37] Nan Ya reported this input as ethylene glycol (EG), which is not chemically different than MEG.

[38] *See Stainless Steel Plate in Coils From Belgium: Final Results of Administrative Review,* 73 FR 75398 (December 11, 2008) and accompanying Issues and Decision Memorandum at Comment 4.

[39] *See* Memorandum to Neal M. Halper, Director of Office of Accounting, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Review—Nan Ya Plastics Corporation,'' dated July 30, 2012 (Nan Ya Cost Adjustments Memorandum); *see also* Memorandum to Neal M. Halper, Director of Office of Accounting, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Review—Shinkong Synthetic Fibers Corporation,'' dated July 30, 2012 (Shinkong Cost Adjustments Memorandum).

[40] *Id.*

[41] *See* Shinkong's section D response dated November 14, 2011 at 108 and its supplemental D response dated June 18, 2012 at 11.

product was sold at prices less than COP, we did not disregard any below-cost sales of that product, because the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a given product was sold at prices less than COP, we disregarded the below cost sales if: (1) they were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to weighted-average COP figures for the POR, they were made at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. As stated in section 773(b)(2)(D) of the Act, prices are considered to provide for recovery of costs if such prices are above the weighted average per-unit COP for the period of investigation or review. In light of the Court's directives in *SeAH Steel Corp.* v. *United States,* 704 F. Supp. 2d 1353 (Ct. Int'l Trade 2010), and *SeAH Steel Corporation* v. *United States,* 764 F. Supp. 2d 1322 (Ct. Int'l Trade 2011) to use an unadjusted annual average cost for purposes of the cost recovery test, in the instant review we have used the approach which we adopted recently to test for cost recovery when using a shorter cost period methodology.[42] Using the methodology adopted in *SPT from Turkey,* we calculated a control-number-specific weighted-average annual price using only those sales that were made below their quarterly COP, and compared the resulting weighted-average price to the annual weighted-average cost per control number. If the annual weighted-average price per control number was above the annual weighted-average cost per control number then we considered those sales to have provided for the recovery of costs and restored all such sales to the NV pool of comparison-market sales available for comparison with U.S. sales. For further details regarding the cost recovery methodology and the application of our shorter-cost period methodology, *see* Shinkong Cost Adjustments Memorandum and Nan Ya Cost Adjustments Memorandum.

Normal Value

1. Price-to-Price Comparisons

We calculated NV based on packed prices (*i.e.*, including costs for packing) to unaffiliated customers in the home market.[43] We used Shinkong's and Nan Ya's adjustments and deductions as reported. We made deductions, where appropriate, for foreign inland freight pursuant to section 773(a)(6)(B) of the Act. In addition, for comparisons involving similar merchandise, we made adjustments for cost differences attributable to the physical differences between the products compared, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also made adjustments for differences in the circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, specifically for imputed credit expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

2. Results of the Sales Below Cost Test

We found that for certain products, more than 20 percent of Shinkong's home market sales were made at prices below COP and, in addition, these below cost sales were made within an extended period of time and in substantial quantities. In addition, pursuant to the cost recovery analysis described above, we found that these sales were at prices which did not permit the recovery of costs within a reasonable period of time. We therefore disregarded these sales from the calculation of NV and used the remaining home market sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

3. Arm's-Length Test

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the prices at which sales are made to parties not affiliated with the exporter or producer; *i.e.*, sales to home market affiliates must be at arm's-length.[44] Sales to affiliated customers for consumption in the home market that are determined not to be at arm's-length are excluded from our analysis. To test whether sales are made at arm's-length prices, the Department compares the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c), and in accordance with the Department's practice, when the prices charged to an affiliated party are, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determine that the sales to the affiliated party are at arm's-length.[45]

In this proceeding, both Shinkong and Nan Ya reported sales of the foreign like product to affiliated customers who consumed the purchased material. Some of Shinkong's and all of Nan Ya's sales to these affiliated home market customers did not pass the arm's-length test, and were therefore excluded from our analysis.[46]

4. Constructed Value-to-Price Comparisons

After disregarding certain sales as below cost, as described above, home market sales of contemporaneous identical and similar products existed that allowed for price-to-price comparisons for all margin calculations for both Shinkong and Nan Ya. Therefore, the Department did not need to rely on constructed value for any calculations for these preliminary results.

Currency Conversions

Pursuant to section 773A of the Act and 19 CFR 351.415, we made currency conversions for Shinkong's and Nan Ya's sales based on the daily exchange rates in effect on the dates of the relevant U.S. sales as certified by the Federal Reserve Bank of New York.

Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not

[42] *See Certain Welded Carbon Steel Pipe and Tube from Turkey; Notice of Final Results of Antidumping Review,* 76 FR 76939 (December 9, 2011) (''*SPT from Turkey*'').

[43] Shinkong and Nan Ya sold a small amount of foreign like product to its affiliates in the home market for consumption during the POR. These sales have failed the arm's-length test and therefore have been excluded from the calculation of NV. *See* ''Arm's Length Test'' section, below, for further discussion.

[44] *See* 19 CFR 351.403(c).

[45] *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69187 (November 15, 2002).

[46] *See* section 773(b)(1) of the Act; *see also* Memorandum to Dana S. Mermelstein, Program Manager, AD/CVD Operations, Office 6, ''Analysis for the Preliminary Results of the 2010–2011 Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Shinkong Synthetic Fibers Corporation and Shinkong Materials Technology Co. Ltd,'' dated July 30, 2012 and Memorandum to Dana S. Mermelstein, Program Manager, AD/CVD Operations, Office 6, ''Analysis for the Preliminary Results of the 2010–2011 Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Nan Ya Plastics Corporation,'' dated July 30, 2012.

sufficient, condition for determining that there is a difference in the stages of marketing.[47] 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), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),[48] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.[49]

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.[50]

In implementing these principles, we examined information provided by Shinkong regarding the selling functions involved in its home market and U.S. sales, including a description of these selling functions, provided in Exhibit 8 of Shinkong's October 21, 2011 response and Exhibit 12 of Shinkong's May 24, 2012 response. Shinkong reported that in the home market it made sales to affiliated end users, unaffiliated end users and to unaffiliated distributors, and that all selling functions were performed at the same or similar levels of intensity in all channels of distribution. We examined the following three activities performed in the comparison market: (1) Sales and marketing (sales forecasting, strategic/economic planning, order input/processing, *etc.*); (2) freight and delivery (including packing); and (3) technical service/warranties. Based on our analysis, we find that Shinkong performed the same selling functions in all three categories to the same or similar degree in all channels of distribution with the exception of rebates, which were provided at a low level only to distributors. Because all comparison market sales are made through these channels of distribution, and Shinkong's selling activities did not vary significantly in intensity among these channels, we preliminarily determine that there is one LOT in the comparison market for Shinkong.

Shinkong reported that sales in the U.S. market were only made to distributors during the POR. Shinkong provided information which consolidated all of the selling activities performed for U.S. sales into this one channel of distribution.[51] These selling activities were grouped into the following three activities: (1) Sales and marketing (sales negotiation, strategic/economic planning, order input/processing, *etc.*); (2) freight and delivery (including packing); and (3) technical services/warranties. Since Shinkong's sales to the U.S. importers were only made through one channel of distribution, we preliminarily determine that there is one LOT in the U.S. market.

Finally, we compared the U.S. market LOT to the home market LOT and found that the selling functions performed for U.S. and comparison home market customers do not differ, as Shinkong performed the same selling functions at the same relative or similar level of intensity in both markets, with the previously noted exception of rebates. There was no substantial difference in these selling activities, therefore, we preliminarily determine that sales to the U.S. and comparison market during the POR were made at the same LOT and, as a result, no LOT adjustment is warranted. These findings are consistent with determinations in past segments of this proceeding based on similar record evidence.[52]

With regard to Nan Ya, because the Department preliminarily determines that Nan Ya is no longer affiliated with certain U.S. customers as discussed in the ''Affiliation of Nan Ya with U.S. Customers'' section, above, all of the U.S. sales are preliminarily determined to be EP sales. We obtained information from Nan Ya regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed by Nan Ya respondent for each channel of distribution.

In this administrative review, with respect to the comparison market, Nan Ya reported that it made sales to both unaffiliated end users and to unaffiliated distributors, and that most selling functions were performed at the same or similar levels of intensity in both channels of distribution. We examined the following three activities performed in the comparison market: (1) Sales and marketing (sales forecasting, strategic/economic planning, order input/processing, *etc.*); (2) freight and delivery (including packing); and (3) technical service warranties. Based on our analysis, we find that Nan Ya performed the selling functions in all three categories to the same or similar degree in both channels of distribution.[53] Because all comparison market sales are made through these two channels of distribution, and the selling activities to Nan Ya's customers did not vary between theses channels, we preliminarily determine that there is one LOT in the comparison market for Nan Ya.

Nan Ya reported that its sales to the U.S. market were only made to distributors during the POR.[54] Nan Ya provided information which consolidated all of the selling activities performed for U.S. sales into this one channel of distribution. These selling activities were grouped into the following three activities: (1) Sales and marketing (sales negotiation, strategic/economic planning, order input/processing, *etc.*); (2) freight and delivery (including packing); and (3) technical services/warranties.[55] Since Nan Ya's sales to the U.S. importers were only made through one channel of distribution, we preliminarily determine that there is one LOT in the U.S. market.

Finally, we compared the U.S. market LOT to the home market LOT and found that the selling functions performed for U.S. and comparison home market customers do not differ significantly, as

[47] *See Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part,* 75 FR 50999, 51001 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

[48] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A expenses, and profit for CV, where possible.

[49] *See Micron Tech., Inc.* v. *United States,* 243 F.3d 1301, 1314–16 (Fed. Cir. 2001).

[50] *See, e.g., OJ from Brazil,* 75 FR at 51001.

[51] *See* Shinkong's supplemental questionnaire response of May 24, 2012 at Exhibit 12.

[52] *See PET Film from Taiwan Investigation; see also PET Film Review 09–10.*

[53] *See* Nan Ya's Supplemental Questionnaire Response of June 5, 2012, at Exhibit SE2–Exhibit-9.

[54] *See* Nan Ya's Section A Questionnaire Response of October 24, 2011 at 13.

[55] *See* Nan Ya's Supplemental Questionnaire Response of June 5, 2011, at Exhibit SE2–Exhibit-9.

Nan Ya performed the selling functions at the same relative or similar level of intensity in both markets. Nan Ya reported that it conducts more sales activities in the home market than in the U.S. market with respect to sales negotiations and post-sales technical services.[56] Our examination of the selling and marketing activities in the instant review shows that almost all of the selling functions in the home market between end-use customers and distributors are the same.[57] However, we do not find these home market activities or the level of intensity at which they are performed, to be significantly different from the selling and marketing activities performed in the U.S. market. Where some differences appear to exist between the U.S. and comparison markets, the narrative explanations show them to be more similar than different (*e.g.*, the sales process does not differ by channel of distribution in either the U.S. or home market; the same process is used for handling technical inquiries in both the U.S. and home market; and Nan Ya hires outside carriers to deliver the merchandise to both its customers in the home market and to the port of export).[58] Therefore, we preliminarily determine that sales to the U.S. and comparison market during the POR were made at the same LOT and, as a result, no LOT adjustment is warranted. These findings are consistent with determinations in past segments of this proceeding based on similar record evidence.[59]

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average antidumping duty margins exist for the period July 1, 2010, through June 30, 2011.

Producer/ Exporter	Weighted-average margin (percent)
Nan Ya Plastics Corporation, Ltd.	5.20
Shinkong Synthetic Fibers Corporation	0.00

[56] *See* Nan Ya's Section A Questionnaire Response of October 24, 2011 at 14.

[57] *See* Nan Ya's Supplemental Questionnaire Response of June 5, 2011 at Exhibit SE2–9.

[58] *See* Nan Ya's Section A Questionnaire Response of October 24, 2011 at 16; *see also* Nan Ya's Section B Questionnaire Response of November 22, 2011 at 25; Nan Ya's Section C Questionnaire Response of November 22, 2011 at 26; and Nan Ya's Supplemental Questionnaire Response of June 5, 2011 at 12.

[59] *See PET Film from Taiwan Investigation; see also PET Film Review 08–09.*

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. We will instruct CBP to liquidate entries of merchandise produced and/or exported by Shinkong and Nan Ya. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. For assessment purposes, where possible, we calculate importer-specific (or customer-specific) *ad valorem* assessment rates based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales.[60] However, where the respondents do not report the entered value for their sales, we calculate importer-specific (or customer-specific) per-unit duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis.*

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of PET Film from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for companies under review will be the rate established in the final results of this review (except, if the rate is *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (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, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and, (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the all others rate for this proceeding, 2.40 percent. These deposit requirements, when imposed, shall remain in effect until further notice.

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

Disclosure and Public Comment

We will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**.[61] Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[62] If a hearing is requested, the Department will notify interested parties of the hearing schedule. Oral presentations will be limited to issues raised in the briefs.

Interested parties are invited to comment on the preliminary results of this review. The Department typically requests that interested parties submit case briefs within 30 days of the date of publication of this notice. However, we plan to issue a post-preliminary supplemental questionnaire and, therefore, will be extending the case brief deadline. The Department will inform interested parties of the updated briefing schedule when it has been confirmed. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed not later than five days after the time limit for filing case briefs.[63] Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Executive summaries should be limited to five pages total, including footnotes.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, unless otherwise extended. *See* section 751(a)(3)(A) of the Act.

Notification to Importers

This notice also serves as a preliminary reminder to importers of

[61] *See* 19 CFR 351.310.

[62] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed.

[63] *See* 19 CFR 351.309(c) and (d) (for a further discussion of case briefs and rebuttal briefs, respectively).

their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–19149 Filed 8–3–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–807]

Ferrovanadium and Nitrided Vanadium From the Russian Federation: Negative Final Determination of Circumvention of the Antidumping Duty Order

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

Final Determination

We determine that the importation of vanadium pentoxide from the Russian Federation (Russia) by the Evraz Group,[1] which is toll-converted into ferrovanadium in the United States by Bear Metallurgical Corporation (Bear), prior to sale to unaffiliated customers in the United States, does not constitute circumvention of the antidumping duty order on ferrovanadium and nitrided vanadium (ferrovanadium) from Russia, within the meaning of section 781(a) of the Tariff Act of 1930, as amended (the Act).

DATES: *Effective Date:* August 6, 2012.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2012, the Department of Commerce (the Department) published in the **Federal Register** its negative preliminary determination that Evraz's imports of vanadium pentoxide from Russia that are toll-converted into ferrovanadium in the United States by Bear are not circumventing the antidumping duty order on ferrovanadium and nitrided vanadium from Russia,[2] pursuant to section 781(a) of the Act.[3]

AMG Vanadium Inc. (AMG Vanadium) and Bear submitted case briefs on March 23, 2012. Both of these parties and Evraz submitted rebuttal briefs on March 28, 2012. We held both a public and a closed hearing on May 3, 2012.

Scope of the Antidumping Duty Order

The products subject to this order are ferrovanadium and nitrided vanadium, regardless of grade, chemistry, form or size, unless expressly excluded from the scope of this order. Ferrovanadium includes alloys containing ferrovanadium as the predominant element by weight (*i.e.,* more weight than any other element, except iron in some instances) and at least 4 percent by weight of iron. Nitrided vanadium includes compounds containing vanadium as the predominant element, by weight, and at least 5 percent, by weight, of nitrogen. Excluded from the scope of the order are vanadium additives other than ferrovanadium and nitrided vanadium, such as vanadium-aluminum master alloys, vanadium chemicals, vanadium waste and scrap, vanadium-bearing raw materials, such as slag, boiler residues, fly ash, and vanadium oxides.

The products subject to this order are currently classifiable under subheadings 2850.00.20, 7202.92.00, 7202.99.50.40, 8112.40.30.00, and 8112.40.60.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Scope of the Circumvention Inquiry

The product subject to this anticircumvention inquiry is vanadium pentoxide (V_2O_5) from Russia, which is usually in a granular form and may contain other substances, including silica (SiO_2), manganese, and sulfur, and which is converted into ferrovanadium in the United States. Such merchandise is classifiable under subheading 2825.30.0010 of the HTSUS. This inquiry only covers such products that are imported by the Evraz Group and converted into ferrovanadium in the United States by Bear.

Statutory Provisions Regarding Circumvention

Section 781(a) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in the United States. In conducting anticircumvention inquiries under section 781(a)(1) of the Act, the Department determines whether (A) merchandise sold in the United States is of the same class or kind as any other merchandise produced in a foreign country that is the subject of an antidumping duty order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which the antidumping duty order applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components referred to in (B) is a significant portion of the total value of the merchandise.

With regard to sub-part (C), section 781(a)(2) of the Act specifies that the Department ''shall take into account: (A) The level of investment in the United States; (B) the level of research and development in the United States; (C) the nature of the production process in the United States, (D) the extent of production facilities in the United States; and (E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.''

In addition, the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. R. Doc. No. 103–316, at 893 (1994), states that no single factor listed in section 781(a)(2) of the Act will be controlling. The SAA also states that the Department will evaluate each of the factors as they exist in the United States depending on the particular circumvention scenario. *See id.* Therefore, the importance of any one of the factors listed under 781(a)(2) of the Act can vary from case to case depending on the particular

[1] The Evraz Group (otherwise referred to as Evraz in this notice) includes OAO Vanady-Tula, East Metals S.A., and East Metals N.A.

[2] *See Notice of Antidumping Order: Ferrovanadium and Nitrided Vanadium From the Russian Federation,* 60 FR 35550 (July 10, 1995).

[3] *See Preliminary Negative Determination and Extension of Time Limit for Final Determination of Circumvention of the Antidumping Duty Order on Ferrovanadium and Nitrided Vanadium From the Russian Federation,* 77 FR 6537, (February 8, 2012) (*Preliminary Determination*).

circumstances unique to each specific circumvention inquiry.

Further, section 781(a)(3) of the Act directs the Department to consider, in determining whether to include parts or components produced in a foreign country within the scope of an antidumping duty order, such factors as: (A) The pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order applies; and (C) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

Summary of Analysis of Statutory Provisions

We considered all of the comments submitted by the interested parties and find, pursuant to section 781(a) of the Act, that circumvention of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia is not occurring by reason of imports of vanadium pentoxide from Russia by the Evraz Group that are toll-converted into ferrovanadium by Bear.

As we explained in the *Preliminary Determination,* in order to make an affirmative determination of circumvention, all the criteria under section 781(a)(1) of the Act must be satisfied. In addition, section 781(a)(3) of the Act instructs the Department to consider, in determining whether to include parts or components within the scope of an order, such factors as pattern of trade, affiliation, and import volume.

With respect to the four criteria under section 781(a)(1) of the Act, we find that three of the four criteria have been satisfied. Specifically, (A) the merchandise sold in the United States, ferrovanadium, is of the same class or kind as any other merchandise that is the subject of the antidumping duty order on ferrovanadium from Russia; (B) the ferrovanadium sold in the United States is completed in the United States from parts or components (*i.e.,* vanadium pentoxide), produced in Russia; and (D) the value of the Russian-produced vanadium pentoxide used in the production of ferrovanadium in the United States is a significant portion of the total value of the ferrovanadium sold in the United States. However, as discussed in detail in the *Preliminary Determination* and in the Issues and Decision Memorandum for the Final Negative Determination of Circumvention of the Antidumping Duty Order on Ferrovanadium and Nitrided Vanadium from the Russian Federation (dated concurrently with this notice) (Decision Memo), based on our analysis of all the relevant factors under section 781(a)(2) of the Act and the record information, we do not find that the remaining criterion at section 781(a)(1)(C) of the Act, the process of assembly or completion in the United States is minor or insignificant, has been satisfied.

Pursuant to section 781(a)(3) of the Act, we also considered the additional factors concerning the pattern of trade, affiliation, and import trends after the initiation of the investigation which resulted in the antidumping duty order on ferrovanadium from Russia. Our analysis of these factors, as discussed in the *Preliminary Determination* and the Decision Memo, when viewed in conjunction with our analysis of the other statutory criteria under sections 781(a)(1) and (a)(2) of the Act, do not support including vanadium pentoxide in the antidumping duty order.

All issues raised by the interested parties to which we have responded are listed in the Appendix to this notice and are addressed in the Decision Memo, which is hereby adopted by this notice. The Decision Memo is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic system (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memo can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Decision Memo and the electronic version of the Decision Memo are identical in content.

Conclusion

Based on the analysis under section 781(a) of the Act, summarized above and detailed in the Decision Memo, we determine that circumvention of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia is not occurring by reason of Evraz's imports of vanadium pentoxide from Russia that are toll-converted into ferrovanadium by Bear in the United States.

Notice to Parties

This notice serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This final negative circumvention determination is published in accordance with section 781(a) of the Act and 19 CFR 351.225.

Dated: July 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

Comment 1: The Ferrovanadium Completion Process in the United States
Comment 2: The Additional Statutory Factors
Comment 3: Exclusion of Vanadium Pentoxide from the Scope of the Order
Comment 4: Economic Impact of the Anticircumvention Inquiry

[FR Doc. 2012–19165 Filed 8–3–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Countervailing Duty Administrative Review

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

SUMMARY: On April 2, 2012, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty (CVD) order on certain welded carbon steel standard pipe from Turkey for the January 1, 2010, through December 31, 2010, period of review (POR).[1] The Department preliminarily found that the following producers/exporters of subject merchandise covered by this review had *de minimis* net subsidy rates for the POR: (1) Borusan Group, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (BMB), and Borusan Istikbal Ticaret T.A.S. (Istikbal) (collectively, Borusan); and (2) Tosyali dis Ticaret A.S. (Tosyali) and Toscelik Profil ve Sac Endustrisi

[1] *See Certain Welded Carbon Steel Standard Pipe From Turkey: Preliminary Results of Countervailing Duty Administrative Review,* 77 FR 19623 (April 2, 2012) (*Preliminary Results*).

A.S. (Toscelik Profil), (collectively, Toscelik).[2] The Department has now completed the administrative review in accordance with section 751(a) of the Tariff of 1930, as amended (the Act). Based on our analysis of comments received, the Department has not revised the net subsidy rate for Borusan and Toscelik. Further discussion of our analysis of the comments received is provided in the accompanying issues and decision memorandum.[3] The final net subsidy rate for Borusan and Toscelik is listed below in the ''Final Results of Review'' section.

DATES: *Effective Date:* August 6, 2012.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska at 202–482–8362 (for Borusan) and Gayle Longest at 202–482–3338 (for Toscelik), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1986, the Department published in the **Federal Register** the CVD order on certain welded carbon steel pipe and tube products from Turkey.[4] On April 2, 2012, the Department published in the **Federal Register** the preliminary results for this review.[5] In the *Preliminary Results,* we invited interested parties to submit case briefs commenting on the preliminary results or to request a hearing.[6] On April 20, 2012, we issued Memorandum to the File from Jolanta Lawska, Trade Analyst, AD/CVD Operations, Office 3, regarding ''Case and Rebuttal Briefs Schedule,'' (April 20, 2012). On May 18, 2012, we received case briefs from Borusan, Toscelik and Wheatland Tube Company (Wheatland). On May 23, 2012, we received rebuttal briefs from United States Steel Corporation (U.S. Steel) and Wheatland. We did not hold a hearing in this review, as one was not requested.

Scope of Order

The products covered by this order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently provided for under the Harmonized Tariff Schedule of the United States (HTSUS) as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Decision Memorandum, dated concurrently with this notice and which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the Decision Memorandum, is attached to this notice as an Appendix. The Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available in the Central Records Unit, main Commerce Building, Room 7046. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/.* The signed Decision Memorandum and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

As noted above, the Department received comments concerning the preliminary results. Consistent with the *Preliminary Results,* we continue to find that Borusan and Toscelik had *de minimis* net countervailable subsidy rates for the POR. In accordance with section 751(a)(1)(A) of the Act, we calculated a total net countervailable subsidy rate of 0.22 percent *ad valorem* for Borusan and 0.35 percent for Toscelik. Pursuant to 19 CFR 351.106(c), these calculated rates are *de minimis.*

Assessment Rates/Cash Deposits

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results, to liquidate shipments of subject merchandise by Borusan and Toscelik entered, or withdrawn from warehouse, for consumption on or after January 1, 2010, through December 31, 2010, without regard to countervailing duties because a *de minimis* subsidy rate was calculated for each company. We will also instruct CBP not to collect cash deposits of estimated countervailing duties on shipments of the subject merchandise by Borusan and Toscelik entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

For all non-reviewed companies, we will instruct CBP to continue to collect cash deposits at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to companies covered by this order, but not examined in this review, are those established in the most recently completed administrative proceeding for each company. The cash deposit rates for all companies not covered by this review are not changed by the results of this review, and remain in effect until further notice.

Return or Destruction of Proprietary Information

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: July 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Methodology and Background Information

Subsidies Valuation Information

A. Attribution of Subsidies.
B. Benchmark Interest Rates.

Analysis of Programs

I. Programs Determined To Be Countervailable

A. Deduction from Taxable Income for Export Revenue.
B. Foreign Trade Companies Short-Term Export Credits.
C. Pre-Export Credits.
D. Pre-Shipment Export Credits.

[2] The review of Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan) was rescinded. *See Certain Welded Carbon Steel Standard Pipe and Tube from Turkey: Notice of Rescission of Countervailing Duty Administrative Review, In Part,* 77 FR 6542 (February 8, 2012).

[3] *See* Issues and Decision Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, concerning the Final Results of Administrative Review of the Countervailing Duty Order on Certain Welded Carbon Steel Standard Pipe from Turkey (Decision Memorandum).

[4] *See Countervailing Duty Order: Certain Welded Carbon Steel Pipe and Tube Products From Turkey,* 51 FR 7984 (March 7, 1986).

[5] *See Preliminary Results,* 77 FR 19623.

[6] Petitioners in this review are Wheatland Tube Company, Allied Tube and Conduit Corporation and TMK IPSCO, and United States Steel Corporation (collectively, Petitioners).

E. Short-Term Pre-Shipment Rediscount Program.
F. Law 5084: Withholding of Income Tax on Wages and Salaries.
G. Law 5084: Incentive for Employers' Share in Insurance Premiums.
H. Law 5084: Allocation of Free Land.
I. Law 5084: Energy Support.
J. OIZ: Exemption from Property Tax.

II. Programs Determined To not Confer Countervailable Benefits

A. Inward Processing Certificate Exemption.
B. Investment Encouragement Program (IEP): Customs Duty Exemptions.

III. Programs Determined To not Be Used

A. Post-Shipment Export Loans.
B. Export Credit Bank of Turkey Buyer Credits.
C. Subsidized Turkish Lira Credit Facilities.
D. Subsidized Credit for Proportion of Fixed Expenditures.
E. Subsidized Credit in Foreign Currency.
F. Regional Subsidies.
G. VAT Support Program (Incentive Premium on Domestically Obtained Goods).
H. IEP: VAT Exemptions.
I. IEP: Reductions in Corporate Taxes.
J. IEP: Interest Support.
K. IEP: Social Security Premium Support.
L. IEP: Land Allocation.
M. National Restructuring Program.
N. Regional Incentive Scheme: Reduced Corporate Tax Rates.
O. Regional Incentive Scheme: Social Security Premium Contribution for Employees.
P. Regional Incentive Scheme: Allocation of State Land.
Q. Regional Incentive Scheme: Interest Support.
R. OIZ: Waste Water Charges.
S. OIZ: Exemptions From Customs Duties, VAT, and Payments for Public Housing Fund, for Investments for Which an Income Certificate Is Received.
T. OIZ: Credits for Research and Development Investments, Environmental Investments, Certain Technology Investments, Certain ''Regional Development'' Investments, and Investments Moved From Developed Regions to ''Regions of Special Purpose''.
U. Provision of Buildings and Land Use Rights for Less Than Adequate Remuneration Under the Free Zones Law.
V. Corporate Income Tax Exemption Under the Free Zones Law.
W. Stamp Duties and Fees Exemptions Under the Free Zones Law.
X. Customs Duties Exemptions Under the Free Zones Law.
Y. Value-Added Tax Exemptions Under the Free Zones Law.
Z. OIZ: Exemption From Building and Construction Charges.
AA. OIZ: Exemption From Amalgamation and Allotment Transaction Charges.

Analysis of Comments

Borusan

Comment 1: Whether the Department Should Grant an Offset to the Gross Subsidy Found on Turkish Eximbank Loans for the Bank Guarantee Fees.

Toscelik

Comment 2: Whether the Denominator for Benefits at the Osmaniye Plant Should Include Sale of Billets.
Comment 3: Whether the GOT's Energy Subsidies Under Law 5084 Were Properly Attributed to the Subject Merchandise.
Comment 4: Whether the Benchmark Price Used to Calculate Toscelik's Benefit from the Provision of Land for Less Than Adequate Remuneration in the Organized Industrial Zone (OIZ) Should be Revised.
Comment 5: Whether the Department Correctly Attributed Subsidies Received by Toscelik in the OIZ to Subject Merchandise and Should Continue To Do So in the Final Results.

[FR Doc. 2012–19168 Filed 8–3–12; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–869]

Large Residential Washers From the Republic of Korea: Amendment to the Scope of the Countervailing Duty Investigation

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

SUMMARY: The Department of Commerce (the Department) is amending the scope of the countervailing duty (CVD) investigation of large residential washers (washing machines) from the Republic of Korea (Korea) to exclude top-load washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet.

DATES: *Effective Date:* July 27, 2012.

FOR FURTHER INFORMATION CONTACT: Justin Neuman or Milton Koch, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0486 and (202) 482–2584, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 2012, the Department initiated the CVD investigation of washing machines from Korea.[1] On May 29, 2012, the Department issued its affirmative preliminary determination.[2]

In accordance with the preamble to the Department's regulations,[3] in our *Initiation Notice* 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.* No interested party submitted comments during that period. However, on May 17, 2012, the petitioner, Whirlpool Corporation, requested that the Department exclude automatic washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet from the scope of this and the concurrent antidumping duty (AD) investigations of washing machines from Mexico and Korea. Subsequently, the Department received comments from respondents Samsung Electronics Co., Ltd. (Samsung) on May 23, 2012, and from LG Electronics, Inc. on May 24, 2012, objecting to the petitioner's scope exclusion request. On June 21, 2012, the Department contacted U.S. Customs and Border Protection (CBP) seeking its input on whether the petitioner's proposed scope exclusion request, if granted by the Department, would be enforceable by CBP.[4] On July 11, 2012, General Electric Company (GE), a domestic producer and importer of washing machines, filed comments on the record of the AD investigation of washing machines from Korea in support of the petitioner's scope exclusion request. GE's comments were placed on the record of this CVD investigation on July 18, 2012. Also on July 18, Staber Industries, Inc., a domestic producer of washing machines, filed comments in support of the petitioner's scope exclusion request.

Based on the comments received from the interested parties and information provided by CBP, the Department is amending the scope of the investigations to exclude top-load washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet.[5] Section

[1] *See Large Residential Washers From the Republic of Korea: Initiation of Countervailing Duty Investigation,* 77 FR 4279 (January 27, 2012) (*Initiation Notice*).

[2] *See Large Residential Washers From the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination,* 77 FR 33181 (June 5, 2012) (*Preliminary Determination*).

[3] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[4] *See* Memorandum from Brandon Custard to The File, ''Exchange with CBP Regarding Petitioner's Scope Exclusion Request,'' dated June 21, 2012.

[5] *See Large Residential Washers from Mexico: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* and *Large Residential Washers from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* signed July 27, 2012 (not yet published), for the scope amendments in the concurrent AD washing machine investigations.

702(b)(1) of the Tariff Act of 1930 (as amended) (the Act), states that a ''petition may be amended at such time, and upon such conditions, as the administering authority * * * may permit.'' In making a request to amend the scope of the investigations, the petitioner is essentially asking for the Department to amend the petition. It is, therefore, within the Department's authority to permit such an amendment.[6] Further, it is the Department's practice to provide ample deference to the petitioner with respect to the merchandise from which it intends to seek relief.[7]

Amended Scope of the Investigation

The product covered by this investigation is all large residential washers and certain subassemblies thereof from Korea.

For purposes of this investigation, the term ''large residential washers'' denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, except as noted below, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) All assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) At least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs[8] designed for use in large residential washers which incorporate, at a minimum: (a) A tub; and (b) a seal; (3) all assembled baskets[9] designed for use in large residential washers which incorporate, at a minimum: (a) a side wrapper;[10] (b) a base; and (c) a drive hub;[11] and (4) any combination of the foregoing subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term ''stacked washer-dryers'' denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term ''commercial washer'' denotes an automatic clothes washing machine designed for the ''pay per use'' market meeting either of the following two definitions:

(1)(a) It contains payment system electronics;[12] (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;[13] *or*

(2)(a) It contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,[14] the unit cannot begin a wash cycle without first receiving a signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet, as certified to the U.S. Department of Energy pursuant to 10 CFR 429.12 and 10 CFR 429.20, and in accordance with the test procedures established in 10 CFR part 430.

The products subject to this investigation are currently classifiable under subheading 450.20.0090 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this investigation may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

Suspension of Liquidation

As noted in the *Preliminary Determination,* sections 703(d)(1)(B) and (2) of the Act require the Department, upon making an affirmative preliminary determination, to direct CBP to suspend liquidation of all entries of the subject merchandise from Korea, other than those exported by companies with a *de minimis ad valorem* subsidy rate, that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the preliminary determination in the **Federal Register**, and to require a cash deposit for such entries of the merchandise in the amounts of the calculated subsidy rates or all-others rate, as appropriate.[15] Because the scope of this investigation is being amended, the Department will direct CBP to suspend liquidation of entries of the subject merchandise from Korea using the amended scope language.

Public Comment

Interested parties who wish to comment on the amended scope language should do so when submitting case briefs. As noted in the *Preliminary Determination,* the Department will notify parties of the schedule for submitting case briefs and rebuttal briefs, in accordance with 19 CFR 351.309(c) and 19 CFR 351.309(d)(1), respectively. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Based on timely requests by the petitioner and Samsung, the Department intends to hold a public hearing to afford interested parties an opportunity to discuss the arguments raised in case or rebuttal briefs. The Department will notify all parties regarding the scheduling of the public hearing, which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW.,

[6] *See* section 702(b)(1) of the Act.

[7] *See* ''Memorandum from The Team to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations: Exclusion of Top-Load Washing Machines with a Rated Capacity Less than 3.70 Cubic Feet from the Scope of the Investigations,'' dated July 27, 2012, for further discussion.

[8] A ''tub'' is the part of the washer designed to hold water.

[9] A ''basket'' (sometimes referred to as a ''drum'') is the part of the washer designed to hold clothing or other fabrics.

[10] A ''side wrapper'' is the cylindrical part of the basket that actually holds the clothing or other fabrics.

[11] A ''drive hub'' is the hub at the center of the base that bears the load from the motor.

[12] ''Payment system electronics'' denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

[13] A ''security fastener'' is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a ''center pin reject'' feature to prevent standard Allen wrenches or Torx drivers from working.

[14] ''Normal operation'' refers to the operating mode(s) available to end users (*i.e.,* not a mode designed for testing or repair by a technician).

[15] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

Washington, DC 20230. Parties should confirm, by telephone, the date, time, and place of the hearing 48 hours before the scheduled time.

This notice is issued pursuant to 777(i) of the Act.

Dated: July 31, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–19152 Filed 8–3–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 10–3A001]

Export Trade Certificate of Review

ACTION: Notice of Application (10–3A001) To Amend the Export Trade Certificate of Review Issued to Alaska Longline Cod Commission (''ALCC''), Application No. 10–3A001.

SUMMARY: The Office of Competition and Economic Analysis (''OCEA'') of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–X, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 10–3A001.''

ALCC's original Certificate was issued on May 13, 2010 (75 FR 29514, May 26, 2010). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: Alaska Longline Cod Commission (''ALCC''), 271 Wyatt Way NE., Suite 106, Bainbridge Island, WA, 98110.

Contact: Duncan R. McIntosh, Attorney, Telephone: (206) 624–5950.

Application No.: 10–3A001.

Date Deemed Submitted: July 18, 2012.

Proposed Amendment: ALCC seeks to amend its Certificate to:

1. Add Glacier Bay Fisheries LLC as Member of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)).

Dated: July 26, 2012.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2012–19117 Filed 8–3–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–984]

Drawn Stainless Steel Sinks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that countervailable subsidies are being provided to producers and exporters of drawn stainless steel sinks (''SS sinks'') from the People's Republic of China (''PRC''). For information on the estimated subsidy rates, *see* the ''Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* August 6, 2012.

FOR FURTHER INFORMATION CONTACT: Shane Subler or Hermes Pinilla, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0189 or (202) 482–3477, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The following events have occurred since the publication of the notice of initiation in the **Federal Register**.[1]

On April 20, 2012, the U.S. International Trade Commission (''ITC'') published its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of SS sinks from the PRC.[2]

The Department released U.S. Customs and Border Protection (''CBP'') entry data for U.S. imports of SS sinks from the PRC between January 1, 2011, and December 31, 2011, to be used as the basis for respondent selection.[3] The Department received comments on this CBP data from the petitioner, Elkay Manufacturing Company (''Petitioner''), Zhongshan Superte Kitchenware Co.,

[1] *See Drawn Stainless Steel Sinks from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 77 FR 18211 (March 27, 2012) (''*Initiation Notice''*), and the accompanying Initiation Checklist (''*SS Sinks Checklist''*).

[2] *See Drawn Stainless Steel Sinks From China,* 77 FR 23752 (April 20, 2012).

[3] *See* Memorandum from Hermes Pinilla, International Trade Compliance Analyst to the File, ''Release of Customs and Border Protection Entry Data to Interested Parties for Comment,'' dated March 28, 2012.

Ltd. (''Superte''), Foshan Zhaoshun Trade Co., Ltd. (''Zhaoshun''), the Government of the PRC (''GOC''), Zoje Holding Group Co., Ltd., Jiangxi Zoje Kitchen & Bath Industry Co., Ltd., and Jiangxi Offidun Industry Co., Ltd. (collectively, ''Zoje''), Guangdong Yingao Kitchen Utensils Co., Ltd. (''Yingao'') and Guangdong Kitchenware Industrial Co., Ltd. The Department addressed these comments in its respondent selection memorandum, discussed below.

On May 9, 2012, the Department issued its respondent selection analysis.[4] Given available resources, the Department determined it could examine no more than two producers/exporters and selected Yingao and Superte. *Id.* These companies were the two largest producers/exporters of subject merchandise, based on aggregate volume, to the United States.

On March 22, 2012, prior to the *Initiation Notice,* we received a request from Zoje to be a voluntary respondent.[5] Zoje did not, however, submit a response to the Department's initial questionnaire issued to the GOC on May 10, 2012.

On May 10, 2012, the Department postponed the deadline for the preliminary determination in this investigation until July 30, 2012.[6]

Also on May 10, the Department issued the countervailing duty (''CVD'') questionnaire to the GOC. We received initial questionnaire responses from the GOC, Yingao, and Superte on June 28, 2012. Supplemental questionnaires were sent to Yingao on July 10, and to the GOC and Superte on July 12, 2012. We received supplemental questionnaire responses (''SQR'') from Yingao on July 19 and 24, 2012; from the GOC on July 20 and 26, 2012; and from Superte on July 23, 2012.

On June 6, 2012, Petitioner submitted new subsidy allegations requesting the Department to expand its CVD investigation to include an additional subsidy programs. The Department is currently reviewing these new subsidy allegations.

We received deficiency comments on the GOC's, Yingao's and Superte's responses from Petitioner on July 11, 2012. We received pre-preliminary comments from Petitioner on July 23 and 24, 2012.

Period of Investigation

The period for which we are measuring subsidies, *i.e.,* the period of investigation (''POI''), is January 1, 2011, through December 31, 2011.

Scope Comments

In accordance with the preamble to the Department's regulations,[7] in the *Initiation Notice,* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice.* On April 10, 2012, we received scope comments from Blanco America, Inc. (''Blanco''), an importer of subject merchandise. The Department is evaluating the comments submitted by Blanco and will issue its decision regarding the scope of the antidumping (''AD'') and CVD investigations in the preliminary determination of the companion AD investigation, which is due for signature on September 27, 2012. Scope decisions made in the AD investigation will be incorporated into the scope of the CVD investigation.

Scope of the Investigation

The products covered by the scope of this investigation are stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel (''SS sinks''). Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of this investigation if they are included within the sales price of the SS sinks.[8] For purposes of this scope definition, the term ''drawn'' refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. SS sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). SS sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the investigation. SS sinks are covered by the scope of the investigation whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the scope of the investigation are SS sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. SS sinks with fabricated bowls may sometimes be referred to as ''zero radius'' or ''near zero radius'' sinks.

The products covered by this investigation are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under statistical reporting number 7324.10.0000. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the products under investigation is dispositive of its inclusion as subject merchandise.

Application of the Countervailing Duty Law to Imports From the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007) (''*Coated Paper from the PRC*''), and the accompanying Issues and Decision Memorandum (''Coated Paper Decision Memorandum''). In *Coated Paper from the PRC,* the Department found that given the substantial difference between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as {a} bar to proceeding with a CVD investigation involving products from the PRC. *See* Coated Paper Decision Memorandum at Comment 6. The Department has affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.[9] Furthermore, on March 13, 2012, HR 4105 was enacted which makes clear that the Department has the authority to apply the CVD law to non-

[4] *See* Memorandum from Hermes Pinilla, International Trade Analyst, through Shane Subler, Senior International Trade Analyst, and Susan Kuhbach, Office Director, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Selection of Respondents for the Countervailing Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic of China,'' dated May 9, 2012.

[5] *See* letter from Zoje to the Department dated March 22, 2012, ''Request for Voluntary Respondent Treatment in the Antidumping and Countervailing Duty Investigations of Drawn Stainless Steel Sinks from People's Republic of China (A–570–983 and C–570–984).''

[6] *See Drawn Stainless Steel Sinks From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 77 FR 27437 (May 10, 2012).

[7] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[8] Mounting clips, fasteners, seals, and sound deadening pads are not covered by the scope of this investigation if they are not included within the sales price of the SS sinks, regardless of whether they are shipped with or entered with SS sinks.

[9] *See, e.g., Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances,* 73 FR 31966 (June 5, 2008), and accompanying Issues and Decision Memorandum (''CWP Decision Memorandum'') at Comment 1.

market economies (''NMEs'') such as the PRC. The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.[10] Additionally, for the reasons stated in the CWP Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (''WTO''), as the date from which the Department will identify and measure subsidies in the PRC. *See* CWP Decision Memorandum at Comment 2.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if, *inter alia,* necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (''AFA''), information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse ''as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' [11] The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' [12]

Application of AFA

GOC—Government Authorities Under Provision of Stainless Steel Coil (''SSC'') for Less Than Adequate Remuneration (''LTAR'')

As discussed below under the section ''Programs Preliminarily Determined To Be Countervailable,'' the Department is investigating the provision of SSC for LTAR by the GOC. We requested information from the GOC regarding the specific companies that produced the SSC that the mandatory respondents purchased during the POI. Specifically, we sought information from the GOC that would allow us to determine whether the producers are ''authorities'' within the meaning of section 771(5)(B) of the Act.

For each producer that the GOC claimed was privately owned by individuals or companies during the POI, we requested the following.

- Translated copies of source documents that demonstrate the producer's ownership during the POI, such as capital verification reports, articles of association, share transfer agreements, or financial statements.
- Identification of the owners, members of the board of directors, or managers of the producers who were also government or Chinese Communist Party (''CCP'') officials or representatives during the POI.
- A statement regarding whether the producer had ever been a state-owned enterprise (''SOE''), and, if so, whether any of the current owners, directors, or senior managers had been involved in the operations of the company prior to its privatization.
- A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.

For producers owned by other corporations (whether in whole or in part) or with less-than-majority state ownership during the POI, we requested information tracing the ownership of the producer back to the ultimate individual or state owners. Specifically, we requested the following information.

- The identification of any state ownership of the producer's shares; the names of all government entities that own shares, either directly or indirectly, in the producer; the identification of all owners considered SOEs by the GOC; and the amount of shares held by each government owner.
- For each level of ownership, identification of the owners, directors, or senior managers of the producer who were also government or CCP officials during the POI.
- A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.
- A statement regarding whether any of the shares held by government entities have any special rights, priorities, or privileges with regard to voting rights or other management or decision-making powers of the company; a statement regarding whether there are restrictions on conducting, or acting through, extraordinary meetings of shareholders; a statement regarding whether there are any restrictions on the shares held by private shareholders; and a discussion of the nature of the private shareholders' interests in the company (*e.g.,* operational, strategic, or investment-related).

In its June 28, 2012 questionnaire response and its July 20, 2012 SQR, the GOC provided no ownership information for most of the companies that produced SSC purchased by Superte, Yingao and Foshan Magang Kitchen Utensils Co., Ltd. (''Magang''). Instead, the GOC stated that it was unable to respond to the Department's request and characterized the request as ''unreasonable.'' [13] The GOC did not explain what efforts it had made, if any, to seek this information.[14] For one supplier of SSC which it claimed was ''privately owned'' by individuals, the GOC provided the business registration, but no information regarding the identification of owners, directors, or senior managers who were also GOC or CCP officials or representatives. In addition, the GOC declined to answer questions about the CCP's structure and functions that are relevant to our determination of whether the producers of SSC are ''authorities'' within the meaning of section 771(5)(B) of the Act. In its initial questionnaire response, the GOC asserted that SSC producers are not ''authorities'' within the meaning of applicable U.S. law or ''public bodies'' with the meaning of the WTO Agreement on Subsidies and Countervailing Measures. Additionally, the GOC stated that it does not ''play a role in the ordinary business operations, including pricing and marketing decisions, of the domestic Chinese SSC industry, including those in which the state holds an ownership interest.'' [15] The GOC argues that Chinese law prohibits GOC officials from taking positions in private companies.[16]

[10] *See* HR 4105, 112th Cong. § 1(b) (2012) (enacted).

[11] *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998).

[12] *See* Statement of Administrative Action (''SAA'') accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994).

[13] *See* GOC's July 20 SQR (''GSQR'') at 7.

[14] *Id.*

[15] *See* GSQR at 70.

[16] *Id.* at 73.

We have explained our understanding of the CCP's involvement in the PRC's economic and political structure in a past proceeding.[17] Public information suggests that the CCP exerts significant control over activities in the PRC.[18] This conclusion is supported by, among other documents, a publicly available background report from the U.S. Department of State.[19] With regard to the GOC's claim that Chinese law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP officials.[20]

Thus, the Department finds, as it has in past investigations, that the information requested regarding the role of CCP officials in the management and operations of this SSC producer is necessary to our determination of whether this producer is an ''authority'' within the meaning of section 771(5)(B) of the Act. In addition, the GOC did not promptly notify the Department, in accordance with section 782(c) of the Act, that it was not able to submit the required information in the requested form and manner, nor did it suggest any alternative forms for submitting this information. Further, the GOC did not provide any information regarding the attempts it undertook to obtain the requested information for this SSC supplier.

Therefore, we preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on ''facts otherwise available'' in making our preliminary determination. *See* sections 776(a)(1) and 776(a)(2)(A) of the Act.

Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we determine that the GOC has withheld information and impeded the investigation, and that an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act. As AFA, we are finding that all of the producers of SSC for which the GOC failed to provide ownership information or failed to identify whether the owners were CCP officials are ''authorities'' within the meaning of section 771(5)(B) of the Act.

Superte—Government Authorities Under Provision of SSC for LTAR

In our initial questionnaire to Superte at III–16, we requested that Superte provide a spreadsheet showing, among other things, the producers of the SSC it purchased. We also requested that Superte coordinate with the GOC to ensure that the GOC had the information it needed to accurately respond to the Department's questions regarding the input suppliers. For certain purchases, Superte did not provide the names of the enterprises that produced the SSC.[21]

Because Superte failed to report this information, the GOC was unable able to fully respond to the Department's questions about input suppliers. As a result, necessary information is not on the record. Without this information, the Department is not able to analyze whether these suppliers of SSC are ''authorities.'' By failing to identify these suppliers, Superte has significantly impeded the proceeding, and we are resorting to ''facts otherwise available'' in making our preliminary determination. *See* sections 776(a)(1) and 776(a)(2)(C) of the Act.

Moreover, we preliminarily determine that Superte has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act. As AFA, we are finding that the unidentified producers of SSC are ''authorities'' within the meaning of section 771(5)(B) of the Act. [22]

GOC—Provision of Electricity for LTAR

As discussed below under the section ''Programs Preliminarily Determined To Be Countervailable,'' the Department is investigating the provision of electricity for LTAR by the GOC. The GOC, however, did not provide a complete response to the Department's requests for information regarding this program. In the Department's initial questionnaire, we requested that the GOC provide the provincial price proposals for each province in which a mandatory respondent and any reported cross-owned company is located for the applicable tariff schedules that were in effect during the POI, and to explain how those price proposals were created.[23] We also asked the GOC to explain how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the price proposals, and how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories.[24]

The GOC responded that it was unable to provide the price proposals because they are working documents for the National Development and Reform Commission's (''NDRC'') review.[25] Citing section 782(c)(1) of the Act and 19 CFR 351.301(c)(2)(iv), the GOC stated that it was ''{notifying} the Department of difficulty in obtaining the original Provincial Price Proposals.'' [26] To the questions regarding how electricity cost increases are reflected in retail price increases, the GOC's response explained theoretically how price increases should be formulated and did not explain the actual process that led to the price increases.[27]

As such, the Department issued a supplemental questionnaire to the GOC reiterating its request for this information.[28] In its SQR to the Electricity Appendix questions, the GOC reiterated its initial response.[29]

After reviewing the GOC's responses to the Department's electricity questions, we preliminarily determine that the GOC's answers are inadequate and do not provide the necessary information required by the Department to analyze the provision of electricity in the PRC. The GOC did not provide the requested price proposal documents or explain how price increases were formulated. As a result, the Department must rely on the facts otherwise available in its analysis for this

[17] *See* Memorandum to the File from Jennifer Meek, International Trade Analyst, AD/CVD Operations, Office 1, regarding ''Additional Documents for Preliminary Determination,'' dated July 30, 2012 (''Additional Documents Memorandum'') at Attachments II and III (which include the post-preliminary analysis memorandum from certain seamless carbon and alloy steel standard, line, and pressure pipe and a State Department report, both recognizing the significant role the CCP has in the GOC).

[18] *Id.* at Attachment III.

[19] *Id.; see also Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 75 FR 57444 (September 21, 2010), and accompanying Issues and Decision Memorandum (''Seamless Pipe Decision Memorandum'') at Comment 7.

[20] *See* Seamless Pipe Decision Memorandum at 16.

[21] *See* Superte's June 28, 2012 initial questionnaire response (Superte's IQR'') at Ex-13 and Superte's July 23, 2012 SQR at 32.

[22] The Department treated a similar situation in this manner in *High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 77 FR 26738 (May 7, 2012), and accompanying Issues and Decision Memorandum at 13–14.

[23] *See* the Department's Initial Questionnaire to the GOC (May 10, 2012) at Electricity Appendix.

[24] *Id.*

[25] *See* the GOC's June 28, 2012 initial questionnaire response (''GOC's IQR'') at 58–59.

[26] *Id.*

[27] *Id.* at 59–62.

[28] *See* the Department's Supplemental Questionnaire to the GOC (July 12, 2012) at 5–6.

[29] *See* GSQR at 4–6.

preliminary determination. *See* sections 776(a)(1) and 776(a)(2)(A) of the Act.

Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Citing section 782(c)(1) of the Act and 19 CFR 351.301(c)(2)(iv), the GOC stated it could not provide the NDRC documents because they were ''working documents.'' However, the GOC did not explain why it could not submit such documents on the record of this proceeding, particularly as the Department permits parties to submit information under protective order for limited disclosure if it is business proprietary. *See, e.g.,* 19 CFR 351.306. Nor did the GOC provide any other documents that would have answered the Department's questions. Therefore, an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act. Drawing an adverse inference, we preliminarily determine that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act.

We are also relying on an adverse inference by selecting the highest electricity rates that were in effect during the POI as our benchmarks for determining the existence and amount of any benefit under this program. *See* section 776(b)(4) of the Act. Specifically, the GOC provided the provincial rates schedules that were effect during the POI,[30] and we have used those schedules to identify the highest provincial electricity rates in effect during POI. For details on the preliminary calculated subsidy rates for the respondents, *see* below at ''Provision of Electricity for LTAR.''

GOC—''Two New'' Product Special Funds of Guangdong Province and Grant for Loan Interest (Zhongshan City)

The Department will investigate potential subsidies it discovers during the course of an investigation, even if those subsidies were not alleged in the CVD petition. *See* section 775 of the Act.

Yingao indicated that it received a grant under an unknown program during the POI.[31] Also, Superte reported that it received a grant under the ''Grant for Loan Interest'' program during the POI.[32] The Department requested that the GOC provide information about ''other subsidies'' in the initial questionnaire. In the GOC's IQR, the GOC did not provide the requested information. Instead, the GOC asserted that, ''* * * In the absence of sufficient allegations and evidence respecting other programs, consistent with Article 11.2 and other relevant articles of the WTO Agreement on Subsidies and Countervailing Measures, no reply to this question is warranted or required.'' [33]

In the July 11, 2012, supplemental questionnaire issued to the GOC, we again asked the GOC to provide information concerning Yingao's unknown subsidy and Superte's subsidy, referring to information provided in Yingao's and Superte's questionnaire responses. Although the GOC provided the names of these two programs and amounts disbursed, it did not provide a response to any of the required appendices (*i.e.,* Standard Questions Appendix, Allocation Appendix, and Grant Appendix) and, as such, did not provide any information on the specificity of the programs.[34]

The Department normally relies on information from the government to assess program specificity.[35] Because the GOC did not provide the information that would allow us to determine the specificity of these programs, we preliminarily determine that necessary information is not on the record. Accordingly, the use of facts otherwise available is appropriate. *See* sections 776(a)(1) and (2)(A),(B), and (C) of the Act.

Further, the GOC has not cooperated to the best of its ability in responding to the Department's requests for information. Consequently, an adverse inference is warranted in the applicable of facts available. *See* section 776(b) of the Act. As a result, we find the programs to be specific under section 771(5A) of the Act.

Subsidies Valuation Information

Allocation Period

The average useful life (''AUL'') period in this proceeding, as described in 19 CFR 351.524(d)(2), is 12 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[36] No party in this proceeding has disputed this allocation period.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii) through (v) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (''CIT'') has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[37]

Superte

Superte responded to the Department's original and supplemental questionnaires on behalf of itself, a producer and exporter of the subject merchandise during the POI.[38] Superte reported that it had no affiliated companies during the POI.[39] Therefore, we are preliminarily attributing subsidies received by Superte to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

The Department also received a questionnaire response from Zhaoshun, a trading company not affiliated with Superte, but which exported subject merchandise produced by Superte

[30] *See* the GOC's IQR at Exhibits E3–APP6–3 and E3–APP6–4.

[31] *See* Yingao's June 29, 2012, initial questionnaire response (''Yingao's IQR'') at 43–44.

[32] *See* Superte's IQR at 34.

[33] *See* the GOC's IQR at 78–79.

[34] *See* GSQR at 1; *see also* the GOC's July 26, 2012, supplemental questionnaire response (''GOC SQR2'') at 4.

[35] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review,* 76 FR 77206 (December 12, 2011), and accompanying Issues and Decision Memorandum at Comment 8.

[36] *See* U.S. Internal Revenue Service Publication 946 (2008), *How to Depreciate Property,* at Table B–2: Table of Class Lives and Recovery Periods.

[37] *See Fabrique de Fer de Charleroi, SA* v. *United States,* 166 F. Supp. 2d 593, 600–604 (CIT 2001).

[38] *See* Superte's IQR at 2 and 6.

[39] *Id.* at 3.

during the POI.[40] Zhaoshun reported that it had no affiliated companies during the POI.[41] Therefore, we are preliminarily attributing subsidies received by Zhaoshun to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

Because Zhaoshun exported subject merchandise produced by Superte during the POI, we are preliminarily cumulating the benefit from Zhaoshun's subsidies with the benefit from Superte's subsidies, in accordance with 19 CFR 351.525(c).

Yingao

Yingao responded to the Department's original and supplemental questionnaires on behalf of itself, a producer and exporter of the subject merchandise during the POI.[42] Yingao also responded on behalf of Magang, a producer of subject merchandise during the POI and holding company of Yingao during the POI.[43]

We preliminarily determine Yingao and Magang are ''cross-owned'' within the meaning of 19 CFR 351.525(b)(6)(vi) because of Magang's ownership position in Yingao.[44] Because Yingao and Magang are producers of subject merchandise and are ''cross-owned,'' we are preliminarily attributing subsidies received by Yingao to the combined sales of Yingao and Magang (exclusive of intercompany sales), in accordance with 19 CFR 351.525(b)(6)(ii). Additionally, because Magang is a holding company of Yingao, we are preliminarily attributing subsidies received by Magang to Magang's consolidated sales, in accordance with 19 CFR 351.525(b)(6)(iii).[45]

Yingao reported that it is affiliated with other companies.[46] Yingao did not submit questionnaire responses on behalf of these companies. In our supplemental questionnaire to Yingao, we asked Yingao to explain why it did not submit responses on behalf of these affiliated companies.[47] Yingao responded to these questions in its July 24, 2012, supplemental questionnaire response. We intend to examine the relationship between Yingao and these various affiliated companies during the course of this investigation.

Benchmarks and Discount Rates

The Department is investigating loans received by the respondents from Chinese policy banks and state-owned commercial banks (''SOCBs''), as well as non-recurring, allocable subsidies (*see* 19 CFR 351.524(b)(1)). The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

Short-Term RMB-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' Normally, the Department uses comparable commercial loans reported by the company as a benchmark.[48] If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we ''may use a national average interest rate for comparable commercial loans.''[49]

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *Coated Paper from the PRC,*[50] loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Because of this, any loans received by the respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber from Canada,* the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.[51]

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in *Coated Paper from the PRC*[52] and more recently updated in *Thermal Paper from the PRC.*[53] Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: Low income; lower-middle income; upper-middle income; and high income. As explained in *Coated Paper from the PRC,* this pool of countries captures the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.[54] Beginning in 2010, however, the PRC is in the upper-middle income category.[55] Accordingly, as explained further below, we are using the interest rates of upper-middle income countries to construct the benchmark. This is consistent with the Department's calculation of interest rates for recent CVD proceedings involving PRC merchandise.[56]

After the Department identifies the appropriate interest rates, the next step in constructing the benchmark has been to incorporate an important factor in interest rate formation, the strength of governance as reflected in the quality of the countries' institutions.[57] The

[40] *See* Zhaoshun's June 28, 2012, initial questionnaire response (''Zhaoshun's IQR'') at 2.

[41] *Id.* at 3.

[42] *See* Yingao's IQR at 5–6.

[43] *See* Magang's June 29, 2012, initial questionnaire response at 4; *see also* Yingao's IQR at 4.

[44] Information on Magang's ownership of Yingao is business proprietary. *See* Yingao's IQR at 4 for Magang's ownership share of Yingao.

[45] *See* Seamless Pipe Decision Memorandum at Comment 29(b) (discussion of attribution of subsidies to a company that is both a producer of subject merchandise and a holding company).

[46] *See* Yingao's IQR at 2–3.

[47] *See* the Department's July 12, 2012, supplemental questionnaire to Yingao at 4–5.

[48] *See* 19 CFR 351.505(a)(3)(i).

[49] *See* 19 CFR 351.505(a)(3)(ii).

[50] *See* Coated Paper Decision Memorandum at Comment 10; *see also* Memorandum to the File from Jennifer Meek, Trade Analyst, AD/CVD Operations, Office 1, regarding ''Placement of Banking Memoranda on Record of the Instant Investigation,'' dated July 30, 2012 (''Banking Memoranda'').

[51] *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada,* 67 FR 15545 (April 2, 2002) (''*Softwood Lumber from Canada*''), and accompanying Issues and Decision Memorandum (''Softwood Lumber Decision Memorandum'') at ''Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.''

[52] *See* Coated Paper Decision Memorandum at Comment 10.

[53] *See Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 57323 (October 2, 2008) (''*Thermal Paper from the PRC*''), and accompanying Issues and Decision Memorandum at 8–10.

[54] *See* World Bank Country Classification, *http://econ.worldbank.org/. See also* Memorandum to the File from Austin Redington, International Trade Analyst, AD/CVD Operations, Office 1, regarding ''Interest Rate Benchmarks,'' dated July 30, 2012 (''Interest Rate Benchmarks Memorandum'').

[55] *Id.*

[56] *See e.g., Utility Scale Wind Towers From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 77 FR 33422, 33435–33436 (June 6, 2012) (''*Wind Towers from the PRC*'').

[57] The World Bank has not yet published World Governance Indicators for 2011. Therefore, for purposes of this preliminary determination, where the use of a short-term benchmark rate for 2011 is required, we have applied the 2010 short-term benchmark rate. The Department notes that the short-term benchmark may be updated, pending the release of all the necessary 2011 data, by the final determination.

strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators. In each of the years from 2001–2009, the results of the regression analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.[58] For 2010, however, the regression does not yield that outcome for the PRC's income group.[59]

This contrary result for a single year in ten does not lead us to reject the strength of governance as a determinant of interest rates. As confirmed by the Federal Reserve, ''there is a significant negative correlation between institutional quality and the real interest rate, such that higher quality institutions are associated with lower real interest rates.'' [60] However, for 2010, incorporating the governance indicators in our analysis does not make for a better benchmark. Therefore, while we have continued to rely on the regression-based analysis used since *Coated Paper from the PRC* to compute the benchmarks for loans taken out prior to the POI, for the 2010 benchmark we are using an average of the interest rates of the upper-middle income countries. Based on our experience for the 2001–2009 period, in which the average interest rate of the lower-middle income group did not differ significantly from the benchmark rate resulting from the regression for that group, use of the average interest rate for 2010 does not introduce a distortion into our calculations.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics (''IFS''). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as ''upper middle income'' by the World Bank for 2010 and ''lower middle income'' for 2001–2009. First, we did not include those economies that the Department considered to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.[61]

Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.[62]

Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.[63]

In *Citric Acid from the PRC,* this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where ''n'' equals or approximates the number of years of the term of the loan in question.[64] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.[65]

Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.[66] The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the respondents' preliminary calculations memoranda.[67]

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. Two Free, Three Half Program for Foreign Investment Enterprises (''FIEs'')

Under Article 8 of the ''Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises'' (''FIE Tax Law''), an FIE that is ''productive'' and scheduled to operate more than ten years in exempt from income tax in the first two years of profitability and pays income taxes at half the standard rate for the next three to five years.[68] According to the GOC, the program was terminated effective January 1, 2008, by the ''Enterprise Income Tax Law,'' but companies already enjoying the preference were permitted to continue paying taxes at reduced rates.[69] Yingao benefited from tax savings provided under this program during the POI.[70]

The Department has previously found the ''Two Free, Three Half'' program to confer a countervailable subsidy.[71] Consistent with the earlier cases, we preliminarily determine that the ''Two Free, Three Half'' income tax exemption/reduction confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the exemption/reduction afforded by the program is limited as a matter of law to certain enterprises, *i.e.,* productive FIEs, and hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income tax savings received by

[58] *See* Additional Documents Memorandum.

[59] *See* Interest Rate Benchmarks Memorandum.

[60] *Id.*

[61] *See* Interest Rate Benchmarks Memorandum.

[62] *Id.*

[63] *See, e.g., Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination,* 73 FR 35642 (June 24, 2008), and accompanying Issues and Decision Memorandum at 8.

[64] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 16836 (April 13, 2009) (''*Citric Acid from the PRC*''), and accompanying Issues and Decision Memorandum at Comment 14.

[65] *See* Interest Rate Benchmarks Memorandum.

[66] *Id.*

[67] *See* Memorandum to the File from Shane Subler, International Trade Compliance Analyst, ''Preliminary Determination Calculation for Yingao,'' dated July 30, 2012 (''Yingao Preliminary Calculation Memo'') and Memorandum to the File from Shane Subler, International Trade Compliance Analyst, ''Preliminary Determination Calculation for Superte,'' dated July 30, 2012 (''Superte Preliminary Calculation Memo'').

[68] *See* the GOC's IQR at 37.

[69] *Id.* at 37.

[70] *Id.* at 38; *see also* Yingao's IQR at 28.

[71] *See* Coated Paper Decision Memorandum at 11–12; *see also* Seamless Pipe Decision Memorandum at 25; *see also Wind Towers from the PRC.*

Yingao as a recurring benefit, consistent with 19 CFR 351.524(c)(1). We compared the income tax rate that the company should have paid (25 percent) with the reduced income tax rate of (12.5 percent), which Yingao paid during the POI, to calculate the tax savings. To calculate the net subsidy rate, we divided the benefit by Yingao's total POI sales, as described above in the ''Subsidies Valuation Information'' section.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.29 *ad valorem* for Yingao.

B. Provision of Electricity for LTAR

For the reasons explained in the ''Use of Facts Otherwise Available and Adverse Inferences'' section above, we are basing our preliminary determination regarding the GOC's provision of electricity for LTAR in part on AFA. Therefore, we preliminarily determine that the GOC's provision of electricity confers a financial contribution as a provision of a good under section 771(5)(D)(iii) of the Act, and is specific under section 771(5A)(D)(iii) of the Act.

For determining the existence and amount of any benefit under this program, we selected the highest non-seasonal provincial rates in the PRC, as provided by the GOC for each electricity category (*e.g.,* ''large industry,'' ''general industry and commerce'') and ''base charge'' (either maximum demand or transformer capacity) used by the respondents. Additionally, where applicable, we identified and applied the peak, normal, and valley rates within a category.

Consistent with our approach in *Wind Towers from the PRC,* we first calculated the respondents' variable electricity costs by multiplying the monthly kilowatts (kWh) consumed at each price category (*e.g.,* peak, normal, and valley, where appropriate) by the corresponding electricity rates paid by respondents during each month of the POI.[72] Next, we calculated the benchmark variable electricity costs by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at each price category. To calculate the benefit for each month, we subtracted the variable electricity costs paid by each respondent during the POI from the monthly benchmark variable electricity costs.

To measure whether the respondents received a benefit with regard to their base rate (*i.e.,* either maximum demand or transformer capacity charge), we first multiplied the monthly base rate charged to the companies by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying the companies' consumption quantities by the highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the maximum demand or transformer capacity costs paid by the companies during the POI from the benchmark base rate costs. We then calculated the total benefit received during the POI under this program by summing the benefits stemming from the respondents' variable electricity payments and base rate payments.[73]

To calculate the net subsidy rates attributable to Superte, Zhaoshun, and Yingao, we divided the benefit by each company's respective sales as described in the ''Subsidies Valuation Information'' section above. On this basis, we preliminarily determine countervailable subsidy rates of 0.58 percent *ad valorem* for Superte and 1.19 percent *ad valorem* for Yingao. We preliminarily calculated no benefit for Zhaoshun's purchases of electricity. Therefore, Zhaoshun's rate for this program is the rate calculated for Superte.

C. Stainless Steel Coils for LTAR

The Department is investigating whether GOC authorities provided SSC to producers of SS sinks for LTAR. Except as noted above under ''*Superte—Government Authorities Under Provision of SSC for LTAR,*'' the respondent companies identified the suppliers and producers from whom they purchased SSC during the POI. In addition, they reported the date of payment, quantity, unit of measure, and purchase price for the SSC purchased during the POI.

As discussed above under ''Use of Facts Otherwise Available and Adverse Inferences,'' we are finding, as AFA, that certain producers of SSC purchased by the respondents during the POI are ''authorities'' within the meaning of section 771(5)(B) of the Act. Also as discussed under ''Use of Facts Otherwise Available and Adverse Inferences,'' we are finding, as AFA, that Superte's unidentified SSC producers are ''authorities'' within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily determine that the SSC supplied by these enterprises is a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act and that the respondents received a benefit to the extent that the price they paid for SSC produced by these suppliers was for LTAR. *See* sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

Of the remaining SSC producers, the GOC reported that one was an SOE but did not provide the further information the Department requested in order to determine whether this SOE was an ''authority.'' Therefore, consistent with our practice of finding SOEs to be authorities,[74] we preliminarily determine that the SSC supplied by this SOE is a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act and that the respondents received a benefit to the extent that the price they paid for SSC produced by this suppliers was for LTAR. *See* sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

Finally, the GOC identified four SSC producers located in the PRC but entirely or substantially owned and controlled by foreign companies that are not owned or controlled by the GOC. This is supported by record information, for example, these companies' ownership structure, articles of association, and the membership and operation of their boards of directors and their senior management.[75] Therefore, we preliminarily determine that these SSC producers, in this instance, are not ''authorities'' and the SSC purchased from them does not give rise to a countervailable subsidy.

Regarding the specificity of SSC provided for LTAR, the GOC has stated that it does ''not impose any limitations on the consumption of stainless steel coil by law or by policy'' and that ''there is a vast number of uses for stainless steel coil, and that the type of consumers that may purchase stainless steel coil is highly varied within the economy.''[76] In support, the GOC provided a list of industries that invited bids to supply stainless steel products.[77] According to the GOC's classification,

[72] *See Wind Towers from the PRC,* 77 FR at 33436.

[73] For more information on the respondents' electricity usage categories and the benchmark rates we have used in the benefit calculations, *see* Memorandum to the File from Shane Subler, AD/CVD Operations, Office 1, regarding ''PRC Electricity Benchmark Rates'' (July 30, 2012). For the calculations, *see* Yingao Preliminary Calculation Memo and Superte Preliminary Calculation Memo.

[74] *See, e.g., Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances,* 73 FR 40480 (July 15, 2008) and accompanying Issues and Decision Memorandum (''Tires Decision Memorandum'') at 10.

[75] *See* the GOC's IQR at Exhibits E4–APP–1; E4–APP–2; E4–APP–26; and E4–APP–27.

[76] *See* the GOC's IQR at 67.

[77] *See* the GOC's IQR at Exhibit E4–14.

these potential users of stainless steel products fall into 20 or 32 different industry classifications using ISIC and Chinese national economy industry classifications, respectively. On this basis, we preliminarily determine that the GOC is providing SSC to a limited number of industries or enterprises and, hence, that the subsidy is specific pursuant to section 771(5A)(D)(iii).[78]

Finally, regarding benefit, the Department identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services at 19 CFR 351.511(a)(2). These potential benchmarks are listed in hierarchical order by preference: (1) Market prices from actual transactions within the country under investigation (*e.g.,* actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.[79] This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on this hierarchy, we must first determine whether there are market prices from actual sales transactions involving Chinese buyers and sellers that can be used to determine whether the GOC authorities sold SSC to the respondents for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.[80]

In its initial questionnaire response, the GOC stated that its State Statistics Bureau (''SSB'') does not maintain official statistics on stainless steel cold-rolled sheet or strip including production volume by ownership type or import volumes; that, instead, it maintains data on cold-rolled sheet or strip that incorporates stainless and non-stainless products.[81] In our supplemental questionnaire, we requested that the GOC provide the data for the larger category, cold-rolled steel, and asked whether in the GOC's view such data was representative of stainless steel production.[82] The GOC responded that the cold-rolled steel data collected by the SSB includes four types of cold-rolled products in terms of chemical composition: non-alloy, low-alloy, alloy, and stainless steel.[83] Moreover, the GOC claimed that stainless and non-stainless steel are substantially different products, so that relying on information about cold-rolled steel for stainless steel could result in inaccurate and seriously distorted results.[84] The GOC did not submit the SSB data for cold-rolled steel.

Accepting the GOC's claim that the cold-rolled steel information is not representative of stainless steel production for this preliminary determination, the Department has relied instead on record information which shows that SOE producers of stainless steel account for at least 46 percent of Chinese production during the POI.[85] Consequently, because of the government's significant involvement in the stainless steel market, the use of private producer prices in the PRC would not be an appropriate benchmark (*i.e.,* such a benchmark would reflect the distortions of the government presence).[86] As we explained in *Softwood Lumber from Canada:*

> Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.[87]

For these reasons, prices stemming from private transactions within the PRC cannot give rise to a price that is sufficiently free from the effects of the GOC's actions and, therefore, cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration.

Given that we have preliminarily determined that no tier one benchmark prices are available, we next evaluated information on the record to determine whether there is a tier two world market price available to producers of subject merchandise in the PRC. Petitioner and Yingao both submitted prices that they suggest are appropriate.[88] Petitioner proposes using Management Engineering & Production Services (''MEPs'') world market price data, while Yingao has submitted prices for imports of SSC into various Asian countries (not including the PRC). Consistent with our practice, we have not relied on the import prices put forward by Yingao because there is no evidence that such prices are available to SS sinks producers in the PRC.[89] Instead, we are preliminarily relying on the MEPs world market prices.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we have added to the monthly benchmark prices ocean freight and inland freight charges that would be incurred to deliver SSC from the port to the companies' facilities. We have also added the applicable value added tax (''VAT'') and import duties, at the rates reported by the GOC.[90] Our benchmark calculations are fully described in Yingao Preliminary Calculation Memo and Superte Preliminary Calculation Memo.

We then compared the monthly benchmark prices to Superte's and Yingao's actual purchase prices for SSC, including taxes and delivery charges, as appropriate. In instances in which the benchmark unit price was greater than the price paid to GOC authorities, we multiplied the difference by the quantity of SSC purchased from the

[78] *See* section 771(5A)(D)(iii)(I) of the Act.

[79] *See also* Softwood Lumber Decision Memorandum at ''Market-Based Benchmark.''

[80] *See Countervailing Duties; Final Rule,* 63 FR 65348, 65377 (November 25, 1998).

[81] *See* the GOC's IQR at 63.

[82] *See* the Department's July 12, 2012 Supplemental Questionnaire to the GOC at 7.

[83] *See* GSQR at 6.

[84] *Id.* at 7.

[85] *See* Letter from Petitioner, ''Petitions For The Imposition Of Antidumping And Countervailing Duties Against Drawn Stainless Steel Sinks From The People's Republic of China,'' dated March 1, 2012 (''Petition''), Volume III at 49 and Exhibit III–57. *See also* Yingao Preliminary Calculation Memo and Superte Preliminary Calculation Memo.

[86] *See* Softwood Lumber Decision Memorandum at ''There are no market-based internal Canadian benchmarks'' section.

[87] *Id.* at 38–39.

[88] *See* Yingao's IQR at Exhibit 21 and July 16, 2012 Factual Information Submission from Petitioner at Exhibit 2.

[89] *See, e.g., Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 75 FR 57444 (September 21, 2010) and accompanying Issues and Decision Memorandum at Comment 9A.

[90] *See* GOC's IQR at 66.

GOC authorities to arrive at the benefit.[91]

Because the benchmark prices exceeded the prices paid by Superte and Yingao for SSC, we preliminarily find that the GOC's provision of SSC for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). To calculate the net subsidy rates attributable to Superte and Yingao, we divided the benefit by each company's respective sales as described in the ''Subsidies Valuation Information'' section above.

On this basis, we preliminarily determine countervailable subsidy rates of 12.23 percent *ad valorem* for Superte and 0.49 percent *ad valorem* for Yingao. Because Zhaoshun did not purchase SSC, we are not calculating a rate for this company under this program.

D. Land for LTAR to Companies Located in Industrial or Other Special Economic Zones

The Department is investigating whether GOC authorities provided land to producers of SS sinks for LTAR. As instructed in the Department's questionnaires, the respondent companies identified the land-use rights they purchased or their leasing arrangements, as appropriate. Superte is located in the Food Industry Park in Zhongshan.[92] Its land-use rights were originally purchased by one of Superte's owners in 2004 and 2009.[93] In 2010, Superte purchased the land-use rights from the owner.[94] Zhaoshun leases office space in Foshan from an individual.[95] Yingao is also located in Foshan, in the Xintan Industrial Estate:[96] It purchased its land-use rights in 2006.[97] Magang leases the site for its factory, also in Foshan.[98]

The cities of Foshan and Zhongshan are covered by the *Pearl River Delta Industrial Layout Integration Plan* (''*Pearl River Delta Plan*'').[99] This plan was the basis for Petitioner's allegation and the Department's decision to investigate the GOC's provision of land-use rights in zones within the cities of Foshan and Zhongshan, which are covered by the plan.[100] According to the GOC, the *Pearl River Delta Plan* was enacted in July 2010.[101] Also according to the GOC, none of the responding companies was located in an industrial or other special economic zone when its land was acquired.[102]

Based on the GOC's response, we preliminarily determine that the ''Provision of Land and/or Land Use Rights for LTAR in Industrial and Other Special Economic Zones'' program was not used. As explained above, Superte's and Yingao's land-use rights were purchased prior to implementation of the *Pearl River Delta Plan,* and there is no indication that Magang or Zhaoshun is located in an industrial or other special economic zone. Nonetheless, based on our authority to investigate practices discovered in the course of an investigation which appear to be subsidies pursuant to section 775 of the Act, we have requested further information from the GOC about the provision of land-use rights in the Zhongshan Food Industry Park to Superte and in the Xintan Industrial Estate to Yingao.[103] We intend to address this information in a post-preliminary analysis.

Also based on section 775 of the Act, we preliminarily determine that the GOC conferred a countervailable subsidy on Superte when it issued Superte's land-use certificates in 2010, which effectively extended Superte's land use rights by additional years without additional consideration.[104] While the details are proprietary and addressed separately,[105] we preliminarily determine that Superte received a financial contribution in the form of revenue forgone by the GOC and a benefit in the amount of forgone revenue. *See* section 771(5)(d)(ii) of the Act. We further preliminarily determine that the subsidy was specific to Superte under section 771(5A)(D)(iii)(I) of the Act.

To calculate the benefit, we considered the subsidy to be exceptional within the meaning of 19 CFR 351.524(c)(2)(i) and, hence, have treated it as non-recurring. Thus, we divided the benefit by Superte's total sales in 2010 (the year of approval) pursuant to 19 CFR 351.524(b)(2). Because the result was greater than 0.5 percent, we allocated the benefit over the 12-year AUL, using the discount rate described in the ''*Benchmarks and Discount Rates*'' section above, and divided the allocated amount by Superte's total sales during the POI. *See* Superte Preliminary Calculation Memo.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.19 percent *ad valorem* for Superte. Because Zhaoshun did not receive this benefit, its rate for this program is the rate calculated for Superte.

E. Policy Lending to the SS Sinks Industry

The Department is investigating whether the GOC subsidizes SS sinks producers through the provision of policy loans. According to Petitioner, the GOC provides preferential policy lending to SS sinks producers through central level plans that are implemented through local government programs and measures, including industry plans and the five-year plans for Guangdong province, Foshan City, and Zhongshan City.

As explained below, we preliminarily determine that a local policy lending program exists for SS sinks in Zhongshan City. We also preliminarily determine that the respondents located elsewhere have not received policy loans.

Upon review of the various planning documents on the record, we have found that stainless steel is consistently identified as an industry or product for development or encouragement. For example, the ''Iron and Steel Industry 12th Five-Year Plan (''*Iron and Steel Plan*''), a national planning document that provides direction for iron and steel industries, mentions the GOC's intent to support specialty steel enterprises, especially those that manufacture high-grade stainless steel products.[106] In efforts to implement many goals and objectives of the *Iron and Steel Plan,* the GOC specifically directs coordination between ''finance polic{y} * * * and the iron and steel policy.[107] While this national plan discusses providing support to the stainless steel industry and stainless steel products, as noted above, Petitioner has alleged that the GOC has in place a national policy lending program that is implemented at the local level. Thus, in order to make a determination of whether this type of policy lending exists, we must turn to the relevant regional, provincial, and city level plans on the record.

First, the *Pearl River Delta Plan,* which covers the Pearl River Delta region in which both respondents are located, states the GOC's intention to give priority to the development of ''post processing stainless steel plates'' and to build an agglomeration or cluster development layout in several cities in the region, including those in which the

[91] *See* Yingao Preliminary Calculation Memo and Superte Preliminary Calculation Memo.

[92] *See* Superte's IQR at 27.

[93] *Id.* at 28.

[94] *Id.*

[95] *See* Zhaoshun's IQR at 23.

[96] *See* Yingao's IQR at 5.

[97] *See* Yingao's IQR at 38.

[98] *See* Magang's Section of Yingao's IQR at 24.

[99] *See SS Sinks Checklist* at 22.

[100] *Id.*

[101] *See* the GOC's IQR at 57.

[102] *Id.*

[103] *See* the Department's July 12, 2012 Supplemental Questionnaire to the GOC at 5.

[104] *See* Superte's IQR at 28.

[105] *See* Superte Preliminary Calculation Memo.

[106] *See* Petition at Exhibit III–9.

[107] *Id.*

respondents are located, in order to focus on the manufacturing of certain products, including stainless steel products.[108] The ''Guidelines of Foshan City on Industrial Structure Adjustment (''*Foshan Industrial Plan*''), which covers the city in which Yingao is located, states Foshan City's intent to develop ''3+9'' special industry bases and 15 key industries.[109] Among these industry bases and key industries are ''metal material processing and products.'' Further, in efforts to center on these industry bases and key industries, the *Foshan Industrial Plan* states that priorities should be given to the construction of 12 industrial key areas, including ''new metal materials (new aluminum extrusions, stainless steel, cold rolled steel plates and their deeply processed products).'' Finally, this plan demands coordination among the government, banks, and enterprises, in order to encourage and guide financial institutes to actively provide financing services for enterprises in the industry bases outlined in the plan. While this plan makes clear the city's intention to financially support certain industries, the areas targeted for growth are broad and overarching. For example, ''metal material processing and products'' could include an infinite number of products.

In reviewing the provincial and city five-year planning documents on the record, we again found references to stainless steel. For example, Guangdong province's 12th five-year plan mentions the potential need to ''scale up'' the steel industry and to ''actively promote'' enterprises.[110] The development of special types of stainless steel is also mentioned in Foshan City's 12th five-year plan.[111] The Foshan City 11th five-year plan discusses optimizing, uplifting, and developing the stainless steel market as a ''Major Mission.''[112] However, we find that without further information, each of these references to steel or stainless steel is not specific to the SS sinks industry or SS sinks producers. Furthermore, the references in the Foshan City 12th five-year plan to ''scale up'' and ''actively promote'' are vague and only pertain to the steel industry as a whole.

In reviewing Zhongshan City's 12th five year plan, however, we noted that the home appliance industry, which includes SS sinks,[113] is specifically targeted for growth.[114] The plan states the city's goal to ''{m}ake the 100 billion level industrial clusters for the lighting and home appliance industries, and 10 billion level industrial clusters for the furniture, hardware, textile and apparel industries.'' Moreover, in conjunction with the growth targets identified in Zhongshan City's 12th five-year plan, we also found certain information provided by the GOC that indicates Superte received its loans pursuant to GOC policies.[115] While this information is not necessary in determining whether policy lending exists, in this instance, the information contained in the documents support a preliminary determination that the GOC has a policy in place to encourage the development and production of SS sinks through policy lending in Zhongshan City.

Therefore, given the evidence demonstrating the Zhongshan City's objective of developing the home appliance industry through loans and other financial incentives, and the specific references found in the loan documents on the record, we preliminarily determine there is a program of preferential policy lending specific to SS sinks producers in Zhongshan City, within the meaning of section 771(5A)(D)(i) of the Act. However, based on the remaining planning documents on the record, we preliminarily determine that the producers outside of Zhongshan did not have policy loans outstanding during the POI.

We also preliminarily determine that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are ''authorities.''[116] The loans to Superte provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans. *See* section 771(5)(E)(ii) of the Act (our benchmarks are discussed above under the ''Subsidy Valuation Information'' section). To calculate the net subsidy rate attributable to Superte, we divided the benefit by the company's total sales in the POI.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.75 percent *ad valorem* for Superte. Because Zhaoshun is not located in Zhongshan and did not receive this benefit, its rate for this program is the rate calculated for Superte.[117]

F. Export Assistance Grants

Superte reported that it received a grant under this program during the POI.[118] Yingao reported that it received grants under this program in 2010 and during the POI.[119] The GOC identified the grants that Superte and Yingao received under this program as export-related.[120]

We preliminarily determine that the grants received by Superte and Yingao under this program constitute a financial contribution and provide a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Moreover, based on record information cited in the previous paragraph from the GOC's response, we preliminarily determine that this program is contingent upon export and, therefore, specific within the meaning of section 771(5A)(B) of the Act.

The grants that Superte and Yingao received during the POI were less than 0.5 percent of their respective POI export sales, as described above in the ''Attribution of Subsidies'' section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI.

On this basis, we preliminarily determine that Superte received a countervailable subsidy of 0.04 percent *ad valorem,* and that Yingao received a countervailable subsidy of 0.04 percent *ad valorem.* Because Zhaoshun did not receive this benefit, its rate for this program is the rate calculated for Superte.

The grant to Yingao in 2010 under this program was less than 0.5 percent of Yingao's export sales in the year of

[108] *See* Petition at Exhibit III–15.

[109] *See* Petition at Exhibit III–18; for supplementary translation, *see* the GOC's SQR at Exhibit D.

[110] *See* the GOC's IQR at Exhibit B–2–1.

[111] *See* the GOC's IQR at Exhibit B–2–2.

[112] *Id.*

[113] The names of the respondents, and other Chinese producers of SS sinks, include the words ''hardware,'' ''kitchen,'' ''kitchenware,'' ''appliance,'' or ''utensil.'' Moreover, information in the respondents' business licenses indicates that SS sinks are included in the home appliance industry. *See* Yingao's IQR at Exhibit 7; Superte's IQR at Exhibit 5; Magang's IQR at Exhibit 7; and Zhaoshun's IQR at Exhibit 3.

[114] *See* GSQR at Exhibit C.

[115] *See* the GOC's IQR at Exhibit B–8–1 through B–8–6; *see also* Memorandum from Austin Redington, International Trade Compliance Analyst to the File, ''BPI Memorandum,'' dated July 30, 2012.

[116] *See, e.g.,* Tires Decision Memorandum at Comment E2, where the Department discusses that a complete analysis of the facts and circumstances of the Chinese banking system that have led us to find that Chinese policy banks and SOCBs constitute a government authority as outlined in Coated Paper Decision Memorandum at Comment 8. *See also* Banking Memoranda. Parties in the instant case have not demonstrated that conditions within the Chinese banking sector have changed significantly since that previous decision such that a reconsideration of that decision is warranted.

[117] *See* Zhaoshun's IQR at 4.

[118] *See* Superte's IQR at 13–14.

[119] *See* Yingao's IQR at 13.

[120] *See* the GOC's IQR at 6.

receipt. Therefore, because any potential subsidy would expense prior to the POI in accordance with 19 CFR 351.524(b)(2), we preliminarily have not included this grant in the subsidy rate for Yingao.

G. Special Funds of Guangdong Province for International Market Expansion

Yingao reported that it received a grant under an unknown program during POI.[121] The GOC identified this grant under the program listed above.[122] The GOC stated that this grant program supports small- and medium-sized enterprises in Guangdong Province to expand international markets.[123]

We preliminarily determine that the grant received by Yingao under this program constitutes a financial contribution and provides a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Moreover, based on record information cited in the previous paragraph from the GOC's response, we preliminarily determine that this program is contingent upon export and, therefore, specific within the meaning of section 771(5A)(B) of the Act.

The grant that Yingao received during the POI was less than 0.5 percent of Yingao's POI export sales, as described above in the ''Attribution of Subsidies'' section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we preliminarily determine that Yingao received a countervailable subsidy of 0.04 percent *ad valorem.*

H. ''Two New'' Product Special Funds of Guangdong Province

Yingao reported that it received a grant under another unknown program during POI.[124] The GOC identified this grant under the program listed above, but did not respond to any of the questions from the Department's initial questionnaire.[125]

We preliminarily determine that the grant received by Yingao under this program constitutes a financial contribution and provides a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Moreover, as discussed under ''Use of Facts Otherwise Available and Adverse Inferences,'' above, the Department is relying on AFA to preliminarily determine that the grant program is specific.

The grant that Yingao received during the POI was less than 0.5 percent of Yingao's POI sales, as described above in the ''Attribution of Subsidies'' section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we preliminarily determine that Yingao received a countervailable subsidy of 0.07 percent *ad valorem.*

I. Grant for Loan Interest (Zhongshan City)

Superte reported that it received a grant under this program during POI.[126] The GOC provided a brief description of the program, but did not respond to any of the questions from the Department's initial questionnaire.[127]

We preliminarily determine that the grant received by Superte under this program constitutes a financial contribution and provides a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Moreover, as discussed under ''Use of Facts Otherwise Available and Adverse Inferences,'' above, the Department is relying on AFA to preliminarily determine that the grant program is specific.

The grant that Superte received during the POI was less than 0.5 percent of Superte's POI sales, as described above in the ''Attribution of Subsidies'' section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we preliminarily determine that Superte received a countervailable subsidy of 0.09 percent *ad valorem.* Because Zhaoshun did not receive this benefit, its rate for this program is the rate calculated for Superte.

J. Grant of Zhongshan City for Enterprises' Participation in Overseas Professional Exhibition

Superte reported that it received a grant under this program during the POI.[128] The GOC stated that the purpose of this program is to encourage enterprises in Zhongshan City to explore international markets.[129]

We preliminarily determine that the grant received by Superte under this program constitutes a financial contribution and provides a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Moreover, based on record information cited in the previous paragraph from the GOC's response, we preliminarily determine that this program is contingent upon export and, therefore, specific within the meaning of section 771(5A)(B) of the Act.

The grant that Superte received during the POI was less than 0.5 percent of Superte's POI export sales, as described above in the ''Attribution of Subsidies'' section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we preliminarily determine that Superte received a countervailable subsidy of 0.05 percent *ad valorem.* Because Zhaoshun did not receive this benefit, its rate for this program is the rate calculated for Superte.

K. Funds of Guangdong Province To Support the Adoption of E-Commerce by Foreign Trade Enterprises

The GOC reported that Yingao received a grant under this program during POI.[130] The GOC stated that the program supports adoption of e-commerce by foreign trade enterprises in Guangdong Province.[131] Superte also reported that it received a grant under this program during the POI.[132]

We preliminarily determine that the grants received by Yingao and Superte under this program constitute a financial contribution and provide a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Moreover, based on record information cited in the previous paragraph from the GOC's response, we preliminarily determine that this program is contingent upon export and, therefore, specific within the meaning of section 771(5A)(B) of the Act.

The grant that Superte received during the POI was less than 0.5 percent of Superte's POI export sales, as described above in the ''Attribution of Subsidies'' section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we preliminarily determine that Superte received a countervailable subsidy of 0.01 percent *ad valorem.* Because Zhaoshun did not receive this benefit, its rate for this program is the rate calculated for Superte.

The grant that Yingao received during the POI was less than 0.005 percent of Yingao's POI export sales. Therefore, consistent with our past practice, we did not include this program in our net countervailing duty rate.[133]

[121] *See* Yingao's IQR at 43–44.

[122] *See* GSQR at 1.

[123] *See id.*

[124] *See* Yingao's IQR at 43–44.

[125] *See* GSQR at 1.

[126] *See* Superte's IQR at 34.

[127] *See* GOC SQR2 at 4.

[128] *See* Superte's IQR at 36–37; *see also* GOC SQR2 at 4.

[129] *See* GOC SQR2 at 4.

[130] *See id.*

[131] *See id.*

[132] *See* Superte's July 23, 2012 SQR at 17.

[133] *See, e.g., Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007), and accompanying Issues and Decision Memorandum at 15.

II. Programs for Which More Information Is Necessary

A. Preferential Export Financing

Superte and Yingao reported that they did not receive preferential export financing during the POI.[134] Based on information in the respondents' questionnaire responses, however, we intend to request additional information about loans to these companies. We intend to address this information in a post-preliminary analysis.

III. Programs Preliminarily Determined To Have Been Not Used by Respondents or To Not Provide Benefits During the POI

We preliminarily determine that the respondents did not apply for or receive measurable benefits during the POI under the following programs.

A. Export Subsidies Characterized as ''VAT Rebates''

The Department's regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted ''exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.'' [135]

To determine whether the GOC provided a benefit under this program, we compared the VAT exemption upon export to the VAT levied with respect to the production and distribution of like products when sold for domestic consumption. The GOC reported that the VAT levied on SS sinks sales in the domestic market (17 percent) exceeded the amount of VAT exempted upon the export of SS sinks (nine percent).[136]

Thus, consistent with past cases, we preliminarily determine that the VAT exempted upon the export of SS sinks does not confer a countervailable benefit.[137]

B. Grant Programs Identified in Responses

The GOC, Superte, Zhongshun, and Yingao reported that respondents received various grants in 2005, 2008, 2009, and 2010.[138] We preliminarily find that the grants represent less than 0.5 percent of Yingao's, Superte's and Zhongshun's respective export or total sales, as applicable, for the years of approval. Therefore, we have expensed these grants to the year of receipt, in accordance with 19 CFR 351.524(b)(2), and have not allocated the benefits from these grants to the POI. These programs are as follows:

1. Special Funds for Development of Foreign Trade (Foshan City)
2. Special Funds of Guangdong Province for Development of Foreign Trade
3. Support Funds of Guangdong Province of Export Rebate for Mechanic, Electronic and High-tech Products
4. Special Funds of Shunde District for International Market Expansion
5. Subsidy to Attend Domestic Fair in Shanghai
6. Subsidy to Attend Overseas Fair
7. Interest Discount for Export Goods
8. Technology and Trade Specific Fund of Guangdong Province
9. International Market Development Fund for Export Companies

We also preliminarily determine the following programs to have been not used by the respondents:

1. The State Key Technology Renovation Fund
2. ''Famous Brands'' Awards
3. Grants to Cover Legal Fees in Trade Remedy Cases
4. Special Fund for Energy Saving Technology Reform
5. The Clean Production Technology Fund
6. Grants for Listing Shares
7. Guangdong Province Science and Technology Bureau Project Fund (aka Guangdong Industry, Research, University Cooperating Fund)
8. Export Rebate for Mechanic, Electronic, and High-tech Products
9. Funds for Outward Expansion of Industries in Guangdong Province
10. Fund for Small and Medium Enterprises (''SME'') Bank-enterprise Cooperation Projects
11. Special Fund for Fostering Stable Growth of Foreign Trade
12. Local Government Deposits Into Bank Accounts
13. Treasury Bond Loans or Grants
14. Preferential Loans for State-owned Enterprises (''SOEs'')
15. Provincial Tax Exemptions and Reductions for ''Productive'' Foreign Invested Enterprises (''FIEs'')
16. Tax Reductions for FIEs Purchasing Chinese-made Equipment
17. Tax Reductions for FIEs in Designated Geographic Locations
18. Tax Reductions for Technology- or Knowledge-intensive FIEs
19. Tax Reductions for FIEs that are also High or New Technology Enterprises (''HNTEs'')
20. Tax Reductions for HNTEs Involved in Designated Projects
21. Tax Offsets for Research and Development at FIEs
22. Tax Credits for Domestically Owned Companies Purchasing Chinese-made Equipment
23. Tax Reductions for Export-oriented FIEs
24. Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises
25. Tax Reduction for High-tech Industries in Guangdong Province
26. Import Tariff and Value Added Tax (''VAT'') Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
27. VAT Rebates on FIE Purchases of Domestically Produced Equipment
28. City Tax and Surcharge Exemptions for FIEs
29. Exemptions from Administrative Charges for Companies in Industrial Zones
30. VAT and Import Duty Exemptions on Imported Material
31. VAT Rebates on Domestically Produced Equipment
32. Provision of Land to SOEs at LTAR
33. Exemptions from Land Development Fees
34. Land Purchase Grants
35. Grants to Hire Post-doctoral Workers
36. Financial Subsidies: Interest Subsidies, Preferential Loans, and Lowered Interest Rates
37. Tax Reductions or Exemptions

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual countervailable subsidy rate for each respondent. Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an all others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates based entirely on AFA under section 776 of the Act. Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the ''all others'' rate by weight averaging the rates of Yingao and Superte, because doing so risks disclosure of proprietary information. Therefore, for the all others rate, we have calculated a simple average of the two responding firms' rates.

We preliminarily determine the total estimated net countervailable subsidy rates to be:

[134] *See* Superte's IQR at 20; *see also* Yingao's IQR at 25.

[135] *See* 19 CFR 351.517(a); *see also* 19 CFR 351.102 (for a definition of ''indirect tax'').

[136] *See* the GOC's IQR at 51.

[137] *See, e.g., Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination,* 74 FR 64045 (December 7, 2009), and accompanying Issues and Decision Memorandum at 25.

[138] *See* the GOC's July 20, 2012, supplemental questionnaire response at 2; *see also* Superte's July 23, 2012, supplemental questionnaire response at pages 10–17.

Producer/exporter	Net subsidy rate (%)
Guangdong Yingao Kitchen Utensils Co., Ltd., and Foshan Magang Kitchen Utensils Co., Ltd	2.12
Zhongshan Superte Kitchenware Co., Ltd	13.94
Foshan Zhaoshun Trade Co., Ltd.	13.94
All Others	8.03

Zhaoshun's cash deposit rate is a ''combination rate'' pursuant to 19 CFR 351.107(b). It applies only to subject merchandise exported by Zhaoshun and produced by Superte.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of SS sinks from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit for such entries of merchandise in the amounts indicated above.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Due to the anticipated timing of verification and issuance of verification reports, case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. *See* 19 CFR 351.309(c)(i) (for a further discussion of case briefs). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs, pursuant to 19 CFR 351.309(d)(1). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. *See* 19 CFR 351.309(c)(2) and (d)(2).

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will be held two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d), at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must electronically submit a written request to the Assistant Secretary for Import Administration using IA ACCESS, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone; (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. *Id.*

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: July 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–19058 Filed 8–3–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC120

Aquatic Nuisance Species Task Force Strategic Plan 2013–2017

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

ACTION: Notice of availability of Strategic Plan; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) announces the availability of the Aquatic Nuisance Species Task Force Strategic Plan 2013—2017 (Plan), approved by the Aquatic Nuisance Species Task Force (ANSTF). The Plan is available for public review and comment.

DATES: Comments must be received within 45 days after September 20, 2012.

ADDRESSES: Electronic copies of the Strategic Plan are available on the ANSTF Web site, *http://anstaskforce.gov.* To obtain a hard copy of the Strategic Plan or to submit comments, see Document Availability and Public Comment under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Margaret M. (Peg) Brady, NOAA Policy Liaison to the Aquatic Nuisance Species Task Force. 1315 East West Highway, SSMC 3, Rm. 15426 Silver Spring, MD 20910 Phone: 301–427–8655; Email: *Peg.Brady@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

The Aquatic Nuisance Species Task Force (ANSTF) is an intergovernmental organization dedicated to preventing and controlling aquatic nuisance species (ANS) and coordinating governmental efforts dealing with ANS in the United States with those of the private sector and other North American interests. ANSTF was established by Congress with the passage of the Nonindigenous Aquatic Nuisance Prevention and Control Act (NANPCA, Pub. L. 101–646, 104 STAT. 4671, 16 U.S.C. 4701–4741) in 1990 and reauthorized with the passage of the National Invasive Species Act (NISA) in 1996. Section 1201(d) of NANPCA designates the Undersecretary of Commerce for Oceans and Atmosphere and the Director of the Fish and Wildlife Service and the as the ANSTF Co-chairpersons. The ANSTF's charter is authorized by the Federal Advisory Committee Act (FACA) of 1972. The charter provides the ANSTF with its core structure and ensures an open and public forum for its activities. To meet the challenges of developing and implementing a coordinated and complementary Federal program for ANS activities, the ANSTF members include 13 Federal agency representatives and 13 representatives from ex-officio member organizations. These members work in conjunction with Regional Panels and issue-specific committees to coordinate efforts amongst agencies as well as efforts of the private sector and other North American interests.

Background

Section 1202 (a) of NANPCA authorizes the ANSTF to develop and implement a program for waters of the United States to prevent introduction and dispersal of ANS, to monitor, control, and study such species, and to disseminate related information. The Aquatic Nuisance Species Program document guided the work of the ANSTF from 1994 to 2002. The document tracked the requirements outlined in the NANPCA, established the core and supporting elements of the ANS program, provided for prioritization of activities, and charted a course for implementation of the Act. The ANSTF Strategic Plans for 2002–2007 and 2007–2012 maintained the key elements of the ANS Program, but provided a broader focus for activities consistent with provisions of NISA. These plans provided more emphasis on prevention strategies, particularly for intentional introductions.

On May 6, 2011, the ANSTF formed an ad hoc committee to draft the ANSTF Strategic Plan for 2013—2017. A draft plan was presented to the ANSTF on November 2, 2011. ANSTF Federal agency and ex-officio members and Regional Panels representatives were given the opportunity to review and comment on the draft plan. Each comment received was reviewed and addressed by the ad hoc committee and a revised draft plan was presented to the ANSTF. The ANSTF approved the revised draft on May 3, 2012.

The ANSTF Strategic Plan for 2013—2017 (hereafter, the Strategic Plan) carries through many of the goals and objectives established in previous plans by remaining focused on prevention, monitoring, and control of ANS as well as increasing public understanding of the problems and impacts associated with invasive species. The Strategic Plan also calls attention to other areas of ANS management, including habitat restoration and research. The Strategic Plan establishes the following eight goals, each which contain associated objectives and action items.

1. *Coordination:* The ANSTF was created to facilitate cooperation and coordinate efforts between Federal, State, tribes, and local agencies, the private sector, and other North American interests. The objectives for the coordination goal include strengthening cooperation at both national and regional levels within the ANSTF and the Regional Panels and encouraging the development and implementation of ANS plans and regulations.

2. *Prevention:* Prevention is the first-line of defense against ANS. This goal calls for developing strategies to identify and reduce the risk of ANS introduced by increasing development and use of risk assessments, Hazard Analysis and Critical Control Point programs (HACCP), and pathway assessment and interdiction options.

3. *Early Detection and Rapid Response:* Early Detection and Rapid Response programs are designed to monitor habitats to discover new species soon after introduction, report sightings of previously unknown species in an area, and work quickly to keep the species from becoming established and spreading. Objectives for the ANSTF include improving detection and monitoring programs and facilitating development and implementation of rapid response contingency plans.

4. *Control and Management:* Control and management tools are needed to assess, remove, and contain ANS populations as well as to guide management decisions. The ANSTF will implement this goal by evaluating and providing support to management plans, increasing training opportunities, and encouraging the development of management techniques.

5. *Restoration:* Habitat restoration is an essential to guard against future invasions and to minimize harm from invasive species. This goal focuses on restoring impacted ecosystems and consideration of potential ANS during planning and implementation of restoration activities.

6. *Education/Outreach:* The lack of awareness concerning ANS impacts is one of the largest management obstacles. Few people understand the threat some ANS pose and how their actions might introduce them. Objectives by the ANSTF for education and outreach include reaching out to the general public, providing technical guidance to targeted audiences, and raising awareness among legislators and decision makers.

7. *Research:* Research supports all facets of the Strategic Plan and is necessary to increase the effectiveness of prevention, detection, response, and control and management of invasive species. To help ensure that research addresses critical needs, this goal focuses on coordination among government agencies, academia, and other participating entities.

8. *Funding:* Securing dedicated long-term and emergency funding is necessary to achieve the goals laid out in the Strategic Plan. The actions outlined by the ANSTF focus on coordinating Federal agency budgets to support ANSTF priorities, develop partnerships, and seek opportunities to leverage funds within Federal and State agencies, local governments, tribal entities, industry, as well as other entities including non-governmental organizations.

The Strategic Plan should not be considered a comprehensive list of all ANS strategic actions; it does contain a targeted set of priority strategic goals, objectives, and associated action items that are intended to be completed in the next 5 years. The accomplishment of specific objectives and action items will be dependent upon budgets of individual agencies and the Regional Panels; and in some cases, legal or regulatory changes as well as enforcement of these changes. Following adoption of the Strategic Plan, an Operational Plan will be composed to depict short-term efforts to achieve the actions in the Strategic Plan to ensure the goals and objectives of the Strategic Plan are measurable and accountable. The Operational Plan will be completed by the ANSTF members working together and separately with support of the Regional Panels and committees. The actions in the Operational Plan will be updated regularly and reported on to measure the progress towards meeting the goals of the Strategic Plan.

The Strategic Plan takes a deliberate, cooperative approach and builds on existing programs. The ANSTF will utilize this plan to maximize its efforts over the next 5 years to prevent and control invasive species with the purpose of protecting our environment, economy and human health. The Strategic Plan was approved by the ANSTF on May 3, 2012; distribution of the document for public comment is the final step for the ANSTF to adopt the Strategic Plan.

Document Availability

You may obtain copies of the Strategic Plan by any one of the following methods:

- *Internet: http://anstaskforce.gov*
- *Write:* Susan Pasko, National Oceanic and Atmospheric Administration. 1315 East West Highway, SSMC 3, Rm. 15719 Silver Spring, MD 20910; Telephone: (301) 427–8682; Email: *Susan.Pasko@noaa.gov.*

Request for Comments

Comments on the Strategic Plan are invited. The ANSTF will review all submitted comments and make revisions, as appropriate, to the Strategic Plan before adoption. You may

submit a written comment by any one of the following methods:

- *Email: Susan.Pasko@noaa.gov.*
- *Mail or hand-delivery:* Susan Pasko, National Oceanic and Atmospheric Administration. 1315 East West Highway, SSMC 3, Rm. 15719 Silver Spring, MD 20910.
- *Fax:* (301) 713–1043.

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 25, 2012.

Alan D. Risenhoover,

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

[FR Doc. 2012–19161 Filed 8–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC140

Gulf of Mexico Fishery Management Council (Council); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held August 20–23, 2012.

ADDRESSES: The meetings will be held at the Astor Crowne Plaza, 739 Canal Street, New Orleans, LA 70130; telephone: (504) 962–0500.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Bortone, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Committees

Monday, August 20, 2012

9 a.m.–11 a.m.—New Council Member Orientation.

1 p.m.–2:30 p.m.—The Ad Hoc Restoration Committee will receive presentations.

2:30 p.m.–4:30 p.m.—The Data Collection Committee will discuss the Final Generic Amendment—Dealer Permits/Electronic Logbook Reporting Requirements; discuss Electronic Report for Headboats and for the For-Hire Industry.

4:30 p.m.–5 p.m.—The Shrimp Management Committee will review a White Paper on Funding Options for the Electronic Logbook (ELB) Program; and discuss Exempted Fishing Permits related to Shrimp (if any).

5 p.m.–5:30 p.m.—The Law Enforcement Committee will receive a report from the Law Enforcement Advisory Panel Meeting.

5:30 p.m.–6 p.m.—The Budget/Personnel Committee will discuss the Executive Director's selection process.

—Recess—

Immediately following committee recess NOAA Fisheries will hold a workshop considering administrative changes to the Individual Fishing Quota (IFQ) Program. This workshop will be held in the Council's meeting room.

Tuesday, August 21, 2012

8:30 a.m.–11:30 a.m. and 12:30 p.m.–5:30 p.m.—The Reef Fish Management Committee will receive a presentation by Louisiana DWF on the State Boundary Extension and Pilot Program; review a Scoping Document for Amendment 28—Sector Allocations; discuss an Options Papers for a Framework Action on Vermilion Snapper Annual Catch Limit; review comments on Amendment 33—Reef Fish Limited Access Privilege Program; consider a Public Hearing Draft for Amendment 37—Gray Triggerfish Rebuilding Plan; discuss the Final Amendment 38—Revise Post-Season Recreational Accountability Measures for Shallow-Water Grouper and Revision to the Generic Framework Procedure; review the Public Hearing Draft of a Framework Action for 2013 Gag Season, Split Season, & Elimination of February–March Shallow-Water Group Closure; discuss concerns about Amendment 35—the Rebuilding Plan for Greater Amberjack; review other Reef Fish Advisory Panel comments (if any); discuss the status of actions submitted under the Abbreviated Framework Process; and discuss Exempted Fishing Permits related to Reef Fish (if any).

—Recess—

Immediately following the Committee Recess will be the Informal Question & Answer Session on Gulf of Mexico Fishery Management Issues.

Wednesday, August 22, 2012

8:30 a.m.–9:30 a.m.—Closed Session—Full Council to discuss personnel matters.

9:30 a.m.–10:30 a.m.—The Joint Artificial Reef/Habitat Committees will review a Scoping Document for Essential Fish Habitat (EFH) Amendment 4 Designating Petroleum Platforms and Artificial Reefs as Essential Fish Habitat.

—Recess—

Council

Wednesday, August 22, 2012

10:30 a.m.—The Council meeting will begin with a Call to Order and Introductions.

10:40 a.m.–10:45 a.m.—The Council will induct the New Council Members.

10:45 a.m.–10:55 a.m.—The Council will review the agenda and approve the minutes.

10:55 a.m.–11 a.m.—The Council will review the Action Schedule.

11 a.m.–11:45 a.m.—The Council will review Committee Reports from the Ad Hoc Restoration Committee, the Shrimp Management Committee, the Law Enforcement Committee, and the Budget/Personnel Committee.

1 p.m.–1:15 p.m.—The Council will review Exempted Fishing Permits (EFP), if any.

1:15 p.m.–5:30 p.m.—The Council will receive public testimony on the Final Reef Fish Amendment 38—Revise Post-Season Recreational Accountability Measures for Shallow-Water Grouper & Revision to the Generic Framework Procedure; the Final Generic Amendment for Dealer Permits and Electronic Reporting; Amendment 33 for Adding Additional Reef Fish to the Limited Access Privilege Program; and Exempted Fishing Permits (EFPs), if any. The Council will also hold an open public comment period regarding any other fishery issues or concerns. People wishing to speak before the Council should complete a public comment card prior to the comment period.

Thursday, August 23, 2012

8:30 a.m.–8:45 a.m.—The Council will vote on Exempted Fishing Permits (if any).

8:45 a.m.–3:45 p.m.—The Council will review and discuss reports from committee meetings as follows: Reef Fish, Data Collection, Mackerel and Joint Artificial Reef/Habitat.

4 p.m.–4:15 p.m.—Other Business items will follow.

4:15 p.m.–4:30 p.m.—The Council will hold an Election of Chair and Vice-Chair.

The Council will conclude its meeting at approximately 4:30 p.m.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date/time established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: July 31, 2012.

Tracey L. Thompson

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–19051 Filed 8–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC145

Marine Fisheries Advisory Committee

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

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee (MAFAC). The members will discuss and provide advice on issues outlined in the agenda below.

DATES: The meeting is scheduled for August 20, 2012, 3–5 p.m., Eastern Daylight Time.

ADDRESSES: Conference call. Public access is available at 1311–B East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mark Holliday, (301) 427–8004; email: *Mark.Holliday@noaa.gov.*

SUPPLEMENTARY INFORMATION: The MAFAC was established by the Secretary of Commerce (Secretary), and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The complete charter and other information are located online at *http://www.nmfs.noaa.gov/ocs/mafac/.*

Matters To Be Considered

The Committee is convening to prepare comments from MAFAC on the draft National Aquaculture Research and Development Strategic Plan. This agenda is subject to change.

Dated: July 31, 2012.

Samuel D. Rauch III,

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

[FR Doc. 2012–19164 Filed 8–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA567

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Navy Training Exercises in the Mariana Islands Range Complex

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

ACTION: Notice; issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has issued a Letter of Authorization (LOA) to take marine mammals, by harassment, incidental to the U.S. Navy's training exercises within the Navy's Mariana Islands Range Complex (MIRC) in the Pacific Ocean.

DATES: Effective from August 10, 2012, through August 3, 2015.

ADDRESSES: Electronic copies of the Navy's request for an LOA, the LOA, the Navy's 2012 marine mammal monitoring report and 2012 exercise report are available by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, by telephoning the contact listed here (See **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Brian D. Hopper, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a military readiness activity if certain findings are made and regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's training activities in the MIRC were published on August 3, 2010 (75 FR 45527), and remain in effect through August 3, 2015. They are codified at 50 CFR 218.100. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the Navy's range complex training exercises. For detailed information on these actions, please

refer to the August 3, 2010 **Federal Register** notice and 50 CFR 218.100.

A final rule was issued on February 1, 2012 (77 FR 4917) to allow certain flexibilities concerning Navy training activities and allow for multi-year LOAs in 12 range complexes, including MIRC.

Summary of LOA Request

On March 15, 2012, NMFS received a LOA renewal application to take marine mammals incidental to training activities in the MIRC between August 12, 2012 and August 3, 2015. The LOA application included a request from the U.S. Navy for modifications from previous LOAs issued under the MIRC regulations. Specifically, the Navy requested that NMFS modify the LOA to include taking of marine mammals incidental to mine neutralization training using Time Delay Firing Devices (TDFDs) within the MIRC, along with revised mitigation measures, to ensure that effects to marine mammals resulting from these activities will not exceed what was originally analyzed in the Final Rule for this Range Complex (75 FR 45527). The potential effects of mine neutralization training on marine mammals were comprehensively analyzed in the final regulations for this Range Complex and mine neutralization training has been included in the specified activity in the associated 2010 and 2011 LOAs. However, the use of TDFD and the associated mitigation measures have not been previously contemplated, which is why NMFS believed it was appropriate to provide the proposed modifications to the LOA to the public for review. NMFS published a notice proposing to modify and renew the LOA on June 7, 2012 (77 FR 33718).

On March 4, 2011, three dolphins were suspected to be killed by the Navy's mine neutralization training event using TDFDs in its Silver Strand Training Complex (SSTC). In short, a TDFD device begins a countdown to a detonation event that cannot be stopped, for example, with a 10-min TDFD, once the detonation has been initiated, 10 minutes pass before the detonation occurs and the event cannot be cancelled during that 10 minutes. Although a previous **Federal Register** notice (76 FR 68734; November 7, 2011) stated that using TDFDs is believed to have likely resulted in the death of five dolphins, further discussion with the Navy and reviewing of reports concerning the incident showed that there is no concrete evidence that more than three dolphins were killed. Following the March 4th event, the Navy initiated an evaluation of mine neutralization events occurring throughout Navy Range Complexes and realized that TDFDs were being used at the VACAPES, JAX, and CHPT Range Complexes. According to the Navy, less than 3% of all MINEX events would not use TDFD. As a result, the Navy subsequently suspended all underwater explosive detonations using TDFDs during training. While this suspension was in place, the Navy worked with NMFS to develop a more robust monitoring and mitigation plan to ensure that marine mammal mortality and injury would not occur during mine neutralization training activities using TDFDs. After the Navy and NMFS developed a monitoring and mitigation plan for mine neutralization activities using TDFDs, the LOAs for VACAPES, JAX, and CHPT Range Complexes were modified and issued to the Navy after public notice and comment (77 FR 2040, January 13, 2012). Because testing and training activities in the MIRC also include mine neutralization using TDFDs, NMFS engaged in a similar process for renewing the LOA for MIRC.

The Navy requested that the revised LOA remain valid until August 2015. A detailed description of the Navy's LOA request can be found on NMFS Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Description of the Need for Time Delay Firing Devices in MINEX Training

A detailed description of the overall operational mission concerning the use of TDFDs was provided in the **Federal Register** notice for the proposed LOA (77 FR 33718, June 7, 2012), and is not repeated here.

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on June 7, 2012 (77 FR 33718). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) and one private citizen.

Comment 1: The Commission recommends that NMFS require the Navy model the proposed monitoring schemes to determine what portion of the associated buffer zone is being monitored at any given time and the probability that any of the cetacean species in the area and entering the various-sized buffer zones would be detected before getting too close to the detonation site.

Response: In the fall of 2011, the Navy funded the Center for Naval Analysis (CNA) to examine this issue. The Navy asked CNA to: (1) Analyze the Navy's mitigation approach (estimate the probability of marine mammals getting within the explosive safety zone without detection) under various scenarios; (2) determine what mathematical methods would be appropriate for estimating the probability of marine mammals entering the various safety zones undetected; (3) use the mathematical methods determined above to assess the effectiveness of the Navy's mitigation measures at protecting marine mammals; and (4) determine the effects of various factors such as the size of the explosive charge, the footprint of the impact zones, the travel speeds of various marine mammals, and the location and number of Navy observers.

CNA validated that a geometric approach to the problem would help in assessing the study questions described above, and its final conclusions regarding the Navy's proposed TDFD mitigation measures were as follows:

- Explosive harm ranges for charge sizes under consideration are driven by the 13 psi-ms acoustic impulse metric, which corresponds to slight lung injury.
- Fuse delay and animal swim speeds strongly drive results regarding mitigation capability.
- Probability of detection of all animals (Pd): (1) for TDFD mitigation ranges out to 1,000 yards, Pd would be close to 100 percent for 2-boats and 5-minute delay for charge weights up to 20-lb net explosive weight; and (2) for TDFD mitigation ranges of 1,400 yards or greater, likely Pd would be greater than 95–99 percent for 3-boats and 10-minute delay for charge weights up to 20-lb net explosive weight.
- A three-boat effort would be sufficient to cover most cases.

In terms of how the CNA analysis relates to the MIRC training activities, please see Response to Comment 3.

Comment 2: The Commission recommends that NMFS require the Navy to measure empirically the propagation characteristics of the blast (i.e., impulse, peak, pressure, and sound exposure level) from the 5- and 10-lb charges used in the proposed exercises and use that information to establish appropriately sized exclusion and buffer zones.

Response: In 2002, the Navy conducted empirical measurements of underwater detonations at San Clemente Island and at the SSTC in California. During these tests, 2 lb and 15 lb net explosive weight charges were placed at 6 and 15 feet of water and peak pressures and energies were measured for both bottom placed detonations and detonations off the bottom. A finding was that, generally, single-charge underwater detonations, empirically measured, were similar to or less than

propagation model predictions (DoN 2006).

To date, mine neutralization training exercises have not been conducted in the MIRC. However, on the east coast, the Navy has conducted marine mammal surveys during mine neutralization training events during August of 2009, 2010, and 2011 as part of its marine mammal monitoring program (see Navy's VACAPES, JAX, and CHPT annual monitoring reports for further details). NMFS contacted Navy regarding the feasibility of empirical sound propagation measurement in the east coast range complexes. The Navy stated that it will explore the value of adding field measurements during monitoring of a future mine neutralization event after evaluating the environmental variables affecting sound propagation in the area, such as shallow depths, seasonal temperature variation, bottom sediment composition, and other factors that would affect our confidence in the data collected. If such data can be collected without unreasonable costs and impacts to training, the Navy will move forward in incorporating the measurements into its monitoring program for east coast mine neutralization training.

At this moment, because the modeled exclusion zones are set to be much larger than the measured and modeled zones of injury or TTS, NMFS does not believe that there is added value to conducting empirical measurements before the issuance of the modified LOAs, especially given the short time frame during which the LOA modifications will be effective. Nevertheless, NMFS would recommend the Navy conduct these measurements as funding becomes available.

Comment 3: The Commission recommends that NMFS require the Navy to re-estimate the sizes of the buffer zones using the average swim speed of the fastest-swimming marine mammal that occurs in the areas within the Complex where time-delay firing devices would be used and for which taking authorization has been granted.

Response: NMFS does not agree with the Commission's assessment that the sizes of the buffer zones be established based on average swim speed of the fastest swimming marine mammals. Just because an animal can go faster does not mean that it will, and the behavioral context of the fast swim speeds should be considered. Maximum speeds are energetically expensive for any organism and usually not maintained for long. Unpublished observations of marine mammals within the MIRC during the Navy 2011 surveys have documented mostly groups of slow moving, milling spinner dolphins, bottlenose dolphins, and short-finned pilot whales. The occurrence of more pelagic species (Risso's dolphins and short-beaked common dolphins) is predicted to be less likely and limited in duration. These species are included in the MIRC LOA as a conservative measure.

Further expansion of the buffer zones is not warranted because: (1) the current buffer zones already incorporate an additional precautionary factor to account for swim speeds above 3 knots; and (2) buffer zones greater than 1,000 yards for events using 2 boats, and 1,400 yards or greater for events using 3 boats or 2 boats and 1 helicopter, cannot be monitored or supported by the Navy's exercising units.

In terms of sizes of the mitigation zones, a 1,400 yard radius or greater for larger charge or longer time TDFD training events are required, which is the maximum distance the Navy can confidently clear with 3 boats (or 2 boats and 1 helicopter). NMFS is satisfied that the mitigation zones proposed in the **Federal Register** notice for the proposed IHA (77 FR 33718, June 7, 2012) are justified, adequate, and protective of marine mammals. In addition to the buffer zone determination issue, there are also additional operational and training resources to consider. While larger mitigation zones increase distance from the detonation site, there must also be an ability to adequately survey a mitigation zone to ensure animals are spotted. Due to the type of small unit training being conducted at the MIRC, there are limited surveillance assets available to monitor a given buffer zone during underwater detonations training. Scheduling additional observation boats and crews beyond what the Navy has proposed in the MIRC LOA application involves coordination and availability of other unit(s) and will degrade overall training readiness. For instance, limited availability of boats and personnel do not allow for operation of 4 or more boats. If 4 boats were required, negative impacts to military readiness would result because Navy would be precluded from conducting events due to unavailable assets. Therefore, both NMFS and the Navy do not consider additional observation boats other than those designated a valid option during TDFD training events in the MIRC.

Comment 4: One private citizen expressed general opposition to Navy activities and NMFS' issuance of a modified LOA because of the danger of killing marine life.

Response: NMFS appreciates the commenter's concern for the marine mammals that live in the area of the proposed activity. However, the MMPA allows individuals to take marine mammals incidental to specified activities if NMFS can make the necessary findings required by law (i.e., negligible impact, unmitigable adverse impact on subsistence users, etc.), as explained in the rulemakings (75 FR 45527, August 3, 2010) and the proposed LOA (77 FR 33718, June 7, 2012). The detailed analyses in these documents show that no marine mammal mortality would likely occur as a result of the Navy activities, including the use of TDFDs during mine neutralization trainings. Finally, take of marine mammals by mortality and serious injury are not authorized under these rules and regulations. Therefore, NMFS has made the necessary findings under 16 U.S.C. 1371 (a)(5)(A) to support our issuance of this LOA.

Modifications to Mitigation and Monitoring Measures Related to Mine Neutralizing Training

NMFS worked with the Navy and developed a series of modifications to improve monitoring and mitigation measures so that take of marine mammals will be minimized and no risk of injury and/or mortality to marine mammals would result from the Navy's use of TDFD mine neutralization training exercises. The following modifications to the mitigation and monitoring measures are specific to MCM training exercises involving TDFDs conducted within the MIRC.

(A) Visual Observation and Exclusion Zone Monitoring

The estimated potential for marine mammals to be exposed during demolitions and mine countermeasure training events is not expected to change with the use of TDFDs, as the same amount of explosives will be used and the same area ensonified/pressurized regardless of whether TDFDs are involved. This is due to the fact that estimated exposures are based on the probability of the animals occurring in the area when a training event is occurring, and this probability does not change because of a time-delay. However, what does change is the potential effectiveness of the current mitigation that is implemented to reduce the risk of exposure.

The locations selected for mine neutralization training within the MIRC are all close to shore (~3—12 nm) and in shallow water (~ 10—20 m). Based on the training location, description of the area, and data from recent monitoring surveys, large whales and species that prefer deep or offshore waters are not expected to occur in this area with any

regularity. However, mitigation measures apply to all species and will be implemented if any marine mammal species is sighted.

The rationale used to develop new monitoring zones to reduce potential impacts to marine mammals when using a TDFD is as follows: The Navy has identified the distances at which the sound and pressure attenuate below NMFS injury criteria (i.e., outside of that distance from the explosion, marine mammals are not expected to be injured). Here, the Navy identifies the distance that a marine mammal is likely to travel during the time associated with the TDFD's time delay, and that distance is added to the injury distance. If this enlarged area is effectively monitored, animals would be detected at distances far enough to ensure that they could not swim to the injurious zone within the time of the TDFD. Using an average swim speed of 3 knots (102 yd/min) for a delphinid, the Navy provided the approximate distance that an animal would typically travel within a given time-delay period (Table 1). Based on acoustic propagation modeling conducted as part of the NEPA analyses for this Range Complex, there is potential for injury to a marine mammal within 106 yd of a 5-lb detonation and within 163 yd of a 10-lb detonation. The buffer zones were calculated based on average swim speed of 3 knots (102 yd/min). The specific buffer zones based on charge size and the length of time delays are presented in Table 2.

TABLE 1—POTENTIAL DISTANCE BASED ON SWIM SPEED AND LENGTH OF TIME-DELAY

Species Group	Swim Speed	Time-delay (min)	Potential distance traveled (yd)
Delphinid	102 yd/min	5	510
		6	612
		7	714
		8	816
		9	918
		10	1,020

TABLE 2—BUFFER ZONE RADIUS (YD) FOR TDFDS BASED ON SIZE OF CHARGE AND LENGTH OF TIME-DELAY

Charge size	Time-delay					
	5 min	6 min	7min	8 min	9 min	10 min
5-lb	616 yd	718 yd	820 yd	922 yd	1,024 yd	1,126 yd
10-lb	673 yd	775 yd	877 yd	979 yd	1,081 yd	1,183 yd

However, it is possible that some animals may travel faster than the average swim speed noted above, thus there may be a possibility that these faster swimming animals would enter the buffer zone during time-delayed to detonation. In order to compensate for the swim distance potentially covered by faster swimming marine mammals, an additional correction factor was applied to increase the size of the buffer zones radii. Specifically, two sizes of buffer zones are established for the ease of monitoring operations based on size of charge (e.g., 5-lb and 10-lb) and length of time-delay, with an additional buffer added to account for faster swim speed. These revised buffer zones are shown in Table 3. As long as animals are not observed within the buffer zones before the time-delay detonation is set, then the animals would be unlikely to swim into the injury zone from outside the area within the time-delay window.

TABLE 3—UPDATED BUFFER ZONE RADIUS (YD) FOR TDFDS BASED ON SIZE OF CHARGE AND LENGTH OF TIME- DELAY, WITH ADDITIONAL BUFFER ADDED TO ACCOUNT FOR FASTER SWIM SPEEDS

Charge size	Time-delay					
	5 min	6 min	7min	8 min	9 min	10 min
5-lb	1,000 yd	1,000 yd	1,000 yd	1,000 yd	1,400 yd	1,400 yd
10-lb	1,000 yd	1,000 yd	1,000 yd	1,400 yd	1,400 yd	1,400 yd

1,000 yds: minimum of 2 observation boats
1,400/1,450 yds: minimum of 3 observation boats or 2 boats and 1 helicopter

The current mitigation measure specifies that parallel tracklines will be surveyed at equal distances apart to cover the buffer zone. Considering that the buffer zone for protection of a delphinid may be larger than specified in the current mitigation, a more effective and practicable method for surveying the buffer zone is for the survey boats to position themselves near the mid-point of the buffer zone radius (but always outside the detonation plume radius/human safety zone) and travel in a circular pattern around the detonation location surveying both the inner (toward detonation site) and outer (away from detonation site) areas of the buffer zone, with one observer looking inward toward the detonation site and the other observer looking outward. When using 2 boats, each boat will be positioned on opposite sides of the detonation location, separated by 180 degrees. When using more than 2 boats, each boat will be positioned equidistant from one another (120 degrees separation for 3 boats, 90 degrees separation for 4 boats, etc.). Helicopters will travel in a circular pattern around the detonation location when used.

During mine neutralization exercises involving surface detonations, a helicopter deploys personnel into the water to neutralize the simulated mine. The helicopter will be used to search for any marine mammals within the buffer zone. Use of additional Navy aircraft beyond those participating in the exercise was evaluated. Due to the limited availability of Navy aircraft and logistical constraints, the use of additional Navy aircraft beyond those participating directly in the exercise was deemed impracticable. A primary logistical constraint includes coordinating the timing of the detonation with the availability of the aircraft at the exercise location. Exercises typically last most of the day and would require an aircraft to be dedicated to the event for the entire day to ensure proper survey of the buffer zone 30 minutes prior to and after the detonation. The timing of the detonation may often shift throughout the day due to training tempo and other factors, further complicating coordination with the aircraft.

Based on the above reasoning, the modified monitoring and mitigation for visual observation are as follows:

A buffer zone around the detonation site will be established to survey for marine mammals. Events using positive detonation control will use a 700 yd radius buffer zone. Events using time-delay firing devices will use the table below to determine the radius of the buffer zone. Time-delays longer than 10 minutes will not be used. Buffer zones less than 1,400 yds shall use a minimum of 2 boats to survey for marine mammals. Buffer zones greater than 1,400 yds radius shall use 3 boats or 1 helicopter and 2 boats to conduct surveys for marine mammals. Two dedicated observers in each of the boats will conduct continuous visual survey of the buffer zone for marine mammals for the entire duration of the training event. The buffer zone will be surveyed from 30 minutes prior to the detonation and for 30 minutes after the detonation. Other personnel besides the observers can also maintain situational awareness on the presence of marine mammals and sea turtles within the buffer zone to the best extent practical given dive safety considerations. If available, aerial visual survey support from Navy helicopters can be utilized, so long as it does not jeopardize safety of flight.

When conducting the survey, boats will position themselves at the mid-point of the buffer zone radius (but always outside the detonation plume radius/human safety zone) and travel in a circular pattern around the detonation location surveying both the inner (toward detonation site) and outer (away from detonation site) areas of the buffer zone. To the extent practicable, boats will travel at 10 knots to ensure adequate coverage of the buffer zone. When using 2 boats in a less than 1,400 yds buffer zone, each boat will be positioned on opposite sides of the detonation location at 500 yds from the detonation point, separated by 180 degrees. When using 3 boats in a 1,400 yds or greater buffer zone, each boat will be positioned equidistant from one another (120 degrees separation) at 700 yds respectively from the detonation point. Helicopter pilots will use established Navy protocols to determine the appropriate pattern (e.g., altitude, speed, flight path, etc.) to search and clear the buffer zone of turtles and marine mammals.

(B) Mine neutralization training shall be conducted during daylight hours only.

(C) Maintaining Buffer Zone for 30 Minutes Prior to Detonation and Suspension of Detonation

Visually observing the mitigation buffer zone for 30 min prior to the detonation allows for any animals that may have been submerged in the area to surface and therefore be observed so that mitigation can be implemented. Based on average dive times for the species groups that are most likely expected to occur in the areas where mine neutralization training events take place, (i.e., delphinids), 30 minutes is an adequate time period to allow for submerged animals to surface. Allowing a marine mammal to leave of their own volition if sighted in the mitigation buffer zone is necessary to avoid harassment of the animal.

It is not possible to suspend the detonation after a TDFD is initiated due to safety risks to personnel. Therefore, the current measure that requires suspension of the detonation cannot be implemented when using a TDFD and should be removed, noting that revised mitigation measures will make it unnecessary to have to suspend detonation within the maximum of ten minutes between setting the TDFD and detonation.

Based on the above reasoning, the modified monitoring and mitigation for pre-detonation observation are as follows:

If a marine mammal is sighted within the buffer zone, the animal will be allowed to leave of its own volition. The Navy will suspend detonation exercises and ensure the area is clear for a full 30 minutes prior to detonation.

When required to meet training criteria, time-delay firing devices with up to a 10 minute delay may be used. The initiation of the device will not start until the area is clear for a full 30 minutes prior to initiation of the timer.

(D) The requirement in the current LOA that ''no detonation shall be conducted using time-delayed devices'' is deleted because the improved monitoring and mitigation measures will minimize the potential impacts to marine mammals and greatly reduce the likelihood of injury and/or mortality to marine mammals using TDFDs.

The availability of additional technological solutions that would enable suspension of the detonation when using a TDFD was evaluated. Currently there are no devices that would stop the timer if a marine mammal was sighted within the buffer zone after initiation of the timer.

The Navy states that procurement of new technology can take many years to be fielded. Joint service procurement can take approximately 3 years, with an additional 6 months when an item needs to go through the WSESRB (Weapon System Explosive Safety Review Board). For example, the Acoustic Firing System (AFS) has been in development for 10 years. It was fielded ''as is'' to the Fleet in 2011, with the understanding that it has not met the minimum standards put forth. Once fielded, it will remain in the Product Improvement Process (PIP), which can take up to five years to have a finished product. This AFS will not be considered a true positive control firing device because current technology prevents a shorter time-delay than one minute in the firing cycle.

In 2012 another Radio Firing Device (RFD) will be fielded to the Fleet through a new program called the Special Mission Support Program. This RFD has a disposable receiver that can function in an Electronic Counter Measure (ECM) environment. Navy will evaluate and consider the use of the AFS and the new RFD for potential use as mitigation once they are fielded, but currently they are not options that can be implemented. Without further evaluation, it is not clear whether the new RFD could be used to replace TDFD at this moment.

(E) Diver and Support Vessel Surveys

The Navy recommends, and NMFS concurs, revising this measure to clarify that it applies to divers only. The intent of the measure is for divers to observe the immediate, underwater area around the detonation site for marine mammals while placing the charge.

The modified mitigation measure is provided below:

Divers placing the charges on mines will observe the immediate, underwater area around the detonation site for

marine mammals and will report any sightings to the surface observers.

(F) Personnel shall record any protected species observations during the exercise as well as measures taken if species are detected within the zone of influence (ZOI).

Take Estimates

There is no change for marine mammal take estimates from what were analyzed in the final rule (75 FR 45527, August 3, 2010) for mine neutralization training activities in this Range Complex. Take estimates were based on marine mammal densities and distribution data in the action area, computed with modeled explosive sources and the sizes of the buffer zones.

The Comprehensive Acoustic System Simulation/Gaussian Ray Bundle (OAML, 2002) model, modified to account for impulse response, shock-wave waveform, and nonlinear shock-wave effects, was run for acoustic-environmental conditions derived from the Oceanographic and Atmospheric Master Library (OAML) standard databases. The explosive source was modeled with standard similitude formulas, as in the Churchill FEIS—an analysis of a Navy ship-shock trial that initially developed the criteria for mortality, Level A harassment, and Level B harassment from explosive detonations. Because all the sites are shallow (less than 50 m), propagation model runs were made for bathymetry in the range from 10 m to 40 m.

Estimated zones of influence (ZOIs; defined as area within which the animals would experience Level B harassment) varied with the explosive weights, however, little seasonal dependence was found in MIRC. Generally, in the case of ranges determined from energy metrics, as the depth of water increases, the range shortens. The single explosion TTS-energy criterion (182 dB re 1 microPa^2-sec) was dominant over the pressure criteria and therefore used to determine the ZOIs for the Level B exposure analysis.

The total ZOI, when multiplied by the animal densities and total number of events, provides the exposure estimates for that animal species for each specified charge in the MIRC (Table 4). Take numbers were estimated without considering marine mammal monitoring and mitigation measures, therefore, the additional monitoring and mitigation measures and the use of TDFD for mine neutralization training would not change the estimated takes from the original final rule for MIRC (75 FR 45527, August 3, 2010).

TABLE 4—ESTIMATED TAKES OF MARINE MAMMALS THAT COULD RESULT FROM MCM TRAINING

Species	Potential exposures @ 182 dB re 1 μPa^2-s or 23 psi	Potential exposures @ 205 dB re 1 μPa^2-s or 13 psi	Potential exposures @ 30.5 psi
Cuvier's beaked whale	2	0	0
Dwarf/Pygmy sperm whale	2	0	0
Fraser's dolphin	2	0	0
Melon-headed whale	2	0	0
Pantropical spotted dolphin	2	0	0
Risso's dolphin	4	0	0

Analysis and Negligible Impact Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), or any of the other variables mentioned in the first paragraph (if known), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The aforementioned additional mitigation and monitoring measures will increase the buffer zone to account for marine mammal movement and increase marine mammal visual monitoring efforts to ensure that no marine mammal would be in a zone where injury and/or mortality could occur as a result of time-delayed detonation.

In addition, the estimated exposures are based on the probability of the animals occurring in the area when a training event is occurring, and this probability does not change based on the use of TDFDs or implementation of mitigation measures (i.e., the exposure model does not account for how the charge is initiated and assumes no mitigation is being implemented). Therefore, the potential effects to marine mammal species and stocks as a result of mine neutralization training activities are the same as those analyzed in the final rule governing the incidental takes for this activity. Consequently, NMFS believes that the existing analysis in the final rule does not change as a result of issuing an LOA that includes mine neutralization training activities using TDFDs.

Further, there will be no increase of marine mammal takes as analyzed in the previous rule governing NMFS-issued incidental takes that could result from the Navy's training activities within this Range Complex by using TDFDs.

Based on the analyses of the potential impacts from the mine countermeasure training exercises conducted within the MIRC, especially the improved marine mammal monitoring and mitigation measures, NMFS has determined that the modification of the Navy's current LOA to include taking of marine mammals incidental to mine neutralization training using TDFD within the MIRC will have a negligible impact on the marine mammal species and stocks present in these action areas, provided that additional mitigation and monitoring measures are implemented.

ESA

There are five marine mammal species that are listed as endangered under the ESA with confirmed or possible occurrence in the MIRC: humpback whale, blue whale, fin whale, sei whale, and sperm whale.

Pursuant to Section 7 of the ESA, NMFS has completed consultation internally on the issuance of the modified LOAs under section 101(a)(5)(A) of the MMPA for these activities. The Biological Opinion concludes that the Navy's training activities using TDFDs within the MIRC Study Area are likely to adversely affect, but are not likely to jeopardize the continued existence of these ESA-listed marine mammal species under NMFS jurisdiction.

National Environmental Policy Act (NEPA)

NMFS participated as a cooperating agency on the Navy's Final Environmental Impact Statements (FEISs) for the MIRC. NMFS subsequently adopted the Navy's EISs for the purpose of complying with the MMPA. For issuance of the LOA, which includes TDFDs, but also specifically adds monitoring and mitigation measures to minimize the likelihood of any additional impacts from TDFDs, NMFS has determined that there are no changes in the potential effects to marine mammal species and stocks as a result of the mine neutralization training activities using TDFDs. Therefore, no additional NEPA analysis was required, and the information in the existing EISs remains sufficient.

Determination

Based on the preceding analysis of the likely effects of the specified activity on marine mammals and their habitat and dependent upon the implementation of the mitigation measures, NMFS determined that the total taking from Navy mine neutralization training exercises utilizing TDFDs in the MIRC will have a negligible impact on the affected marine mammal species or stocks. NMFS has issued the modified LOA to allow takes of marine mammals incidental to the Navy's mine neutralization training exercises using TDFDs, provided that the improvements to the monitoring and mitigation measures are implemented.

Dated: July 31, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–19160 Filed 8–3–12; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Extension of Approval of Information Collection; Comment Request—Baby Bouncers and Walker-Jumpers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice; correction.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC) requested comments on a proposed extension of approval, for a period of 3 years from the date of approval by the Office of Management and Budget (OMB), of information collection requirements for manufacturers and importers of children's articles known as baby-bouncers and walker-jumpers. This document was published in the **Federal Register** of June 20, 2012, and contains an incorrect docket number.

FOR FURTHER INFORMATION CONTACT: Mary James, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7213 or by email to: *mjames@cpsc.gov.*

Correction

In the **Federal Register** of June 20, 2012, in FR Doc. 2012–14950, on page 37000, in the second column, correct the first sentence of the **ADDRESSES** section to read:

''You may submit comments, identified by Docket No. CPSC–2012–0038, by any of the following methods:''

Dated: August 1, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–19108 Filed 8–3–12; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 284. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 284 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: *Effective Date:* August 1, 2012.

FOR FURTHER INFORMATION CONTACT: Mrs. Sonia Malik, 571–372–1276.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 283. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows: The changes in Civilian Bulletin 284 are updated rates for Alaska.

Dated: July 30, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA						
[OTHER]						
01/01 - 12/31	110		105		215	2/1/2012
ADAK						
01/01 - 12/31	120		79		199	7/1/2003
ANCHORAGE [INCL NAV RES]						
05/16 - 09/30	181		104		285	2/1/2012
10/01 - 05/15	99		96		195	2/1/2012
BARROW						
01/01 - 12/31	159		95		254	10/1/2002
BETHEL						
01/01 - 12/31	157		99		256	7/1/2011
BETTLES						
01/01 - 12/31	135		62		197	10/1/2004
CLEAR AB						
01/01 - 12/31	90		82		172	10/1/2006
COLDFOOT						
01/01 - 12/31	165		70		235	10/1/2006
COPPER CENTER						
09/16 - 05/14	99		95		194	2/1/2012
05/15 - 09/15	149		99		248	2/1/2012
CORDOVA						
01/01 - 12/31	95		109		204	2/1/2012
CRAIG						
10/01 - 04/30	99		78		177	11/1/2011
05/01 - 09/30	129		81		210	11/1/2011
DEADHORSE						
01/01 - 12/31	170		68		238	8/1/2012
DELTA JUNCTION						
01/01 - 12/31	129		62		191	2/1/2012
DENALI NATIONAL PARK						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
05/01 - 09/30	159		101		260	2/1/2012
10/01 - 04/30	89		94		183	2/1/2012
DILLINGHAM						
05/15 - 10/15	185		111		296	1/1/2011
10/16 - 05/14	169		109		278	1/1/2011
DUTCH HARBOR-UNALASKA						
01/01 - 12/31	121		102		223	2/1/2012
EARECKSON AIR STATION						
01/01 - 12/31	90		77		167	6/1/2007
EIELSON AFB						
09/16 - 05/14	75		92		167	2/1/2012
05/15 - 09/15	175		102		277	2/1/2012
ELFIN COVE						
01/01 - 12/31	175		46		221	2/1/2012
ELMENDORF AFB						
05/16 - 09/30	181		104		285	2/1/2012
10/01 - 05/15	99		96		195	2/1/2012
FAIRBANKS						
05/15 - 09/15	175		102		277	2/1/2012
09/16 - 05/14	75		92		167	2/1/2012
FOOTLOOSE						
01/01 - 12/31	175		18		193	10/1/2002
FT. GREELY						
01/01 - 12/31	129		62		191	2/1/2012
FT. RICHARDSON						
05/16 - 09/30	181		104		285	2/1/2012
10/01 - 05/15	99		96		195	2/1/2012
FT. WAINWRIGHT						
05/15 - 09/15	175		102		277	2/1/2012
09/16 - 05/14	75		92		167	2/1/2012
GAMBELL						
01/01 - 12/31	105		39		144	1/1/2011
GLENNALLEN						
05/15 - 09/15	149		99		248	2/1/2012

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
09/16	- 05/14	99		95		194	2/1/2012
HAINES							
01/01	- 12/31	107		101		208	1/1/2011
HEALY							
05/01	- 09/30	159		101		260	2/1/2012
10/01	- 04/30	89		94		183	2/1/2012
HOMER							
09/16	- 05/04	79		108		187	2/1/2012
05/05	- 09/15	167		117		284	2/1/2012
JUNEAU							
05/16	- 09/15	149		104		253	2/1/2012
09/16	- 05/15	135		103		238	2/1/2012
KAKTOVIK							
01/01	- 12/31	165		86		251	10/1/2002
KAVIK CAMP							
01/01	- 12/31	150		69		219	10/1/2002
KENAI-SOLDOTNA							
05/01	- 08/31	179		102		281	2/1/2012
09/01	- 04/30	79		92		171	2/1/2012
KENNICOTT							
01/01	- 12/31	175		111		286	2/1/2012
KETCHIKAN							
05/01	- 09/30	140		97		237	2/1/2012
10/01	- 04/30	99		94		193	2/1/2012
KING SALMON							
05/01	- 10/01	225		91		316	10/1/2002
10/02	- 04/30	125		81		206	10/1/2002
KLAWOCK							
05/01	- 09/30	129		81		210	11/1/2011
10/01	- 04/30	99		78		177	11/1/2011
KODIAK							
05/01	- 09/30	152		93		245	2/1/2012
10/01	- 04/30	100		88		188	2/1/2012
KOTZEBUE							

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	219		115		334	2/1/2012
KULIS AGS						
10/01 - 05/15	99		96		195	2/1/2012
05/16 - 09/30	181		104		285	2/1/2012
MCCARTHY						
01/01 - 12/31	175		111		286	2/1/2012
MCGRATH						
01/01 - 12/31	165		69		234	10/1/2006
MURPHY DOME						
05/15 - 09/15	175		102		277	2/1/2012
09/16 - 05/14	75		92		167	2/1/2012
NOME						
01/01 - 12/31	140		132		272	2/1/2012
NUIQSUT						
01/01 - 12/31	180		53		233	10/1/2002
PETERSBURG						
01/01 - 12/31	110		105		215	2/1/2012
POINT HOPE						
01/01 - 12/31	200		49		249	1/1/2011
POINT LAY						
01/01 - 12/31	225		51		276	8/1/2011
PORT ALEXANDER						
01/01 - 12/31	150		43		193	8/1/2010
PORT ALSWORTH						
01/01 - 12/31	135		88		223	10/1/2002
PRUDHOE BAY						
01/01 - 12/31	170		68		238	1/1/2011
SELDOVIA						
05/05 - 09/15	167		117		284	2/1/2012
09/16 - 05/04	79		108		187	2/1/2012
SEWARD						
05/01 - 10/15	172		103		275	2/1/2012
10/16 - 04/30	85		95		180	2/1/2012
SITKA-MT. EDGECUMBE						

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	10/01 - 04/30	99		90		189	2/1/2012
	05/01 - 09/30	119		92		211	2/1/2012
SKAGWAY							
	10/01 - 04/30	99		94		193	2/1/2012
	05/01 - 09/30	140		97		237	2/1/2012
SLANA							
	05/01 - 09/30	139		55		194	2/1/2005
	10/01 - 04/30	99		55		154	2/1/2005
SPRUCE CAPE							
	05/01 - 09/30	152		93		245	2/1/2012
	10/01 - 04/30	100		88		188	2/1/2012
ST. GEORGE							
	01/01 - 12/31	129		55		184	6/1/2004
TALKEETNA							
	01/01 - 12/31	100		89		189	10/1/2002
TANANA							
	01/01 - 12/31	140		132		272	2/1/2012
TOK							
	05/15 - 09/30	95		89		184	2/1/2012
	10/01 - 05/14	85		88		173	2/1/2012
UMIAT							
	01/01 - 12/31	350		64		414	2/1/2012
VALDEZ							
	05/16 - 09/14	159		89		248	2/1/2012
	09/15 - 05/15	119		85		204	2/1/2012
WAINWRIGHT							
	01/01 - 12/31	175		83		258	1/1/2011
WASILLA							
	05/01 - 09/30	153		90		243	2/1/2012
	10/01 - 04/30	89		84		173	2/1/2012
WRANGELL							
	10/01 - 04/30	99		94		193	2/1/2012
	05/01 - 09/30	140		97		237	2/1/2012
YAKUTAT							

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	105		94		199	1/1/2011
AMERICAN SAMOA						
AMERICAN SAMOA						
01/01 - 12/31	139		122		261	12/1/2010
GUAM						
GUAM (INCL ALL MIL INSTAL)						
01/01 - 12/31	159		96		255	7/1/2012
HAWAII						
[OTHER]						
07/01 - 08/21	114		118		232	5/1/2012
08/22 - 06/30	104		117		221	5/1/2012
CAMP H M SMITH						
01/01 - 12/31	177		126		303	5/1/2012
EASTPAC NAVAL COMP TELE AREA						
01/01 - 12/31	177		126		303	5/1/2012
FT. DERUSSEY						
01/01 - 12/31	177		126		303	5/1/2012
FT. SHAFTER						
01/01 - 12/31	177		126		303	5/1/2012
HICKAM AFB						
01/01 - 12/31	177		126		303	5/1/2012
HONOLULU						
01/01 - 12/31	177		126		303	5/1/2012
ISLE OF HAWAII: HILO						
07/01 - 08/21	114		118		232	5/1/2012
08/22 - 06/30	104		117		221	5/1/2012
ISLE OF HAWAII: OTHER						
01/01 - 12/31	180		129		309	5/1/2012
ISLE OF KAUAI						
01/01 - 12/31	243		131		374	5/1/2012
ISLE OF MAUI						
01/01 - 12/31	209		137		346	5/1/2012
ISLE OF OAHU						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	177		126		303	5/1/2012
KEKAHA PACIFIC MISSILE RANGE FAC						
01/01 - 12/31	243		131		374	5/1/2012
KILAUEA MILITARY CAMP						
07/01 - 08/21	114		118		232	5/1/2012
08/22 - 06/30	104		117		221	5/1/2012
LANAI						
01/01 - 12/31	249		155		404	5/1/2012
LUALUALEI NAVAL MAGAZINE						
01/01 - 12/31	177		126		303	5/1/2012
MCB HAWAII						
01/01 - 12/31	177		126		303	5/1/2012
MOLOKAI						
01/01 - 12/31	131		89		220	5/1/2012
NAS BARBERS POINT						
01/01 - 12/31	177		126		303	5/1/2012
PEARL HARBOR						
01/01 - 12/31	177		126		303	5/1/2012
SCHOFIELD BARRACKS						
01/01 - 12/31	177		126		303	5/1/2012
WHEELER ARMY AIRFIELD						
01/01 - 12/31	177		126		303	5/1/2012
MIDWAY ISLANDS						
MIDWAY ISLANDS						
01/01 - 12/31	125		68		193	5/1/2012
NORTHERN MARIANA ISLANDS						
[OTHER]						
01/01 - 12/31	85		76		161	7/1/2012
ROTA						
01/01 - 12/31	130		106		236	7/1/2012
SAIPAN						
01/01 - 12/31	140		87		227	7/1/2012
TINIAN						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	85		76		161	7/1/2012
PUERTO RICO						
[OTHER]						
01/01 - 12/31	109		112		221	6/1/2012
AGUADILLA						
01/01 - 12/31	124		113		237	9/1/2010
BAYAMON						
01/01 - 12/31	195		128		323	9/1/2010
CAROLINA						
01/01 - 12/31	195		128		323	9/1/2010
CEIBA						
01/01 - 12/31	210		141		351	11/1/2010
CULEBRA						
01/01 - 12/31	150		98		248	3/1/2012
FAJARDO [INCL ROOSEVELT RDS NAVSTAT]						
01/01 - 12/31	210		141		351	11/1/2010
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]						
01/01 - 12/31	195		128		323	9/1/2010
HUMACAO						
01/01 - 12/31	210		141		351	11/1/2010
LUIS MUNOZ MARIN IAP AGS						
01/01 - 12/31	195		128		323	9/1/2010
LUQUILLO						
01/01 - 12/31	210		141		351	11/1/2010
MAYAGUEZ						
01/01 - 12/31	109		112		221	9/1/2010
PONCE						
01/01 - 12/31	149		87		236	9/1/2010
RIO GRANDE						
01/01 - 12/31	169		123		292	6/1/2012
SABANA SECA [INCL ALL MILITARY]						
01/01 - 12/31	195		128		323	9/1/2010
SAN JUAN & NAV RES STA						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	195		128		323	9/1/2010
VIEQUES						
01/01 - 12/31	175		95		270	3/1/2012
VIRGIN ISLANDS (U.S.)						
ST. CROIX						
04/15 - 12/14	135		92		227	5/1/2006
12/15 - 04/14	187		97		284	5/1/2006
ST. JOHN						
04/15 - 12/14	163		98		261	5/1/2006
12/15 - 04/14	220		104		324	5/1/2006
ST. THOMAS						
04/15 - 12/14	240		105		345	5/1/2006
12/15 - 04/14	299		111		410	5/1/2006
WAKE ISLAND						
WAKE ISLAND						
01/01 - 12/31	145		42		187	7/1/2011

[FR Doc. 2012–18965 Filed 8–3–12; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; Institute of Education Sciences; Impact Evaluation of Teacher and Leader Evaluation Systems

SUMMARY: This study provides important implementation and impact information on the kinds of performance evaluation systems currently discussed in federal policy.

DATES: Interested persons are invited to submit comments on or before October 5, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04903. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Impact Evaluation of Teacher and Leader Evaluation Systems.

OMB Control Number: 1850–0890.

Type of Review: Revision.

Total Estimated Number of Annual Responses: 1,742.

Total Estimated Number of Annual Burden Hours: 3,841.

Abstract: This information collection package requests clearance to recruit districts for a study of a performance evaluation system for principals and teachers. Study findings will be presented in two reports, one scheduled for release in late 2014 and the other in late 2015.

Dated: July 31, 2012.

Tomakie Washington,

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

[FR Doc. 2012–19136 Filed 8–3–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Tests Determined To Be Suitable for Use in the National Reporting System for Adult Education

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary annually announces tests, test forms, and delivery formats that the Secretary determines to be suitable for use in the National Reporting System for Adult Education (NRS).

FOR FURTHER INFORMATION CONTACT: John LeMaster, Department of Education, 400 Maryland Avenue SW., Room 11159, Potomac Center Plaza, Washington, DC 20202–7240. Telephone: (202) 245–6218 or by email: *John.LeMaster@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: On January 14, 2008, we published in the **Federal Register** final regulations for 34 CFR part 462, Measuring Educational Gain in the National Reporting System for Adult Education (NRS regulations) (73 FR 2306). The NRS regulations established the process the Secretary uses to determine the suitability of tests for use in the NRS. We annually publish in the **Federal Register** and post on the Internet at *http://www.nrsweb.org* a list of the names of tests and the educational functioning levels the tests are suitable to measure in the NRS as required by § 462.12(c)(2) of the NRS regulations.

On April 16, 2008, we published in the **Federal Register** a notice providing test publishers an opportunity to submit tests for review under the NRS regulations (73 FR 20616).

On February 2, 2010, we published in the **Federal Register** a notice (February 2010 notice) listing the tests and test forms the Secretary determined to be suitable for use in the NRS (75 FR 5303).

The Secretary determined tests and test forms to be suitable for a period of either seven or three years from the date of the February notice. A seven-year approval required no additional action on the part of the publisher, unless the information the publisher submitted as a basis for the Secretary's review was inaccurate or unless the test is substantially revised. A three-year approval was issued with a set of conditions that must be met by the completion of the three-year period. If these conditions are met, the Secretary approves a period of time for which the test may continue to be used in the NRS.

On September 12, 2011, we published in the **Federal Register** (76 FR 56188) a notice (September 2011 notice) to update the list published on February 2, 2010 (75 FR 5303), and include suitable test delivery formats. The update clarified that some, but not all, tests using computer-adaptive or computer-based delivery formats are suitable for use in the NRS.

The Secretary publishes here the same list of forms and computer delivery formats for the tests published in the September 2011 notice. Adult education programs must use only the approved forms and computer delivery formats for the tests published in this notice. If a particular test form or computer delivery format is not explicitly specified for a test in this notice, it is not approved for use in the NRS.

Tests Determined To Be Suitable for Use in the NRS for Seven Years

(a) The Secretary has determined that the following test is suitable for use at all Adult Basic Education (ABE) and Adult Secondary Education (ASE) levels and at all English-as-a-Second-Language (ESL) levels of the NRS for a period of seven years beginning on February 2, 2010:

Comprehensive Adult Student Assessment Systems (CASAS) Reading Assessments (Life and Work, Life Skills, Reading for Citizenship, Reading for Language Arts—Secondary Level). Forms 27, 28, 81, 82, 81X, 82X, 83, 84, 85, 86, 185, 186, 187, 188, 310, 311, 513, 514, 951, 952, 951X, and 952X of this test are approved for use on paper and through the computer-based delivery format. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *www.casas.org.*

(b) The Secretary has determined that the following tests are suitable for use at all ABE and ASE levels of the NRS for a period of seven years beginning on February 2, 2010:

(1) *Comprehensive Adult Student Assessment Systems (CASAS) Life Skills Math Assessments—Application of Mathematics (Secondary Level).* Forms 31, 32, 33, 34, 35, 36, 37, 38, 505, and 506 of this test are approved for use on paper and through the computer-based delivery format. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *www.casas.org.*

(2) *Massachusetts Adult Proficiency Test (MAPT) for Math.* This test is approved for use through a computer-adaptive delivery format. Publisher: Massachusetts Department of Elementary and Secondary Education and University of Massachusetts Amherst, School of Education, 156 Hills South, University of Massachusetts, Amherst, MA 01003. Telephone: (413) 545–0564. Internet: *www.sabes.org/assessment/mapt.htm.*

(3) *Massachusetts Adult Proficiency Test (MAPT) for Reading.* This test is approved for use through the computer-adaptive delivery format. Publisher: Massachusetts Department of Elementary and Secondary Education and University of Massachusetts Amherst, School of Education, 156 Hills South, University of Massachusetts, Amherst, MA 01003. Telephone: (413) 545–0564. Internet: *www.sabes.org/assessment/mapt.htm.*

(4) *Tests of Adult Basic Education (TABE 9/10).* Forms 9 and 10 are approved for use on paper and through the computer-based delivery format. Publisher: CTB/McGraw Hill, 20 Ryan Ranch Road, Monterey, CA 93940. Telephone: (800) 538–9547. Internet: *www.ctb.com.*

(5) *Tests of Adult Basic Education Survey (TABE Survey).* Forms 9 and 10 are approved for use on paper and through the computer-based delivery format. Publisher: CTB/McGraw Hill, 20 Ryan Ranch Road, Monterey, CA 93940. Telephone: (800) 538–9547. Internet: *www.ctb.com.*

(c) The Secretary has determined that the following tests are suitable for use at all ESL levels of the NRS for a period of seven years beginning on February 2, 2010:

(1) *Basic English Skills Test (BEST) Literacy.* Forms B, C, and D are approved for use on paper. Publisher: Center for Applied Linguistics, 4646 40th Street NW., Washington, DC 20016–1859. Telephone: (202) 362–0700. Internet: *www.cal.org.*

(2) *Tests of Adult Basic Education Complete Language Assessment System-English (TABE/CLAS–E).* Forms A and B are approved for use on paper. Publisher: CTB/McGraw Hill, 20 Ryan Ranch Road, Monterey, CA 93940. Telephone: (800) 538–9547. Internet: *www.ctb.com.*

Tests Determined To Be Suitable for Use in the NRS for Three Years

(a) The Secretary has determined that the following tests are suitable for use at all ABE and ASE levels and at all ESL levels of the NRS for a period of three years beginning on February 2, 2010:

(1) *Comprehensive Adult Student Assessment Systems (CASAS) Employability Competency System (ECS) Reading Assessments—Workforce Learning Systems (WLS).* Forms 11, 12, 13, 14, 15, 16, 17, 18, 114, 116, 213, 214, 215, and 216 are approved for use on paper and through the computer-based delivery format. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *www.casas.org.*

(2) *Comprehensive Adult Student Assessment Systems (CASAS) Functional Writing Assessments.* Forms 460, 461, 462, 463, 464, 465, and 466 are approved for use on paper. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *www.casas.org.*

(b) The Secretary has determined that the following tests are suitable for use at all ABE and ASE levels of the NRS for a period of three years beginning on February 2, 2010:

(1) *Comprehensive Adult Student Assessment Systems (CASAS) Employability Competency System (ECS) Math Assessments—Workforce Learning Systems (WLS).* Forms 11, 12, 13, 14, 15, 16, 17, 18, 213, 214, 215, and 216 are approved for use on paper and through the computer-based delivery format. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *www.casas.org.*

(2) *General Assessment of Instructional Needs (GAIN)—Test of English Skills.* Forms A and B are approved for use on paper and through the computer-based delivery format. Publisher: Wonderlic Inc., 400 Lakeview Parkway, Suite 200, Vernon Hills, IL 60061. Telephone: (877) 605–9496. Internet: *www.wonderlic.com.*

(3) *General Assessment of Instructional Needs (GAIN)—Test of Math Skills.* Forms A and B are approved for use on paper and through the computer-based delivery format. Publisher: Wonderlic Inc., 400 Lakeview Parkway, Suite 200, Vernon Hills, IL 60061. Telephone: (877) 605–9496. Internet: *www.wonderlic.com.*

(c) The Secretary has determined that the following tests are suitable for use at the High Intermediate, Low Adult Secondary, and High Adult Secondary levels of the NRS for a period of three years beginning on February 2, 2010:

(1) *WorkKeys: Applied Mathematics.* Forms 210 and 220 are approved for use on paper. Publisher: ACT, 500 ACT Drive, P.O. Box 168, Iowa City, Iowa 52243–0168. Telephone: (800) 967–5539. Internet: *www.act.org.*

(2) *WorkKeys: Reading for Information.* Forms 110 and 120 are approved for use on paper. Publisher: ACT, 500 ACT Drive, P.O. Box 168, Iowa City, Iowa 52243–0168. Telephone: (800) 967–5539. Internet: *www.act.org.*

(d) The Secretary has determined that the following tests are suitable for use at all ESL levels of the NRS for a period of three years beginning on February 2, 2010:

(1) *Basic English Skills Test (BEST) Plus.* Forms A, B, and C are approved for use on paper and through the computer-adaptive delivery format. Publisher: Center for Applied Linguistics, 4646 40th Street NW., Washington, DC 20016–1859. Telephone: (202) 362–0700. Internet: *www.cal.org.*

(2) *Comprehensive Adult Student Assessment Systems (CASAS) Employability Competency System (ECS) Listening Assessments—Life Skills (LS).* Forms 51, 52, 53, 54, 55, 56, 63, 64, 65, and 66 are approved for use on paper and through the computer-based delivery format. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *www.casas.org.*

Expiring Tests

The Secretary will allow States a period to sunset an expiring test and transition to other tests suitable for use in the NRS. States may use the transition period to select new tests, purchase appropriate inventories of assessment materials, and provide training to staff. Specifically, tests with three-year NRS approvals expiring on February 2, 2013, may continue to be used during a transition period ending on June 30, 2014.

Revocation of Tests

Under certain circumstances the Secretary may revoke the determination that a test is suitable (see 34 CFR 462.12(e)). If the Secretary revokes the determination of suitability, the Secretary announces through the **Federal Register** and posts on the Internet at *www.nrsweb.org* a notice of that revocation along with the date by which States and local eligible providers must stop using the revoked test.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT** in this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 9212.

Dated: August 1, 2012.

Johan Uvin,

Delegated Authority to Perform the Functions and Duties of the Assistant Secretary for Vocational and Adult Education.

[FR Doc. 2012–19143 Filed 8–3–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy.

ACTION: Notice and Request for OMB Review and Comment.

SUMMARY: EIA has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its information collection, EIA–882T, ''Generic Clearance for Questionnaire Testing, Evaluation, and Research.'' The proposed collection will utilize qualitative and quantitative methodologies to pretest questionnaires and validate EIA survey forms data quality, including conducting pretest

surveys, pilot surveys, respondent debriefings, cognitive interviews, usability interviews, and focus groups.

DATES: Comments regarding this proposed information collection must be received on or before September 5, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718 or contacted by email at *Chad_S_Whiteman@omb.eop.gov.*

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503. And to Richard J. Reeves, U.S. Energy Information Administration, 1000 Independence Ave. SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Richard Reeves, U.S. Energy Information Administration, 1000 Independence Ave. SW., Washington, DC 20585, phone: 202–586–5856, email: *richard.reeves@eia.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1905–0186;

(2) *Information Collection Request Title:* Generic Clearance for Questionnaire Testing, Evaluation, and Research;

(3) *Type of Request:* Extension, Without Change, of a Previously Approved Collection;

(4) *Purpose:* The U.S. Energy Information Administration (EIA) is requesting a three-year approval from the Office of Management and Budget (OMB) to utilize qualitative and quantitative methodologies to pretest questionnaires and validate the quality of the data that is collected on EIA survey forms. This authority would allow EIA to conduct pretest surveys, pilot surveys, respondent debriefings, cognitive interviews, usability interviews, and focus groups. Through the use of these methodologies, EIA will improve the quality of data being collected, reduce or minimize respondent burden, increase agency efficiency, and improve responsiveness to the public. This authority would also allow EIA to improve data collection in order to meet the needs of EIA's customers while also staying current in the evolving nature of the energy industries.

The specific methods proposed for the coverage by this clearance request are:

- Field Testing
- Pilot Surveys
- Respondent Debriefings
- Cognitive Interviews
- Usability Interviews
- Focus Groups;

(5) *Annual Estimated Number of Respondents:* 1,000;

(6) *Annual Estimated Number of Total Responses:* 1,000;

(7) *Annual Estimated Number of Burden Hours:* 1,000;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* There are not any costs associated with these survey methods other than the burden hours.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, 93, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, on July 31, 2012.

Stephanie Brown,

Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2012–19103 Filed 8–3–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–95–000.
Applicants: Bobcat Bluff Wind Project, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator of Bobcat Bluff Wind Project, LLC.
Filed Date: 7/27/12.
Accession Number: 20120727–5178.
Comments Due: 5 p.m. ET 8/17/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2664–002.
Applicants: Powerex Corp.
Description: Powerex Corp. Response to Staff Data Request and Request for Expedited Treatment and Shortened Comment Period.
Filed Date: 7/27/12.
Accession Number: 20120727–5183.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–2343–000.
Applicants: AEP Energy, Inc.
Description: Notice of Succession AEP Energy, Inc. to be effective 6/29/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5156.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2344–000.
Applicants: New England Power Company.
Description: Interconnection Agreement between New England Power and Barre Energy Partners to be effective 9/26/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5158.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2345–000.
Applicants: PJM Interconnection, L.L.C.
Description: Revisions to the PJM OATT & OA re Quality Project Review related to Credit Rules to be effective 9/28/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5166.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2346–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 1154R7 Associated Electric Cooperative, Inc. NITSA NOA to be effective 7/1/2012.
Filed Date: 7/30/12.
Accession Number: 20120730–5047.
Comments Due: 5 p.m. ET 8/20/12.

Docket Numbers: ER12–2347–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 2158R2 Arkansas Electric Cooperative Corporation NITSA NOA to be effective 7/1/2012.
Filed Date: 7/30/12.
Accession Number: 20120730–5048.
Comments Due: 5 p.m. ET 8/20/12.

Docket Numbers: ER12–2348–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii: OATT Revised Section 13 and Schedule 10 to be effective 12/25/2011.
Filed Date: 7/30/12.
Accession Number: 20120730–5049.
Comments Due: 5 p.m. ET 8/20/12.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA12–2–000.
Applicants: Duke Energy Corporation, Carolina Power & Light Company, Cimarron Windpower II, LLC, CinCap V, LLC, Duke Energy Commercial Asset Management, Inc., Duke Energy Commercial Enterprises, Inc., Duke Energy Carolinas, LLC, Duke Energy

Fayette II, LLC, Duke Energy Hanging Rock II, LLC, Duke Energy Indiana, Inc., Duke Energy Kentucky, Inc., Duke Energy Lee II, LLC, Duke Energy Ohio, Inc., Duke Energy Retail Sales, LLC, Duke Energy Washington II, LLC, Florida Power Corporation, Happy Jack Windpower, LLC, Ironwood Windpower, LLC, Kit Carson Windpower, LLC, North Allegheny Wind, LLC, Silver Sage Windpower, LLC, St. Paul Cogeneration, LLC, Three Buttes Windpower, LLC Top of the World Energy, LLC.

Description: Quarterly Generation Site Acquisition Report of Duke Energy Corporation.

Filed Date: 7/30/12.

Accession Number: 20120730–5042.

Comments Due: 5 p.m. ET 8/20/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 30, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–19098 Filed 8–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–889–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Remove Expired Contracts from Tariff to be effective 8/1/2012.

Filed Date: 7/30/12.

Accession Number: 20120730–5043.

Comments Due: 5 p.m. ET 8/13/12.

Docket Numbers: RP12–890–000.

Applicants: Gulf South Pipeline Company, LP.

Description: ONEOK 34951 to BG 40038 and 40040 Cap Rel Neg Rate Agmts to be effective 8/1/2012.

Filed Date: 7/30/12.

Accession Number: 20120730–5044.

Comments Due: 5 p.m. ET 8/13/12.

Docket Numbers: RP12–891–000.

Applicants: Gulf South Pipeline Company, LP.

Description: HK 37731 to Texla 40045 Cap Rel Neg Rate Agmt to be effective 8/1/2012.

Filed Date: 7/30/12.

Accession Number: 20120730–5045.

Comments Due: 5 p.m. ET 8/13/12.

Docket Numbers: RP12–892–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Antero 2 to Tenaska 580 Cap Rel Neg Rate Agmt to be effective 8/1/2012.

Filed Date: 7/30/12.

Accession Number: 20120730–5046.

Comments Due: 5 p.m. ET 8/13/12.

Docket Numbers: RP12–894–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: 2012–07–30 NC Mieco (2), CIMA (2) to be effective 7/31/2012.

Filed Date: 7/30/12.

Accession Number: 20120730–5155.

Comments Due: 5 p.m. ET 8/13/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–765–001.

Applicants: Rockies Express Pipeline LLC.

Description: Audit Changes Compliance—Resv Charge Credits to be effective 8/29/2012.

Filed Date: 7/30/12.

Accession Number: 20120730–5149.

Comments Due: 5 p.m. ET 8/13/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 31, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–19099 Filed 8–3–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9521–9]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 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 regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or email at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 1871.06; NESHAP for Source Categories: Generic Maximum Achievable Control Technology Standards; 40 CFR part 63 subparts A and YY; was approved on 07/10/2012; OMB Number 2060–0420; expires on 07/31/2015; Approved without change.

EPA ICR Number 0111.13; NESHAP for Asbestos; 40 CFR part 61 subparts A and M; was approved on 07/10/2012; OMB Number 2060–0101; expires on 07/31/2015; Approved without change.

EPA ICR Number 1773.10; NESHAP for Hazardous Waste Combustors (Renewal); 40 CFR part 63 subpart EEE; was approved on 07/10/2012; OMB Number 2050–0171; expires on 07/31/2015; Approved without change.

EPA ICR Number 1601.08; Air Pollution Regulations for Outer

Continental Shelf Activities (Renewal); 40 CFR part 55 and 40 CFR 55.1–55.15; was approved on 07/10/2012; OMB Number 2060–0249; expires on 07/31/2015; Approved without change.

EPA ICR Number 2056.04; NESHAP for Miscellaneous Metal Parts and Products; 40 CFR part 63 subparts A and MMMM; was approved on 07/10/2012; OMB Number 2060–0486; expires on 07/31/2015; Approved without change.

EPA ICR Number 1084.12; NSPS for Nonmetallic Mineral Processing; 40 CFR part 60 subparts A and OOO; was approved on 07/10/2012; OMB Number 2060–0050; expires on 07/31/2015; Approved without change.

EPA ICR Number 2310.02; RCRA Definition of Solid Waste (Renewal); 40 CFR parts 260 and 261; was approved on 07/05/2012; OMB Number 2050–0202; expires on 07/31/2015; Approved without change.

EPA ICR Number 2173.05; EPA's Green Power Partnership and Combined Heat and Power Partnership (Renewal); was approved on 07/05/2012; OMB Number 2060–0578; expires on 07/31/2015; Approved without change.

EPA ICR Number 2427.02; Aircraft Engines—Supplemental Information Related to Exhaust Emissions (Final Rule); 40 CFR 87.42 and 87.46; was approved on 07/12/2012; OMB Number 2060–0680; expires on 07/31/2015; Approved without change.

EPA ICR Number 2432.02; NESHAP for Polyvinyl Chloride and Copolymer Production; 40 CFR part 63 subparts A and HHHHHHH; was approved on 07/17/2012; OMB Number 2060–0666; expires on 07/31/2015; Approved without change.

Comment Filed

EPA ICR Number 2412.01; Electronic Reporting of TSCA Section 4, Section 5 NOC and Supporting Documents, 8(a) Preliminary Assessment Information Rule (PAIR), and 8(d) Submissions; in 40 CFR parts 712, 716, 720 and 790; 40 CFR 725.190; OMB filed comment on 07/23/2012.

Withdrawn and Continue

EPA ICR Number 1463.08; National Oil and Hazardous Substances Pollution Contingency Plan (NCP)(Renewal); Withdrawn from OMB on 07/19/2012 while existing approved collection continues.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2012–19120 Filed 8–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0271; FRL–9521–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Integrated Iron and Steel Manufacturing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before September 5, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0271, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 *FR* 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0271, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to www.regulations.gov.

Title: NESHAP for Integrated Iron and Steel Manufacturing (Renewal).

ICR Numbers: EPA ICR Number 2003.05, OMB Control Number 2060–0517.

ICR Status: This ICR is schedule to expire on August 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The NESHAP for Integrated Iron and Steel Manufacturing are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart FFFFF.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is

inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 419 hours per response. ''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and 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.

Respondents/Affected Entities: Owners or operators of integrated iron and steel manufacturing facilities.

Estimated Number of Respondents: 18.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 18,421.

Estimated Total Annual Cost: $1,832,122, which includes $1,765,120 in labor costs, no capital/startup costs, and $67,002 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor hours in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden. However, there is an increase in the total labor and Agency costs as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The change in cost estimates reflects updated labors rates available from the Bureau of Labor Statistics.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–19121 Filed 8–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2012–0103; FRL 9521–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Diesel Emissions Reduction Act (DERA) Rebate Program (New Collection); EPA ICR No. 2461.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 5, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2012–0103, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Julie Henning, Office of Transportation and Air Quality, National Vehicle and Fuel Emissions Laboratory, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4442; fax number: 734–214–4958; email address: *henning.julie@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 29, 2012 (77 FR 12284), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one set of comments during the comment period, which are addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2012–0103, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at www.regulations.gov, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Diesel Emissions Reduction Act (DERA) Rebate Program (New Collection).

ICR Numbers: EPA ICR No. 2461.01, OMB Control No. 2060–NEW.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control 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: This is a new Information Collection Request (ICR) for the Diesel Emission Reduction Act program (DERA) authorized by Title VII, Subtitle G (Sections 791 to 797) of the Energy Policy Act of 2005 (Pub. L. 109–58), as amended by the Diesel Emissions

Reduction Act of 2010 (Pub. L. 111–364), codified at 42 U.S.C. 16131 *et seq.* DERA provides the Environmental Protection Agency (EPA) with the authority to award grants, rebates or low-cost revolving loans on a competitive basis to eligible entities to fund the costs of a retrofit technology that significantly reduces diesel emissions from mobile sources through implementation of a certified engine configuration, verified technology, or emerging technology. Eligible mobile sources include buses (including school buses), medium heavy-duty or heavy heavy-duty diesel trucks, marine engines, locomotives, or nonroad engines or diesel vehicles or equipment used in construction, handling of cargo (including at port or airport), agriculture, mining, or energy production. In addition, eligible entities may also use funds awarded for programs or projects to reduce long-duration idling using verified technology involving a vehicle or equipment described above. The objective of the assistance under this program is to achieve significant reductions in diesel emissions in terms of tons of pollution produced and reductions in diesel emissions exposure, particularly from fleets operating in areas designated by the Administrator as poor air quality areas.

EPA uses approved procedures and forms to collect necessary information to operate a grant program, and has been providing grants under DERA since Fiscal Year 2008. EPA is requesting approval through this ICR for forms needed to collect necessary information to operate a rebate program as authorized by Congress under the DERA program.

EPA will collect information from applicants who wish to apply for a rebate under the DERA rebate program. Information collected from applicants will ensure that they are eligible to receive funds under DERA, that funds are provided for eligible activities, and to calculate estimated and actual emissions benefits that result from activities funded with rebates as required in DERA's authorizing legislation.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4 hours per response. 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.

Respondents/Affected Entities: Entities potentially affected by this action are those interested in applying for a rebate under EPA's Diesel Emission Reduction Act (DERA) Rebate Program and include but are not limited to the following NAICS (North American Industry Classification System) codes: 23 Construction; 482 Rail Transportation; 483 Water Transportation; 484 Truck Transportation; 485 Transit and Ground Passenger Transportation; 48831 Port and Harbor Operations; 61111 Elementary and Secondary Schools; 61131 Colleges, Universities, and Professional Schools; 813212 Voluntary Health Organizations; 813219 Other Grantmaking and Giving Services; 813312 Environment, Conservation, and Wildlife Organizations; 813910 Business Associations; 813920 Professional Organizations; 9211 Executive, Legislative, and Other Government Support; and 9221 Justice, Public Order, and Safety Activities.

Estimated Number of Respondents: 120.

Frequency of Response: Voluntarily as needed.

Estimated Total Annual Hour Burden: 894 hours.

Estimated Total Annual Cost: $44,548. This includes an estimated labor burden cost of $44,548 and an estimated cost of $0 for capital investment or maintenance and operational costs.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–19125 Filed 8–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9710–6]

Notification of a Public Meeting of the Clean Air Scientific Advisory Committee (CASAC) Ozone Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the CASAC Ozone Review Panel to conduct a peer review of EPA's *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (Third External Review Draft) (June 2012), Health Risk and Exposure Assessment for Ozone—First External Review Draft (July 2012), Welfare Risk and Exposure Assessment for Ozone—First External Review Draft (July 2012* and *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards—First External Review Draft (August 2012).*

DATES: The CASAC Ozone Review Panel meeting will be held on Tuesday, September 11, 2012 from 9 a.m. to 5:30 p.m. (Eastern Time), Wednesday, September 12 from 8:30 a.m. to 5:30 p.m. (Eastern Time) and on Thursday, September 13, 2012 from 8:30 a.m. to 1 p.m. (Eastern Time).

ADDRESSES: The public meeting will be held at the Raleigh Marriott City Center, 500 Fayetteville Street, Raleigh, North Carolina 27601.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the public meeting may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), via telephone at (202) 564–2073 or email at *stallworth.holly@epa.gov*. General information concerning the CASAC can be found on the EPA Web site at *http://www.epa.gov/casac*.

SUPPLEMENTARY INFORMATION: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409D(d)(2), to provide advice, information, and recommendations to the Administrator on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and the strategies to attain and maintain air quality standards and to prevent significant deterioration of air quality. The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the chartered CASAC augmented with additional experts, known as the CASAC Ozone Review Panel, will hold a public meeting to peer review EPA's third external review draft of the *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (June 2012), Health Risk and Exposure Assessment for Ozone—First External Review Draft (July 2012),*

Welfare Risk and Exposure Assessment for Ozone—First External Review Draft (July 20, and *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards—First External Review Draft (August 2012).* These EPA draft documents are prepared as part of the agency's review of the National Ambient Air Quality Standards (NAAQS) for ozone.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including ozone. EPA is currently reviewing the primary (health-based) and secondary (welfare-based) NAAQS for ozone. The CASAC previously reviewed EPA's first external review draft of the *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (March 2011)* as reported in a letter to the EPA Administrator, dated August 10, 2011 (EPA–CASAC–11–009). The CASAC also reviewed the second external review draft of the *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (September 2011)* as reported in a letter to the EPA Administrator, dated March 13, 2012 (EPA–CASAC–12–004). The CASAC Ozone Review Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Technical Contacts: Any technical questions concerning the *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (Third External Review Draft) (June 2012)* should be directed to Dr. James Brown (*brown.james@epa.gov*). Any technical questions concerning the *Health Risk and Exposure Assessment for Ozone—First External Review Draft (July 2012) or the Welfare Risk and Exposure Assessment for Ozone—First External Review Draft (July 2012)* should be directed to Dr. Bryan Hubbell (*hubbell.bryan@epa.gov*). Any technical questions concerning the *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards—First External Review Draft (August 2012)* should be directed to Ms. Susan Lyon Stone (*stone.susan@epa.gov*).

Availability of Meeting Materials: Prior to the meeting, the review documents, agenda and other materials will be accessible through the calendar link on the blue navigation bar at *http://www.epa.gov/casac/.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments for a federal advisory committee to consider pertaining to EPA's charge to the committee or review materials. Input from the public to the CASAC will have the most impact if it provides specific scientific, technical information or analysis or if it relates to the clarity or accuracy of the technical information for the CASAC's consideration. Members of the public wishing to provide comment should contact the Designated Federal Officer directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes. Interested parties should contact Dr. Stallworth, DFO, in writing (preferably via email) at the contact information noted above by August 31, 2012, to be placed on the list of public speakers for the meeting.

Written Statements: Written statements should be submitted to the DFO via email at the contact information noted above by August 31, 2012 for the meeting so that the information may be made available to the CASAC Panel for their consideration. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post public comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Holly Stallworth at (202) 564–2073 or *stallworth.holly@epa.gov.* To request accommodation of a disability, please contact Dr. Stallworth preferably at least ten days prior to the meeting to give EPA as much time as possible to process your request.

Dated: July 26, 2012.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2012–19134 Filed 8–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9711–4]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by WildEarth Guardians in the United States District Court for the District of Colorado: *WildEarth Guardians* v. *Jackson,* No. 12–cv–00754–RPM–MEH (D. CO). On March 26, 2012, Plaintiff filed a complaint alleging that EPA failed to perform a mandatory duty under section 110(k)(2) of the CAA, 7410(k)(2) to take action on a State Implementation Plan (''SIP'') submission from the State of Utah within the time frame required. The proposed consent decree establishes a deadline of February 14, 2013 for EPA to take action.

DATES: Written comments on the proposed consent decree must be received by September 5, 2012.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2012–0569, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Kendra Sagoff, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW.,

Washington, DC 20460; telephone: (202) 564–5591; fax number (202) 564–5603; email address: *sagoff.kendra@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit seeking to compel action by the Administrator to take final action under section 110(k) of the CAA on the Utah SIP submission. The proposed consent decree requires EPA to sign for publication in the **Federal Register** no later than February 14, 2013, a final action in which it either approves in whole, approves in part and disapproves in part, or disapproves in whole, the State of Utah's proposed SIP revision for maintenance of the 1997 eight-hour National Ambient Air Quality Standard for ozone in Salt Lake and Davis Counties, which Utah submitted to EPA on March 22, 2007.

The proposed consent decree requires that, following signature, EPA shall promptly deliver the notice to the Office of the Federal Register for review and publication in the **Federal Register**. After EPA fulfills its obligations under the proposed consent decree, the consent decree shall be terminated and the case dismissed with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2012–0569) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: July 27, 2012.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2012–19130 Filed 8–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9711–5]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA''), notice is hereby given of a proposed consent decree, to address a lawsuit filed by Sierra Club in the United States District Court for the District of Columbia: *Sierra Club* v. *Jackson,* No. 11–2180–RBW (D. DC). Plaintiff filed a complaint alleging that EPA failed to take action on certain state implementation plan (''SIP'') submissions for the States of Massachusetts, Connecticut, New Jersey, New York, Pennsylvania, Maryland and Delaware by the statutory deadline established by CAA section 110(k)(2), 7410(k)(2). The proposed consent decree establishes deadlines for EPA to take action on the SIP submittals.

DATES: Written comments on the proposed consent decree must be received by September 5, 2012.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2012–0595, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: David Orlin, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–1222; fax number (202) 564–5601; email address: *orlin.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by the Sierra Club seeking to compel the Administrator to take final action under sections 110(k)(3) and (4) of the CAA, 42 U.S.C. 7410(k)(3) and (4), to approve or disapprove, in whole or in part, numerous SIP submittals in the States of Massachusetts, Connecticut, New Jersey, New York, Pennsylvania, Maryland and Delaware which are identified in Attachment A to the proposed consent decree.

The proposed consent decree provides various dates by which EPA shall sign one or more final rules to approve or disapprove, in whole or in part, pursuant to CAA section 110(k)(3) and (4), each SIP submission (or portion thereof on which EPA has not yet taken final action) identified in Attachment A; except that the consent decree does not require EPA to act on a submission or portion thereof that is withdrawn prior to the applicable deadline.

Within 15 business days following signature of each final rule described in the proposed consent decree, EPA is required to send the notice to the Office of the Federal Register for review and publication in the **Federal Register**. After EPA fulfills its obligations under the consent decree, the consent decree provides that this case shall be dismissed with prejudice.

The proposed consent decree also states that that the consent decree can be modified by the parties, or by the court following a motion by a party and a response thereto. In addition, the parties agree to seek to resolve informally Sierra Club's claim for litigation costs pursuant to 42 U.S.C. 7604(d), but the court would retain jurisdiction to resolve that claim.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2012–0595) contains a copy of the proposed consent decree (including Attachment A). The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment

that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: July 27, 2012.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2012–19128 Filed 8–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9711–3]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by National Parks Conservation Association, Montana Environmental Information Center, Grand Canyon Trust, San Juan Citizens Alliance, Our Children's Earth Foundation, Plains Justice, Powder River Basin Resource Council, Sierra Club, and Environmental Defense Fund (collectively ''Plaintiffs'') in the United States District Court for the District of Columbia: *National Parks Conservation Association, et al.* v. *Jackson,* No. 1:11–cv–1548 (D.D.C.). Plaintiffs filed a complaint alleging that EPA failed to promulgate regional haze federal implementation plans (FIPs) or approve regional haze state implementation plans (SIPs) for various states, including Florida, as required by section 110(c) of the CAA. The complaint further alleged that EPA had also failed to act on ten regional haze SIP submissions, as required by section 110(k) of the CAA. On March 30, 2012, the Court entered a partial consent decree resolving all claims asserted by Plaintiffs, except those with respect to Florida. The proposed consent decree establishes proposed and final promulgation deadlines for EPA to meet its obligations with respect to Florida to resolve Plaintiffs' remaining claims.

DATES: Written comments on the proposed consent decree must be received by September 5, 2012.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2012–0617, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov*; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Lea Anderson, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–5571; fax number (202) 564–5603; email address: *anderson.lea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

Under section 110(c) of the CAA, EPA has a mandatory duty to promulgate a federal implementation plan (''FIP'') within two years of a finding that a state has failed to make a required state implementation plan (''SIP'') submittal. EPA is not required to promulgate a FIP, however, if the state submits the required SIP and EPA approves the plan within the two years of EPA's finding. On January 15, 2009, EPA found that 37 states, the District of Columbia, and the U.S. Virgin Islands had failed to submit CAA SIPs for improving visibility in mandatory Federal Class I areas. 74 FR 2392. Plaintiffs filed a complaint in 2011 pursuant to CAA section 304(a)(2), 42 U.S.C. 7604(a)(2), alleging, *inter alia,* failure by the Administrator to promulgate regional haze FIPs or approve regional haze SIPs for 34 states within two years of its January 15, 2009 finding, as required by section 110(c) of the CAA.

EPA published notice of a proposed consent decree to resolve the deadline suit filed by Plaintiffs, requesting comment in accordance with section 113(g) of the CAA. 76 FR 75544 (Dec. 2, 2011). Following its review of the comments, EPA concluded that it would be inappropriate to move forward with the consent decree as it applied to Florida, and EPA withdrew its consent to the provisions of the consent decree establishing deadlines for action with respect to Florida. As a result, in March 2012, the Court entered a partial consent decree resolving all Plaintiffs' claims, except those with respect to Florida. EPA is requesting comment today on a new proposed consent that addresses the Agency's failure to promulgate a regional haze FIP or approve a regional haze SIP for Florida within two years of its finding that Florida had failed to submit a plan by the December 17, 2007 deadline.

The proposed consent decree would resolve the remaining claims by Plaintiffs in *National Parks Conservation Association, et al.* v. *Jackson,* No. 1:11–cv–1548 (D.D.C.). EPA recently proposed action on certain revisions to the Florida SIP addressing regional haze. 77 FR 31240 (May 25, 2012). The proposed consent decree requires EPA to sign for publication in the **Federal Register** by November 15, 2012, a notice(s) of final rulemaking taking action on the matters addressed in the May 25, 2012 notice of proposed rulemaking. The proposed consent decree also establishes proposed and final promulgation deadlines of December 3, 2012, and July 13, 2013, respectively, for EPA to approve a SIP or promulgate a FIP that will meet all remaining regional haze requirements for Florida. The proposed consent decree further requires that within ten business days of signing a proposed or final rulemaking, EPA will deliver the notice to the Office of the Federal Register and will provide a copy of the notice to Plaintiffs within five business days. After EPA fulfills its obligations under the proposed consent decree, EPA may move to have this decree terminated.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the proposed consent decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2012–0617) contains a copy of the proposed consent decree.

The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: July 27, 2012.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2012–19167 Filed 8–3–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Approved by the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice of public information collection approved by the Office of Management and Budget.

SUMMARY: The Federal Communications Commission has received the Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Cathy Williams on (202) 418–2918 or via email at *cathy.williams@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1173.

OMB Approval Date: July 24, 2012.

OMB Expiration Date: July 31, 2015.

Title: Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, Fourth Report and Order and Third Order on Reconsideration (''Fourth Report and Order''), MM Docket 99–25, MB Docket No. 07–172, RM–11338; Implementation of Application Caps.

Form Number: N/A.

Number of Respondents and Responses: 300 respondents; 300 responses.

Frequency of Response: One-time reporting requirement.

Estimated Time per Response: 2 hours.

Total Annual Burden: 600 hours.

Total Annual Costs: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: On March 19, 2012, the Commission adopted a Fourth Report and Order and Third Order on Reconsideration (''Fourth Report and Order''), FCC 12–29. In the Fourth Report and Order, the Commission adopts the national and market-specific caps proposed in the Third Further Notice, FCC 11–105, and requires parties with more than 50 pending applications and/or more than one pending application in the markets identified in Appendix A of the Fourth Report and Order (the top 150 Arbitron markets plus markets with more than 4 pending translator applications) to request the dismissal of applications to comply with these limits. Applicants may request such dismissal by filing a letter with the Commission (''Dismissal Letter'') identifying the applications they wish to be dismissed. In the event that an applicant does not timely comply with these dismissal procedures, the Commission staff will first apply the national cap, retaining on file the first 50 filed applications and dismissing those that were subsequently filed. The staff will then dismiss all but the first filed application in each of the markets identified in Appendix A.

OMB Control Number: 3060–1172.
OMB Approval Date: July 24, 2012.
OMB Expiration Date: July 31, 2015.
Title: Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, Fourth Report and Order and Third Order on Reconsideration (''Fourth Report and Order''), MM Docket 99–25, MB Docket No. 07–172, RM–11338; Translator Amendments and Top 50 Market Preclusion Showings.
Form Number: N/A.
Number of Respondents and Responses: 500 respondents; 1,300 responses.
Estimated Time per Response: 2 hours.
Total Annual Burden: 2,600 hours.
Total Annual Costs: None.
Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i) of the Communications Act of 1934, as amended.
Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.
Privacy Impact Assessment(s): No impact(s).
Needs and Uses: On March 19, 2012, the Commission adopted a Fourth Report and Order and Third Order on Reconsideration (''Fourth Report and Order''), FCC 12–29. It adopts the market-based dismissal policy proposed in the Third Further Notice, FCC 11–105, with certain modifications. Among other things, it gives all translator applicants a limited opportunity to amend their proposals. It holds that translator applicants in ''spectrum available'' markets may modify their proposals so long as they do not preclude any LPFM channel/point combination identified in the Bureau's study (''Spectrum Available Amendments''). It further holds that translator applicants with proposals in ''spectrum limited'' markets will be allowed to modify their proposals to eliminate their preclusive impact on any of the LPFM point/channel combinations that would be available within the grid if all translator window applications in that market were dismissed (''Spectrum Limited Amendments'') (''Spectrum Available Amendments'' and ''Spectrum Limited Amendments'' are collectively referred to herein as, ''Amendments''). In addition, any translator applicant in any top 50 spectrum limited market must demonstrate that its out-of-grid proposal would not preclude the only LPFM station licensing opportunity at that location (''Top 50 Market Preclusion Showing''). Specifically, it needs to demonstrate either that no LPFM station could be licensed at the proposed transmitter site or, if an LPFM station could be licensed at the site, that an additional channel remains available for a future LPFM station at the same site.

Federal Communications Commission.

Bulah P. Wheeler,

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

[FR Doc. 2012–19066 Filed 8–3–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Information Collection To Be Submitted to OMB for Review and Approval

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Office of the Comptroller of the Currency (OCC), the Board, and the Federal Deposit Insurance Corporation (FDIC) (the ''agencies''), may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

On May 17, 2012, the Board, under the auspices of the Federal Financial Institutions Examination Council (FFIEC) and on behalf of the agencies, published a notice in the **Federal Register** (77 FR 29345) requesting public comment on the extension, without revision, of the Country Exposure Report for U.S. Branches and Agencies of Foreign Banks (FFIEC 019; OMB No. 7100–0213), which is a currently approved information collection. The comment period for this notice expired on July 16, 2012. No comments were received. The Board hereby gives notice that it plans to submit to OMB on behalf of the agencies a request for approval of the FFIEC 019.

DATES: Comments must be submitted on or before September 5, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments should refer to the OMB control number(s) and will be shared among the agencies.

You may submit comments, which should refer to ''Country Exposure Report for U.S. Branches and Agencies of Foreign Banks, 7100–0213,'' by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to Shagufta Ahmed, OMB Desk Officer, by mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room #10235, 725 17th Street NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from Cynthia Ayouch, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

Comments are invited on all aspects of this information collection, including:

a. Whether the proposed collection of information is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record.

Proposal To Extend for Three Years, Without Revision, the Following Currently Approved Collection of Information

Report Title: Country Exposure Report for U.S. Branches and Agencies of Foreign Banks.

Form Number: FFIEC 019.

OMB Number: 7100–0213.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: 168.

Estimated Average Time per Response: 10 hours.

Estimated Total Annual Burden: 6,720 hours.

General Description of Report: This information collection is mandatory: 12 U.S.C. 3906 for all agencies; 12 U.S.C. 3105 and 3108 for the Board; sections 7 and 10 of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1820) for the FDIC; and the National Bank Act (12 U.S.C. 161) for the OCC. This information collection is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(8)).

Abstract: All individual U.S. branches and agencies of foreign banks that have more than $30 million in direct claims on residents of foreign countries must file the FFIEC 019 report quarterly. Currently, all respondents report adjusted exposure amounts to the five largest countries having at least $20 million in total adjusted exposure. The agencies collect this data to monitor the extent to which such branches and agencies are pursuing prudent country risk diversification policies and limiting potential liquidity pressures. No changes are proposed to the FFIEC 019 reporting form or instructions.

Board of Governors of the Federal Reserve System, July 31, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–19059 Filed 8–3–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 21, 2012.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *Opportunity Fund, LLC; Bank Opportunity Advisors LLC; and Bank Acquisitions LLC,* all in Washington, DC; to acquire voting shares of Middlefield Banc Corp., and thereby indirectly acquire voting shares of The Middlefield Banking Company, both in Middlefield, Ohio, and Emerald Bank, Dublin; Ohio.

B. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Moishe Gubin,* Hillside, Illinois; to acquire voting shares of OptimumBank Holdings, Inc., Ft. Lauderdale, Florida, and thereby indirectly acquire voting shares of OptimumBank, Plantation, Florida.

Board of Governors of the Federal Reserve System, August 1, 2012.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2012–19092 Filed 8–3–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Extension to HS Transportation Requirement.

OMB No.: 0970–0260.

Description: The Office of Head Start is proposing to renew authority to collect information regarding the Head Start transportation requirement without changes. The transportation requirement provides the requirement that each child be seated in a child restraint system while the vehicle is in motion, and the requirement that each bus have at least one bus monitor on board at all times. Waivers would be granted when the Head Start or Early Head Start grantee demonstrates that compliance with the requirement(s) for which the waiver is being sought will result in a significant disruption to the Head Start program or the Early Head Start program and that waiving the requirement(s) is in the best interest of the children involved.

Respondents: Head Start and Early Head Start program grants recipients.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average Burden Hours per Response	Total Burden Hours
Form	275	1	1	275

Estimated Total Annual Burden Hours: 275.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington,

DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–19141 Filed 8–3–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0724]

Documents to Support Submission of an Electronic Common Technical Document; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the following final versions of documents that support making regulatory submissions in electronic format using the electronic Common Technical Document (eCTD) specifications: ''The eCTD Backbone Files Specification for Module 1, version 2.0'' (which includes the U.S. regional document type definition (DTD), version 3.0) and ''Comprehensive Table of Contents Headings and Hierarchy, version 2.0.'' Supporting technical files are also being made available on the Agency Web site. These documents represent FDA's major updates to Module 1 of the eCTD, which contains regional information. FDA is not prepared at present to accept submissions utilizing this new version because eCTD software vendors need time to update their software to accommodate this information and because its use will require software upgrades within the Agency. FDA estimates it will be able to receive submissions utilizing Module 1 Specifications 2.0 by September 2013, but this is not a firm date and we will give 30 days advance notice to industry.

ADDRESSES: Submit written requests for single copies of the documents to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm 2201, Silver Spring, MD 20993–0002; or Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the documents.

FOR FURTHER INFORMATION CONTACT: Virginia Hussong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm 1161, Silver Spring, MD 20993, email: *Esub@fda.hhs.gov*; or Mary Padgett, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–0373, email: *mary.padgett@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The eCTD is an International Conference on Harmonisation (ICH) standard based on specifications developed by ICH and its member parties. FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) have been receiving submissions in the eCTD format since 2003, and the eCTD has been the standard for electronic submissions to CDER and CBER since January 1, 2008. The majority of new electronic submissions are now received in eCTD format. Since adoption of the eCTD standard, it has become necessary to update the administrative portion of the eCTD (Module 1) to reflect regulatory changes, to provide clarification of business rules for submission processing and review, to refine the characterization of promotional marketing and advertising material, and to facilitate automated processing of submissions. In preparation for the Module 1 update, FDA made available draft technical documentation for public comment in a **Federal Register** notice dated October 26, 2011 (Docket No. FDA–2011–N–0724). After considering comments submitted, FDA revised the draft documentation and is making available final versions of the following documents:

- ''The eCTD Backbone Files Specification for Module 1, version 2.0,'' which provides specifications for creating the eCTD backbone file for Module 1 for submission to CDER and CBER. It should be used in conjunction with the guidance for industry ''Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications,'' which can be found online (*http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM072349.pdf*), and which will be revised as part of the implementation of the updated eCTD backbone files specification.
- ''Comprehensive Table of Contents Headings and Hierarchy, version 2.0,'' which reflects updated headings that are specified in the draft document entitled ''The eCTD Backbone Files Specification for Module 1, version 2.0,'' as well as mappings to regulations and legislation.

Supporting technical files are also being made available on the Agency Web site. The documents include changes that:

- Allow submission of promotional label and advertising materials to CDER in eCTD format;
- Provide for processing of grouped submissions (e.g., a supplement that can be applied to more than one new drug application or biologics license application);
- Provide detailed contact information so that companies can specify points of contact to discuss technical matters that may arise with a submission;
- Clarify headings;
- Use attributes in place of certain headings to provide flexibility for future changes without revising the specification itself.

FDA is not prepared at present to accept submissions utilizing this new version because eCTD software vendors need time to update their software to accommodate this information and because its use will require software upgrades within the Agency. FDA estimates it will be able to receive submissions utilizing Module 1 Specifications 2.0 by September 2013, but this is not a firm date and we will give 30 days advance notice to industry.

II. Electronic Access

Persons with access to the Internet may obtain the documents at either *http://www.fda.gov/Drugs/DevelopmentApprovalProcess/FormsSubmissionRequirements/ElectronicSubmissions/ucm253101.htm, http://www.regulations.gov,* or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

Dated: July 31, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–19087 Filed 8–3–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0011]

Clinical Studies of Safety and Effectiveness of Orphan Products Research Project Grant (R01)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of FDA's Office of Orphan Products Development (OPD) grant program. The goal of FDA's OPD grant program is to support the clinical development of products for use in rare diseases or conditions where no current therapy exists or where the proposed product will be superior to the existing therapy. FDA provides grants for clinical studies on safety and/or effectiveness that will either result in, or substantially contribute to, market approval of these products. Applicants must include in the application's Background and Significance section documentation to support the assertion that the product to be studied meets the statutory criteria to qualify for the grant and an explanation of how the proposed study will either help support product approval or provide essential data needed for product development.

DATES: Important dates are as follows:

1. The application due dates are February 6, 2013; February 5, 2014. The resubmission due dates are October 15, 2013; October 15, 2014.
2. The anticipated start dates are November 2013; November 2014.
3. The opening date is December 6, 2013.
4. The expiration date is February 6, 2014; October 16, 2014 (resubmission).

For Further Information and Additional Requirements Contact: Katherine Needleman, Office of Orphan Products Development, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5271, Silver Spring, MD 20993–0002, Phone: 301–796–8660, Email: *katherine.needleman@fda.hhs.gov*; or Vieda Hubbard, Office of Acquisitions & Grant Services, 5630 Fishers Lane, rm. 2034, Rockville, MD 20857, Phone: 301–827–7177, Email: *vieda.hubbard@fda.hhs.gov.*

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *http://grants.nih.gov/grants/guide* (select the ''Request for Applications'' link), *http://www.grants.gov* (see ''For Applicants'' section), and *http://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/WhomtoContactaboutOrphanProductDevelopment/ucm134580.htm.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

RFA–FD–13–001
93.103

A. Background

The OPD was created to identify and promote the development of orphan products. Orphan products are drugs, biologics, medical devices, and medical foods that are indicated for a rare disease or condition. The term ''rare disease or condition'' is defined in section 528 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360ee). FDA generally considers drugs, devices, and medical foods potentially eligible for grants under the OPD grant program if they are indicated for a disease or condition that has a prevalence, not incidence, of fewer than 200,000 people in the United States. Diagnostics and vaccines are considered potentially eligible for such grants only if the U.S. population to whom they will be administered is fewer than 200,000 people in the United States per year.

B. Research Objectives

The goal of FDA's OPD grant program is to support the clinical development of products for use in rare diseases or conditions where no current therapy exists or where the proposed product will be superior to the existing therapy. FDA provides grants for clinical studies on safety and/or effectiveness that will either result in, or substantially contribute to, market approval of these products. Applicants must include in the application's Background and Significance section documentation to support the assertion that the product to be studied meets the statutory criteria to qualify for the grant and an explanation of how the proposed study will either help support product approval or provide essential data needed for product development.

C. Eligibility Information

The grants are available to any foreign or domestic, public or private, for-profit or nonprofit entity (including State and local units of government). Federal Agencies that are not part of the Department of Health and Human Services (HHS) may apply. Agencies that are part of HHS may not apply. For-profit entities must commit to excluding fees or profit in their request for support to receive grant awards. Organizations that engage in lobbying activities, as described in section 501(c)(4) of the Internal Revenue Code of 1968, are not eligible to receive grant awards.

II. Award Information/Funds Available

A. Award Amount

Of the estimated FY 2014 funding ($14.1 million), approximately $10 million will fund noncompeting continuation awards, and approximately $4.1 million will fund 5 to 10 new awards, subject to availability of funds. It is anticipated that funding for the number of noncompeting continuation awards and new awards in FY 2015 will be similar to FY 2014. Phase 1 studies are eligible for grants of up to $200,000 per year for up to 3 years. Phase 2 and 3 studies are eligible for grants of up to $400,000 per year for up to 4 years. Please note that the dollar limitation will apply to total costs (direct plus indirect). Budgets for each year of requested support may not exceed the $200,000 or $400,000 total cost limit, whichever is applicable.

B. Length of Support

The length of support will depend on the nature of the study. For those studies with an expected duration of more than 1 year, a second, third, or fourth year of noncompetitive continuation of support will depend on the following factors: (1) Performance during the preceding year; (2) compliance with regulatory requirements of IND/investigational device exemption (IDE); and (3) availability of Federal funds.

III. Electronic Application, Registration, and Submission

Only electronic applications will be accepted. To submit an electronic application in response to this FOA, applicants should first review the full

announcement located at *http://grants.nih.gov/grants/guide.* For all electronically submitted applications, the following steps are required.

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number
- Step 2: Register With Central Contractor Registration
- Step 3: Obtain Username & Password
- Step 4: Authorized Organization Representative (AOR) Authorization
- Step 5: Track AOR Status
- Step 6: Register With Electronic Research Administration (eRA) Commons

Steps 1 through 5, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp.* Step 6, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp.* After you have followed these steps, submit electronic applications to: *http://www.grants.gov.*

Dated: July 31, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–19086 Filed 8–3–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Early-Stage Innovative Technology Development for Cancer Research (R21).

Date: October 17, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8059, Bethesda, MD 20892–8329, 301–496–7904, *decluej@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 31, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–19064 Filed 8–3–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed 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 National Cancer Advisory Board.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Closed: September 5, 2012.

Time: 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Rm. 8001, Bethesda, MD 20892, 301–496–5147, *grayp@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ncab/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 31, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–19065 Filed 8–3–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 the meeting of the NCI–Frederick Advisory Committee.

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.

A portion of 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. The premature disclosure of information to be discussed during the meeting would significantly frustrate implementation of a proposed agency action.

Name of Committee: NCI–Frederick Advisory Committee.

Open: September 12, 2012, 9 a.m. to 1 p.m.

Agenda: Ongoing and New Business and Scientific Presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Closed: September 12, 2012, 1 p.m. to 3 p.m.

Agenda: Discussion of Proposed Frederick National Laboratory for Cancer Research Strategic Plan.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Thomas M. Vollberg, Sr., Ph.D., Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 7th Floor, Room 7142, Bethesda, MD 20892–8327, (301) 694–9582.

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.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/fac/fac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 1, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–19142 Filed 8–3–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0026]

Public Meeting To Discuss Revision of ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants'' (NUREG–0654/FEMA–REP–1, Rev. 1)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of public meetings.

SUMMARY: The Federal Emergency Management Agency (FEMA) and the U.S. Nuclear Regulatory Commission (NRC) will hold two public meetings to solicit input from stakeholders and interested members of the public on the scope of a proposed revision of ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,'' NUREG–0654/FEMA–REP–1, Rev. 1.

DATES: The first meeting will be held on Wednesday, August 22, 2012 from 1 p.m. to 5 p.m. (CST) in Kansas City, Missouri. The second meeting will be held on Thursday, September 13, 2012 from 1 p.m. to 5 p.m. (EST) in Rockville, MD. Please note that meetings may close early if all business is finished.

ADDRESSES: The first meeting on August 22, 2012 will be held at USDA Center, 6501 Beacon Drive, Kansas City, Missouri 64133; the second meeting on September 13, 2012 will be held at NRC Headquarters, 11555 Rockville Pike, Rockville, MD 20852.

Tele- and Web conferencing: Interested members of the public unable to attend the meeting may participate by telephone via a toll-free teleconference or remotely on the internet by web conference. To participate in the meeting by teleconference or web conference, please call or email the contact person listed below in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible, but no later than three (3) business days before each meeting date.

Comments: To facilitate public participation, we are inviting public comment on the issues to be considered at the public meeting as listed in the **SUPPLEMENTARY INFORMATION** section. To make oral statements at the public meeting, please send a request to the contact person listed under the **FOR FURTHER INFORMATION CONTACT** section by close of business August 17, 2012 for the first meeting and by September 7, 2012 for the second meeting. Written comments must be submitted no later than August 17, 2012 for the Kansas City, MO meeting and September 7, 2012 for the Rockville, MD meeting and must be identified by Docket ID FEMA–2012–0026. Comments may be submitted by one of the following methods:

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

Mail/Hand Delivery/Courier: FEMA, Regulatory Affairs Division, Office of Chief Counsel, 500 C Street, SW., Room 840, Washington, DC 20472–3100.

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal e-Rulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual who submitted the comment (or signed the comment, if submitted on behalf of an association, business, labor union, etc.). You may want to review the Federal Docket Management System of records notice published in the **Federal Register** on March 24, 2005 (70 FR 15086).

Do not submit comments that include trade secrets, confidential commercial or financial information to the public regulatory docket. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address specified in the **ADDRESSES** section of this notice. If FEMA receives a request to examine or copy this information, FEMA will treat it as any other request under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of Homeland Security (DHS)'s FOIA regulation found in 6 Code of Federal Regulations (CFR) Part 5 and FEMA's regulations found in 44 CFR part 5.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov,* click on ''Advanced Search,'' then enter ''FEMA–2012–0026'' in the ''By Docket ID'' box, then select ''FEMA'' under ''By Agency,'' and then click ''Search.'' Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Lou DeGilio, Emergency Management Specialist, Radiological Emergency Preparedness Branch, Technological Hazards Division, National Preparedness Directorate, Federal Emergency Management Agency; Email: *lou.degilio@dhs.gov;* Phone Number: 202–212–2313.

SUPPLEMENTARY INFORMATION: The two meetings will be conducted jointly by the NRC and FEMA, to solicit input from stakeholders and interested members of the public on the scope of a proposed revision to ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,'' NUREG–0654/FEMA–REP–1, Rev. 1. The document is available online at *http://www.regulations.gov* (Docket ID FEMA–2012–0026).

NUREG–0654/FEMA–REP–1, Rev.1 is a joint NRC/FEMA policy document that provides guidance on the sixteen Planning Standards referenced in FEMA's regulations at 44 CFR 350.5, and the NRC's regulations at 10 CFR part 50. Both agencies use these Planning Standards, and associated Evaluation Criteria, to evaluate the adequacy of emergency preparedness plans of commercial nuclear power plant owners and operators, and the State, local, and Tribal jurisdictions in which commercial nuclear power plants are sited.

Since the publication of NUREG–0654/FEMA–REP–1, Rev.1 in November 1980, four supplementary documents and one addendum have been issued that update and modify specific planning and procedural elements. These documents are available online at *http://www.regulations.gov* (Docket ID FEMA–2012–0026). Considering stakeholder interest and the various emergency planning and preparedness lessons learned since its initial publication, FEMA and the NRC are considering revising NUREG–0654/FEMA–REP–1, Rev.1.

The purpose of these public meetings is to: (1) Solicit input from stakeholders and interested members of the public on the scope of future revisions to NUREG–0654/FEMA–REP–1, Rev.1; (2) describe the proposed timeline for the revisions to NUREG–0654/FEMA–REP–1, Rev.1; and (3) promote transparency, public participation, and collaboration during the NUREG–0654/FEMA–REP–1, Rev.1 revision process. To make oral statements at the public meeting, please send a request to the contact person listed under the **FOR FURTHER INFORMATION CONTACT** section by close of business August 17, 2012 for the first meeting and by September 7, 2012 for the second meeting.

Information on Services for Individuals With Disabilities

FEMA provides reasonable accommodations to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this meeting (e.g., sign language), or need this meeting notice or other information from the meeting in another format, please notify the person listed above in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible before each meeting date, so that arrangements can be made.

Dated: July 30, 2012.

Timothy W. Manning,

Deputy Administrator, Protection and National Preparedness, Federal Emergency Management Agency,Department of Homeland Security.

[FR Doc. 2012–19091 Filed 8–3–12; 8:45 am]

BILLING CODE 9110–21–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0025]

Plantings Associated with Eligible Facilities (RP9524.5)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on Recovery Policy, RP 9524.5, *Plantings Associated with Eligible Facilities.* DATES: Comments must be received by September 5, 2012.

ADDRESSES: Comments must be identified by docket ID FEMA–2012–0025 and may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Please note that this proposed policy is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Jurice Hardin, Public Assistance Division, via email at *Jurice.Hardin@dhs.gov* or by facsimile at (202) 646–3304. If you have any questions, please call Ms. Hardin at (202) 646–2931, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the ''Privacy Notice'' link on the homepage of *www.regulations.gov.*

You may submit your comments and material by the methods specified in the **ADDRESSES** section. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: The proposed policy is available in docket ID FEMA–2012–0025. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for the docket ID. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street SW., Washington, DC 20472.

II. Background

Generally, plantings such as trees, shrubs, and other vegetation are not eligible for replacement under Section 406 of the Robert T. Stafford Relief and Emergency Disaster Assistance Act (Stafford Act) (Repair, Restoration, and Replacement of Damaged Facilities). FEMA acknowledges the economic and environmental benefits of replacing trees, shrubs, and other plantings, but has determined that replacement of trees, shrubs, and other plantings damaged or destroyed by a disaster does not impact essential services. This policy defines ineligible work related to trees, shrubs, and other plantings, and defines the limited eligibility for replacement of grass and sod associated with facilities eligible for repair and restoration.

Limited instances when plantings are eligible include grass and sod replacement if it is an integral part of the repair of an eligible recreational facility (e.g., publicly owned football, soccer, baseball fields, golf courses); plantings when they are part of an emergency protective measure or the repair of an eligible facility for the purposes of stabilizing slopes (including dunes on eligible improved beaches), erosion control, or minimizing sediment runoff; and plantings required for the mitigation of environmental impacts such as impacts to wetlands or endangered species habitat. Eligibility of the above plantings is limited to plantings that are required under a Federal, State, Tribal, or local government code or regulation.

This policy was previously issued on July 18, 2007. The policy was reviewed according to the established schedule for FEMA Public Assistance policies.

FEMA seeks comment on the proposed policy, which is available online at *http://www.regulations.gov* in docket ID FEMA–2012–0025. Based on the comments received, FEMA may make appropriate revisions to the proposed policy. Although FEMA will consider any comments received in the drafting of the final policy, FEMA will not provide a response to comments document. When or if FEMA issues a final policy, FEMA will publish a notice of availability in the **Federal Register** and make the final policy available at *http://www.regulations.gov.*

Authority: 42 U.S.C. 5121–5207.

Dated: August 1, 2012.

David J. Kaufman,

Director, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2012–19132 Filed 8–3–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Moapa Solar Energy Center on the Moapa River Indian Reservation, Clark County NV

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs, in cooperation with the Moapa Band of Paiute Indians and other Federal agencies, intends to prepare an Environmental Impact Statement (EIS) that evaluates a solar energy generation center on the Moapa River Indian Reservation. This notice announces the beginning of the scoping process to solicit public comments and identify potential issues related to the EIS. It also announces that two public scoping meetings will be held in Nevada this summer to identify potential issues, alternatives, and mitigation to be considered in the EIS. ID30

DATES: Written comments on the scope of the EIS or implementation of the proposal must arrive by September 5, 2012. The dates of the public scoping meetings will be published in the *Las Vegas Sun, Las Vegas Review-Journal, and Moapa Valley Progress* 15 days before the scoping meetings.

ADDRESSES: You may mail, email, or hand carry written comments to either Mr. Paul Schlafly, Natural Resource Specialist, Bureau of Indian Affairs, Southern Paiute Agency, 180 North 200 East Suite 111, P.O. Box 720, St. George, Utah 84770; telephone: (435) 674–9720; email: *paul.schlafly@bia.gov,* or Ms. Amy Heuslein, Regional Environmental Protection Officer, BIA Western Regional Office, 2600 North Central Avenue, 4th Floor Mailroom, Phoenix, Arizona 85004; telephone: (602) 379–6750; email: *amy.heuslein@bia.gov*.

SUPPLEMENTARY INFORMATION: The Proposed Action consists of constructing and operating a solar generation energy center, consisting of a Photovoltaic (PV), installation up to 100 Megawatts (MW), and Concentrated Solar Power (CSP), installation up to 100 MW in size on the Moapa River Indian Reservation in Clark County, Nevada. The proposed solar energy project is referred to as the Moapa Solar Energy Center (Project).

The facility would be located on tribal lands held in trust for the Moapa Band. The proposed transmission line interconnection and access road corridor associated with the project will be located on Federal lands administered and managed by BLM.

The project would:

- Help to provide a long-term, diverse, and viable economic revenue base and job opportunities for the Moapa Band while
- Help Nevada and neighboring states to meet their State renewable energy needs. The Project would
- Allow the Moapa Band, in partnership with the developer, to optimize the use of the lease site while maximizing the potential economic benefit to the Tribe.

The Bureau of Indian Affairs will prepare the EIS in cooperation with the Moapa Band of Paiute Indians, the Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service, the Environmental Protection Agency (EPA), and Nellis Air Force Base. The EIS will provide a framework for BIA and BLM to make determinations and take Federal actions. The Federal action for BIA would be to approve or deny a lease and any associated rights-of-way (ROW) on tribal lands for the proposed solar facility and for BLM to grant, grant with modifications or deny the ROW application for a proposed transmission line and access road. EPA and Nellis Air Force Base may adopt the documentation to make decisions under their authority and the Moapa Band may also use the EIS to make decisions under their Tribal Environmental Policy Ordinance. The U.S. Fish and Wildlife Service will review the document for consistency with the Endangered Species Act, as amended, and other implementing acts.

The goals of this EIS are to:

(1) Provide agency decision makers, the Moapa Band, and the general public with a comprehensive understanding of the impacts of the proposed solar energy center development project and alternatives on the Reservation;

(2) Describe the cumulative impacts of increased development on the Reservation; and

(3) Identify and propose mitigation measures that would minimize or prevent significant adverse impacts.

This EIS will analyze the proposed project and appurtenant features, viable alternatives including other interconnection options, and the No Action alternative. Other alternatives may be identified in response to issues raised during the scoping process.

The Project would be located in Township 16 South, Range 64 East, Sections 30 and 31 Mount Diablo Meridian, Nevada. For the purposes of this EIS, the ''Analysis Area'' will include approximately 1,000 acres of land entirely located on the Reservation and the corridors for the transmission interconnection and access road located on Federal land managed by BLM.

The project would be fenced and contain up to two components. One would consist of the construction and operation of up to a 100 MW PV solar plant and associated facilities on 500 acres. The PV project would include up to 175,000 crystalline PV panels, a single-axis tracking system, inverters, and an operation and maintenance building. Construction of the PV component is expected to take up to 12 months and is expected to have a project life of 25 years.

The second component would be located on an adjacent 500 acre parcel and be a CSP installation using either:

- eSolar's state-of-the-art CSP plant technology—the basic building block of eSolar's CSP technology consists of twenty-four 250-foot tall tower/receiver combinations situated between north and south-facing subfields of heliostat mirrors. The heliostats are mounted on an above-ground frame, elevated approximately three feet from ground level to minimize dust collection and allow for easy access for maintenance. This module (the tower/receiver and associated heliostat mirrors) is repeated as needed to provide the full output of the CSP power plant design. The focused solar heat boils water within the thermal receiver and produces steam. The steam from each thermal receiver is aggregated and sent to a steam turbine that generates electricity. The steam then reverts back to water through cooling and is routed back to the tower/receivers where the process repeats.

• AREVA Solar's Compact Linear Fresnel Reflector—AREVA Solar's core technology, Compact Linear Fresnel Reflector, uses modular flat reflectors to focus the sun's heat onto elevated receivers with a height of approximately 80 feet which consist of a system of tubes through which water flows. The concentrated sunlight boils the water in the tubes, generating high-pressure superheated steam for direct use in power generation without the need for heat exchangers.

The CSP solar field generates steam and energy when sun light is present. The water supply required for the project would be leased from the Moapa Band. Other major parts of the CSP project would include an operation and maintenance facility building along with cooling towers and evaporation ponds. The CSP project is expected to take 24 months to construct and expected to operate for approximately 25 to 30 years.

A single overhead 230 kilovolt (kV) transmission line would connect the solar energy center to the nearby Harry Allen 230 kV Substation approximately six miles from the site. An additional interconnection line could be constructed to the Crystal Substation located approximately one mile east of project boundary. An access road would be constructed to the project site to provide access from Interstate-15 (I–15). This new road would be constructed between the site and the frontage road on the west side of I–15 for approximately 2.5 miles.

Submission of Public Comments

Please include your name, return address, and the caption ''EIS, Moapa Solar Energy Center Project,'' on the first page of any written comments. You may also submit comments at the public scoping meetings.

The public scoping meetings will be held to further describe the Project and identify potential issues and alternatives to be considered in the EIS. The first public scoping meeting will be held on the Reservation and the other public scoping meeting will be held in Las Vegas, Nevada. The dates of the public scoping meetings will be included in notices to be posted in the *Las Vegas Sun, Las Vegas Review-Journal, and Moapa Valley Progress* 15 days before the meetings.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. 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.

Authority

This notice is published in accordance with 40 CFR 1501.7 of the Council of Environmental Quality regulations and 43 CFR 46.235 of the Department of the Interior Regulations implementing the procedural requirements of the NEPA (42 U.S.C. 4321 *et seq.*), and in accordance with the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by part 209 of the Department Manual.

Dated: July 26, 2012.

Donald E. Laverdue,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 2012–19078 Filed 8–3–12; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK910000 L13100000.DB0000 LXSINSSI0000]

Notice of Public Meeting, North Slope Science Initiative—Science Technical Advisory Panel

AGENCY: Bureau of Land Management, Alaska State Office, North Slope Science Initiative, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, North Slope Science Initiative (NSSI)—Science Technical Advisory Panel (STAP) will meet as indicated below.

DATES: The meeting will be held September 18–20, 2012, in Fairbanks, Alaska. The meetings will begin at 9 a.m. in Room 401, International Arctic Research Center (IARC), 930 Koyukuk Drive, University of Alaska Fairbanks campus, Fairbanks, Alaska. Public comment will be accepted between 3 and 4 p.m. on Tuesday, September 18, 2012.

FOR FURTHER INFORMATION CONTACT: John F. Payne, Executive Director, North Slope Science Initiative, AK–910, c/o Bureau of Land Management, 222 W. Seventh Avenue, #13, Anchorage, AK 99513, (907) 271–3431 or email *jpayne.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, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The NSSI STAP provides advice and recommendations to the NSSI Oversight Group regarding priority information needs for management decisions across the North Slope of Alaska. These priority information needs may include recommendations on inventory, monitoring, and research activities that contribute to informed resource management decisions. This meeting will include continued dialog for scenario planning for the North Slope and adjacent marine environments. Additionally, the STAP will continue with designing a long-term monitoring strategy for the North Slope.

All meetings are open to the public. The public may present written comments to the Science Technical Advisory Panel through the Executive Director, North Slope Science Initiative. Each formal meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the Executive Director, North Slope Science Initiative. 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 30, 2012.

Bud C. Cribley,

State Director.

[FR Doc. 2012–19096 Filed 8–3–12; 8:45 am]

BILLING CODE 1310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Availability of the Injury Assessment Plan for the Upper Columbia River Site, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Reclamation, on behalf of the Department of the Interior, as a natural resource trustee, announces the release of the Injury Assessment Plan for the Upper Columbia River Site. The Injury Assessment Plan describes the activities that constitute the natural resource trustees' (Department of the Interior, State of Washington, Confederated Tribes of the Colville Reservation, and the Spokane Tribe of Indians) currently proposed approach to conducting the assessment of natural resources exposed to hazardous substances, including heavy metals, dioxins, and polychlorinated biphenyls.

DATES: Submit written comments on the Injury Assessment Plan on or before September 20, 2012.

ADDRESSES: Send written comments or requests for copies of the Injury Assessment Plan to Deidre Emerson, Upper Columbia River/Lake Roosevelt, c/o Bureau of Land Management, 1103 N. Fancher Road, Spokane Valley, WA 99212; via email to *demerson@blm.gov;* or via the Web: *http://parkplanning.nps.gov/documentsOpenForReview.cfm?parkID=318&projectID=42954.* You may download the Injury Assessment Plan at *http://parkplanning.nps.gov/documentsList.cfm?projectID=42954.* See the **SUPPLEMENTARY INFORMATION** section for locations where copies of the Injury Assessment Plan are available for public review.

FOR FURTHER INFORMATION CONTACT: Deidre Emerson at 509–536–1222.

SUPPLEMENTARY INFORMATION: The Upper Columbia River Site has been determined to have been contaminated with hazardous substances, including heavy metals, dioxins, and polychlorinated biphenyls along a stretch of the Columbia River from the Canadian/United States border downstream to Grand Coulee Dam in Washington State.

The Injury Assessment Plan (Plan) is being released in accordance with the Natural Resource Damage Assessment Regulations found at Title 43 of the Code of Federal Regulations part 11. The Plan is the second step in the damage assessment, the goal of which is to restore natural resources injured by the release of hazardous substances. The first step, a pre-assessment screen of various sources of contamination, was completed in 2009.

The Plan has been developed within the authority provided by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C.

Copies of the Plan are available for public review at the following locations:

- Bureau of Land Management, 1103 N. Fancher Road, Spokane Valley, WA 99212
- National Park Service, Kettle Falls Visitor Center, 425 West 3rd St., Kettle Falls, WA 99141
- National Park Service, 1008 Crest Drive, Coulee Dam, WA 99116
- Confederated Tribes of the Colville Reservation, Office of Environmental Trust, Building #2, 12 Belvedere Street, Nespelem, WA 99138
- Spokane Tribal Department of Natural Resources Office, 6290–D Ford-Wellpinit Road, Wellpinit, WA 99040
- Washington Department of Ecology, 4601 North Monroe, Spokane, WA 99205

Public Disclosure

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 30, 2012.

Lorri J. Lee,

Regional Director, Pacific Northwest Region.

[FR Doc. 2012–19112 Filed 8–3–12; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Fourth Amendment to Consent Decree Under the Clean Air Act

Notice is hereby given that on July 31, 2012, a proposed Fourth Amendment to the Consent Decree entered in the case of *United States, et al.* v. *Phillips 66 Company, et al.,* Civil Action No. H–05–0258, was lodged with the United States District Court for the Southern District of Texas.

Under the original Consent Decree, ConocoPhillips Company (''COPC'') agreed to implement innovative pollution control technologies to reduce emissions of nitrogen oxides, sulfur dioxide, and particulate matter from refinery process units at nine refineries owned and operated by COPC. COPC also agreed to adopt facility-wide enhanced benzene waste monitoring and fugitive emission control programs.

Subsequently, the Court entered First, Second, and Third Amendments to the Consent Decree. In addition, in 2007, a new owner (WRB Refining) of two of the refineries (the Wood River and Borger Refineries) was added as a defendant. Finally, on June 1, 2012, Phillips 66 Company (''Phillips 66'') was substituted for COPC as a defendant because Phillips 66 acquired ownership and operation of seven refineries and acquired operation, but not ownership, of the Wood River and Borger Refineries.

The proposed Fourth Amendment exclusively involves the refinery located in Trainer, Pennsylvania (''Trainer Refinery''). Under the proposed Fourth Amendment, an entity known as Monroe Energy, LLC (''Monroe Energy'') will assume all outstanding, uncompleted Consent Decree obligations at the Trainer Refinery because Phillips 66 sold the Trainer Refinery to Monroe Energy in June 2012. Simultaneously, Phillips 66 will be released from liability for all obligations at the Trainer Refinery.

In the proposed Fourth Amendment, the United States is joined by Co-Plaintiff the Commonwealth of Pennsylvania.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Fourth Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *Phillips 66 Company, et al.,* D.J. Ref. No. 90–5–2–1–06722/1.

During the public comment period, the Fourth Amendment may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Fourth Amendment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax number (202) 514–0097; phone confirmation number (202) 514–5271. If

requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–19129 Filed 8–3–12; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 5, 2012. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Polly A. Penhale at the above address or (703) 292–7420.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application 2013–017

1. *Applicant:* Michael J. Polito, Department of Biology, Woods Hole Oceanographic Institution, Woods Hole Road, Woods Hole, MA 02543.

Activity for Which Permit Is Requested

Take and enter Antarctic Specially Protected Areas. The applicant plans to capture and handle adult penguins (Gentoo, Chinstrap and Adelie) to obtain small samples of body and tail feathers. These samples will be analyzed for mitochondrial and nuclear (microsatellites) DNS markers, molecular sexing and eventually stable isotope analysis to help interpret population and migratory connectivity. At a maximum of 10 sites, approximately 50 individuals of each species will be sampled for a maximum of 500 individuals of each species. The applicant plans to enter the following sites on an opportunistic basis: ASPA 107–Dion Islands; ASPA 108–Green Island; ASPA 109–Moa Island; ASPA 110–Lynch Island; ASPA 111–Southern Powell Island and adjacent islands; ASPA 112–Coppermine Peninsula, Robert Island; ASPA 113–Litchfield Island; ASPA 114–North Coronation Island; ASPA 115–Lagotellerie Island; ASPA 117–Avian Island; ASPA 125–King George Island; ASPA 126–Livingston Island; ASPA 128–Western shore of Admiralty Bay; ASPA 132–Potter Peninsula; ASPA 133–Harmony Point, Nelson Island; ASPA 134–Cierva Point, Danco Coast; ASPA 139–Biscoe Point, Anvers Island; and ASPA 149–Cape Shirreff, Livingston Island, and ASPA 150–Ardley Island.

Location

ASPA 107–Dion Islands; ASPA 108–Green Island; ASPA 109–Moa Island; ASPA 110–Lynch Island; ASPA 111–Southern Powell Island and adjacent islands; ASPA 112–Coppermine Peninsula, Robert Island; ASPA 113–Litchfield Island; ASPA 114–North Coronation Island; ASPA 115–Lagotellerie Island; ASPA 117–Avian Island; ASPA 125–King George Island; ASPA 126–Livingston Island; ASPA 128–Western shore of Admiralty Bay; ASPA 132–Potter Peninsula; ASPA 133–Harmony Point, Nelson Island; ASPA 134–Cierva Point, Danco Coast; ASPA 139–Biscoe Point, Anvers Island; and ASPA 149–Cape Shirreff, Livingston Island, and ASPA 150–Ardley Island.

Dates

October 1, 2012 to September 31, 2013.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2012–19114 Filed 8–3–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for Quark Expeditions' cruise ships to conduct a number of activities, including: Shore excursions via zodiac, camping ashore or extended stays, mountaineering, kayaking, cross country skiing, and downhill skiing. The application is submitted by Quark Expeditions of Waterbury, Vermont and submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 5, 2012. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for conduct of activities such as shore excursions, camping, where emergency provisions will be taken ashore that would include cook stoves, fuel, radios, batteries, etc. and may include the generation of waste. In addition, mountaineering activities that would include use of emergency provisions, crampons, ice axes, climbing harnesses,

screw-gated carabiners, prusik slings, and climbing helmets.

Designated pollutants that would be associated with the various excursions are typically air emissions and waste water (urine, grey-water, and human solid waste. All wastes would be packaged and removed to the ship(s) for proper disposal in Chile or the U.S. under approved guidelines prior to the end of each season.

The permit: Eric Stangeland, Executive VP Operations, Quark Expeditions, Inc., Waterbury, VT Permit application No. 2012 WM–004.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2012–19116 Filed 8–3–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2012–0058]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on April 11, 2012 (77 FR 21813).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 30—Rules of General Applicability to Domestic Licensing of Byproduct Material.

3. *Current OMB approval number:* 3150–0017.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur. There is a one-time submittal of information to receive a license. Renewal applications are submitted every 10 years. Information submitted in previous applications may be referenced without being resubmitted. In addition, recordkeeping must be performed on an on-going basis.

6. *Who will be required or asked to report:* All persons applying for or holding a license to manufacture, produce, transfer, receive, acquire, own, possess, or use radioactive byproduct material.

7. *An estimate of the number of annual responses:* 37,398 (4,999 NRC Licensee responses [2,040 responses + 2,959 recordkeepers] and (32,399 Agreement State Licensee responses [13,267 responses + 19,132 recordkeepers]).

8. *The estimated number of annual respondents:* 22,091 (2,959 NRC Licensees and 19,132 Agreement State Licensees).

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 302,697 (NRC licensees 40,327 hours [18,258 reporting + 22,069 recordkeeping] and Agreement State licensees 262,370 hours [118,913 reporting + 143,457 recordkeeping]).

10. *Abstract:* Title 10 of the *Code of Federal Regulations* (10 CFR) part 30, establishes requirements that are applicable to all persons in the United States governing domestic licensing of radioactive byproduct material. The application, reporting and recordkeeping requirements are necessary to permit the NRC to make a determination whether the possession, use, and transfer of byproduct material is in conformance with the Commission's regulations for protection of the public health and safety.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.*

The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments and questions should be directed to the OMB reviewer listed below by September 5, 2012. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0017), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 31st day of July, 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012–19072 Filed 8–3–12; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. PI2012–1; Order No. 1420]

Public Inquiry on International Mail Proposals

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is establishing a public inquiry to receive comments addressing the Commission's role in advising the Secretary of State on whether certain international mail proposals are consistent with applicable standards and criteria. This notice provides background information, addresses related administrative matters, and invites public comment.

DATES: *Comments are due:* August 20, 2012.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *dockets@prc.gov* (electronic filing assistance).

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SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission anticipates receiving a request from the Secretary of State, pursuant to 39 U.S.C. 407(c)(1), for its

views on whether proposals affecting market dominant rates and classifications for international postal products and services exchanged among postal administrations, to be negotiated this fall at the 25th Congress of the Universal Postal Union (UPU), are consistent with the standards and criteria for modern rate regulation established by the Commission under 39 U.S.C. 3622.

The Commission invites public comment on the principles that should guide the development of its views.

II. Background

The role of the State Department. The U.S. Department of State is responsible for formulating, coordinating, and overseeing foreign policy related to international postal services and other international delivery services, and has the power to conclude postal treaties, conventions, and amendments, subject to a condition related to competitive products. 39 U.S.C. 407(b)(1). In carrying out these responsibilities, the Secretary of State exercises primary authority for the conduct of foreign policy with respect to international postal services and other international delivery services, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. *Id.* at 407(b)(2). In exercising this authority, the Secretary of State is, among other things, to coordinate with other agencies as appropriate, and in particular, to give full consideration to the authority vested by law or Executive Order in certain Federal entities, including the Postal Regulatory Commission. *Id.* at 407(b)(2)(A).

The role of the Commission. Before concluding any treaty, convention, or amendment that establishes a rate or classification for a product subject to subchapter I of chapter 36 [provisions relating to market dominant products], the Secretary of State is to request that the Commission submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622. *Id.* at 407(c)(1).[1] The Secretary must then ensure that each treaty, convention, or amendment concluded under section 407(b) is consistent with the views submitted by the Commission except if, or to the extent the Secretary determines, in writing, that ensuring such consistency is not in the foreign policy or national security interest of the United States. *Id.* at 407(c)(2).

The role of the UPU. The UPU is a specialized agency of the United Nations. It is the primary forum for cooperation between governments, posts, regulators and other postal-sector stakeholders. UPU Biennial Report 2009–2010 at 2. In terms of UPU organization and terminology the United States is a member country, the Department of State is the ministry, the Commission is the regulator, and the Postal Service is the operator.

Every 4 years, the UPU Congress meets ''to define the future world postal strategy, the Union's 4-year roadmap, and lay down standards and regulations which facilitate and increase the security of international exchanges of mail and parcels, as well as the delivery of a broad range of secure and affordable electronic and financial services.'' [2] The UPU will hold its 25th Congress in Doha, Qatar this fall (from September 24 to October 15, 2012). As matters that affect ''postal treaties, conventions, and amendments'' will be considered in Doha, section 407 requirements come into play.

In anticipation of receipt of the Secretary of State's request under section 407(c)(1), the Commission invites public comment on the principles that should guide development of its views on the consistency of proposals for ''rates and classification of products subject to subchapter I of chapter 36'' with the standards and criteria of 39 U.S.C. 3622.

Comments are to be submitted via the Commission's *Filing Online* system at *http://www.prc.gov* unless a request for waiver is approved. For assistance with filing, contact Joyce Taylor at 202–789–6846 or *dockets@prc.gov.*

Public Representative. Section 505 of title 39 requires the designation of an officer of the Commission (public representative) to represent the interests of the general public in all public proceedings. The Commission hereby designates Emmett Rand Costich as Public Representative in this proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. PI2012–1 for the purpose of receiving comments on the principles that should guide the development of its section 407 views on rate and classification proposals subject to subchapter I of chapter 36 of title 39 of the U.S. Code [provisions relating to market dominant products].

2. Comments are due by August 20, 2012.

3. Emmett Rand Costich is designated as the Public Representative to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this Notice in the **Federal Register.**

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–19131 Filed 8–3–12; 8:45 am]

BILLING CODE 7710–FW–P

[1] The Commission established a modern system of regulation in Order No. 43 (issued October 29, 2007).

[2] *http://www.upu.int/the-upu/congress/about-congress.html.*

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Interactive Data; OMB Control No. 3235–0645 ; SEC File No. 270–330.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The ''Interactive Data'' collection of information requires issuers filing registration statements under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and reports under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) to submit specified financial information to the Commission and post it on their corporate Web sites, if any, in interactive data format using eXtensible Business Reporting Language (XBRL). This collection of information is located primarily in registration statement and report exhibit provisions, which require interactive data, and Rule 405 of Regulation S–T (17 CFR 232.405), which specifies how to submit and post interactive data. The exhibit provisions are in Item 601(b)(101) of Regulation S–K (17 CFR 229.601(b)(101), Forms F–9 and F–10 under the Securities Act (17 CFR 239.39 and 17 CFR 239.40) and Forms 20–F, 40–F and 6–K under the Exchange Act (17 CFR 249.220f, 17 CFR 249.240f and 17 CFR 249.306).

In interactive data format, financial statement information could be downloaded directly into spreadsheets and analyzed in a variety of ways using commercial off-the-shelf software. The specified financial information already is and will continue to be required to be submitted to the Commission in traditional format under existing requirements. The purpose of the interactive data requirement is to make financial information easier for investors to analyze and assist issuers in automating regulatory filings and business information processing. We estimate that 10,229 respondents per year will each submit an average of 4.5 reponses per year for an estimated total of 46,031 responses. We further estimate an internal burden of 59 hours per response for a total annual internal burden of 2,715,829 hours (59 hours per response × 46,031 responses).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: July 31, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19075 Filed 8–3–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 30e–1, SEC File No. 270–21, OMB Control No. 3235–0025.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 30e–1 (17 CFR 270.30e–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') generally requires a registered investment company (''fund'') to transmit to its shareholders, at least semi-annually, reports containing the information that is required to be included in such reports by the fund's registration statement form under the Investment Company Act. The purpose of the collection of information required by rule 30e–1 is to provide fund shareholders with current information about the operation of their funds in accordance with Section 30 of the Investment Company Act.

Approximately 2,490 funds, with a total of approximately 10,750 portfolios, respond to rule 30e–1 annually. Based on conversations with fund representatives, we estimate that it takes approximately 84 hours to comply with the collection of information associated with rule 30e–1 per portfolio. This time is spent, for example, preparing, reviewing, and certifying the reports. Accordingly, we calculate the total estimated annual internal burden of responding to rule 30e–1 to be approximately 903,000 hours (84 hours × 10,750 portfolios). In addition to the burden hours, based on conversations with fund representatives, we estimate that the total cost burden of compliance with the information collection requirements of rule 30e–1 is approximately $31,061 per portfolio. This includes, for example, the costs for funds to prepare, print, and mail the reports. Accordingly, we calculate the total external cost burden associated with rule 30e–1 to be approximately $333,905,750.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collection of information under rule 30e–1 is mandatory. The information provided under rule 30e–1 will not be kept confidential. 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.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 31, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19083 Filed 8–3–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–5, SEC File No. 270–172, OMB Control No. 3235–0169.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form N–5 (17 CFR 239.24 and 274.5)—Registration Statement of Small Business Investment Companies Under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) Form N–5 is the integrated registration

statement form adopted by the Commission for use by a small business investment company which has been licensed as such under the Small Business Investment Act of 1958 and has been notified by the Small Business Administration that the company may submit a license application, to register its securities under the Securities Act of 1933 (''Securities Act''), and to register as an investment company under section 8 of the Investment Company Act of 1940 (''Investment Company Act''). The purpose of registration under the Securities Act is to ensure that investors are provided with material information concerning securities offered for public sale that will permit investors to make informed decisions regarding such securities. The Commission staff reviews the registration statements for the adequacy and accuracy of the disclosure contained therein. Without Form N–5, the Commission would be unable to carry out the requirements of the Securities Act and the Investment Company Act for registration of small business investment companies. The respondents to the collection of information are small business investment companies seeking to register under the Investment Company Act and to register their securities for sale to the public under the Securities Act.

Based on discussions with fund representatives and the Commission's experience with the filing of Form N–5 and with disclosure documents generally, we estimate that the reporting burden of compliance with Form N–5 is approximately 352 hours per respondent. The Commission has received one Form N–5 filing in the last three years, for an average annual hourly burden of 117 hours. The cost of compliance varies considerably depending on factors such as whether a filing is a new registration statement or an update to a previously effective registration statement; whether the fund being registered presents novel or complex legal issues or is similar to other funds; whether amendments are required in response to staff comments; and whether outside counsel and accountants are necessary for preparation of the filing. Based on discussions with fund representatives and the Commission's experience with the filing of Form N–5 and with comparable disclosure documents, we estimate that the cost of compliance may range from less than $15,000 (for a routine filing) to over $60,000 (for a registration statement presenting significant legal issues per response) with an average cost per filing of $30,000. There has been one Form N–5 filing in the last three years. We therefore estimate that the average annual cost burden to the industry is $10,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: July 31, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19084 Filed 8–3–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–8B–2, SEC File No. 270–186, OMB Control No. 3235–0186.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form N–8B–2 (17 CFR 274.12) is the form used by unit investment trusts (''UITs'') other than separate accounts that are currently issuing securities, including UITs that are issuers of periodic payment plan certificates and UITs of which a management investment company is the sponsor or depositor, to comply with the filing and disclosure requirements imposed by section 8(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(b)). Form N–8B–2 requires disclosure about the organization of a UIT, its securities, the personnel and affiliated persons of the depositor, the distribution and redemption of securities, the trustee or custodian, and financial statements. The Commission uses the information provided in the collection of information to determine compliance with section 8(b) of the Investment Company Act.

Based on the Commission's industry statistics, the Commission estimates that there would be approximately two initial filings on Form N–8B–2 and 6 post-effective amendment filings to the Form annually. The Commission estimates that each registrant filing an initial Form N–8B–2 would spend 10 hours in preparing and filing the Form and that the total hour burden for all initial Form N–8B–2 filings would be 20 hours. Also, the Commission estimates that each UIT filing a post-effective amendment to Form N–8B–2 would spend 6 hours in preparing and filing the amendment and that the total hour burden for all post-effective amendments to the Form would be 36 hours. By combining the total hour burdens estimated for initial Form N–8B–2 filings and post-effective amendments filings to the Form, the Commission estimates that the total annual burden hours for all registrants on Form N–8B–2 would be 56. Estimates of the burden hours are made solely for the purposes of the PRA, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

The information provided on Form N–8B–2 is mandatory. The information provided on Form N–8B–2 will not be kept confidential. 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.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of

information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 31, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19085 Filed 8–3–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission held a Closed Meeting on Wednesday, August 1, 2012 at 2:30 p.m.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c), 4, 8 and 9(A) and (B) and 17 CFR 200.402(a)(4), (8) and 9(A) and (B) permit consideration of the scheduled matter at the Closed Meeting. Certain staff members who had an interest in the matter were present.

Commissioner Paredes, as duty officer, voted to consider the item listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible

The subject matter of the Closed Meeting on August 1, 2012 was a matter related to a financial institution.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: August 1, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19209 Filed 8–2–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67545; File No. SR–ISE–2012–65]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reformat the Schedule of Fees

July 31, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 25, 2012, the International Securities Exchange, LLC (the ''ISE'' or the ''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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to relocate various fees within the Schedule of Fees in order to group fees with other similar types of fees and adopt a Table of Contents for the Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to relocate various fees within the Exchange's Schedule of Fees to group fees so that the Exchange's fees may be easily located within the fee schedule. The Exchange also proposes to adopt a Table of Contents so that the Exchange's fees are easily located within the Schedule of Fees. The Exchange is not proposing any substantive changes, but rather proposes to merely rearrange text within the Schedule of Fees. The only substantive change the Exchange proposes to make is the adoption of a Preface wherein the Exchange proposes to adopt definitions of market participants, certain order types, and provide a list of symbols for certain defined groups of securities. The information proposed in the Preface already appears in one form or another on the Exchange's current Schedule of Fees.

Specifically, the Exchange proposes to adopt a Table of Contents and therein, adopt Sections I through IX. Proposed Section I contains a table for Regular Order Fees and Rebates; Proposed Section II contains a table for Complex Order Fees and Rebates; Proposed Section III contains FX Options Fees and Rebates; Proposed Section IV contains Other Options Fees and Rebates;[3] Proposed Section V contains Trading Application Software fees;[4] Proposed Section VI contains Access Service fees;[5] Proposed Section VII contains Legal & Regulatory fees;[6] Proposed Section VIII contains Market

[3] Other Options Fees and Rebates include the QCC and Solicitation Rebate, Index License Surcharge, Market Maker Tiers, Payment for Order Flow, PMM Linkage Credit, Route-Out Fees, Credit for Responses to Flash Orders, Firm Fee Cap, Inactive PMM Fee and Cancellation Fee. The Exchange notes that by adopting the proposed headings, the Exchange is simply proposing to make its Schedule of Fees more transparent and easier to navigate. As such, the Exchange believes that changes such as the adoption of the term PMM Linkage Credit, which is currently identified on the Exchange's Schedule of Fees as Intermarket Sweep Order Credit, are not substantive changes and are simply name changes to allow market participants to understand the Exchange's fees and credits with greater ease.

[4] Trading Application Software fees include Installation fees, Software License and Maintenance fees and FIX Session/API Session fees.

[5] Access Service fees include Access Fees, Network Fees and Telco Line Charges.

[6] Legal & Regulatory fees include Application Fee, Administrative Fee, Options Regulatory Fee and Regulatory Fee.

Data fees;[7] and Proposed Section IX contains Other Services fees.[8]

This proposed rule change also proposes to adopt a Preface which contains a list of defined terms that are used by the Exchange in assessing its fees for market participants to use as guidance in determining the Exchange's fees and rebates. Specifically, the Exchange proposes to adopt the following terms and definitions in the proposed Preface:

- A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in ISE Rule 100(a)(37A).[9]
- A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer.
- A ''Non-ISE Market Maker'' is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.
- A ''Firm Proprietary'' order is an order submitted by a member for its own proprietary account.
- A ''Broker-Dealer'' order is an order submitted by a member for a non-member broker-dealer' account.[10]
- A ''Flash Order'' is a Priority or Professional Customer order that is exposed at the National Best Bid or Offer by the Exchange to all members for execution, as provided under Supplementary Material .02 to ISE Rule 803.
- A ''Regular Order'' is an order that consists of only a single option series and is not submitted with a stock leg.
- A ''Complex Order'' is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, as provided in ISE Rule 722, as well as Stock-Option Orders and SSF–Option Orders.
- A ''Crossing Order'' is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (PIM) or submitted as a Qualified Contingent Cross order. For purposes of this Fee Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.[11]
- ''Responses to Crossing Order'' is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM.[12]
- ''Select Symbols'' are options overlying QQQ, C, BAC, SPY, IWM, XLF, GE, JPM, INTC, RIMM, T, VZ, UNG, FCX, CSCO, DIA, AMZN, X, AA, AIG, AXP, BBY, CAT, CHK, DNDN, EEM, EFA, EWZ, F, FAS, FAZ, FSLR, GDX, GLD, IYR, MGM, MS, MSFT, MU, PBR, PG, POT, RIG, SDS, SLV, XLE, XOM, ABX, BMY, BP, COP, DELL, FXI, HAL, IBM, KO, LVS, MCD, MO, MON, NOK, ORCL, PFE, QCOM, S, SLB, SNDK, TBT, USO, V, VALE, WFT, XLI, XRT, YHOO, AKAM, AMD, APC, BA, BRCM, GG, HPQ, LCC, NEM, NFLX, NVDA, QID, SSO, TEVA, TLT, TZA, UAL, WFC, XLB, SIRI, SBUX, VVUS, MSI, AAPL, BIDU, and VXX.
- ''Special Non-Select Penny Pilot Symbols'' are options overlying BTU, CLF, CRM, CVX, DE, EBAY, FDX, GLW, GM, GMCR, GS, HD, LULU, MCP, MMR, MOS, MRK, SHLD, SINA, SLW, UPS, USB, WYNN, XHB, XLK.
- ''Non-Select Symbols'' are options overlying all symbols excluding Select Symbols and Special Non-Select Penny Pilot Symbols.
- ''FX Option Symbols'' are options overlying AUM, GBP, EUU and NDO.
- ''Early Adopter FX Option Symbols'' are options overlying NZD, PZO, SKA, BRB, AUX, BPX, CDD, EUI, YUK and SFC.[13]
- ''Singly Listed Symbols'' are options overlying DMA, FUM, HSX, OOG, BYT, HVY, RUF, JLO, SIN, RND, HHO, PMP, POW, TNY, WMX, IXZ, UKX, NXTQ, FXO, QQEW, PLTM, SMDD, and FIW.[14]

The goal of this proposed rule change is to reformat the current fee schedule by bringing the Exchange's transaction fees and rebates to the front of the proposed Schedule of Fees and to present these fees and rebates in a more cohesive table as opposed to presenting these fees and rebates in multiple tables, as is currently the case. The Exchange believes the proposed reformatted Schedule of Fees will allow market participants to more easily ascertain and locate fees that are applicable to them.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the ''Exchange Act'')[15] in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act[16] in particular, in

[7] Market Data fees include fees for the following market data offerings: ISE Open/Close Trade Profile End of Day, ISE Open/Close Trade Profile Intraday, ISE Open/Close Trade Profile End of Day and ISE Open/Close Trade Profile Intraday, Enhanced Sentiment Market Data, Historical Data, Real-time Depth of Market Raw Data Feed, ISE Order Feed, ISE Top Quote Feed, ISE Spread Feed and ISE Implied Volatility and Greeks Feed.

[8] Other Services fees include Training, Testing, Third Party Developers and Disaster Recovery Testing & Relocation Services fees.

[9] Prior to adopting the term ''Priority Customer,'' retail customers were identified on the Exchange's Schedule of Fees, and in some cases, are still identified on the Exchange's Schedule of Fees, by the term ''public customers.'' With this proposed rule change, public customers will now be identified as Priority Customers. The Exchange is not proposing any substantive change and is simply making a name change for the purpose of identifying this category of market participant consistently throughout the Schedule of Fees.

[10] The term ''Broker-Dealer'' does not currently appear in the Exchange's Schedule of Fees. Broker-Dealer orders are currently charged the same fees as Firm Proprietary orders. However, in recognizing that Firm Proprietary orders and Broker-Dealer orders are not always synonymous, the Exchange proposes to adopt the term ''Broker-Dealer'' as a distinct order type.

[11] Crossing Order fees currently appear in the column titled Facilitation, Solicited Order, Price Improvement and Block Order Mechanisms and Qualified Contingent Cross orders on pages 17, 21 and 23 of the Exchange's current Schedule of Fees. A Crossing Order is currently identified on the Exchange's Schedule of Fees as a Special Order. With this proposed rule change, Special Orders will now be identified as Crossing Orders. The Exchange is not proposing any substantive change and is simply making a name change for the purpose of identifying these orders consistently throughout the Schedule of Fees.

[12] Responses to Crossing Order fees currently appears as footnote 8 on page 18 and in the column titled Responses to Special Orders on pages 21 and 23 of the Exchange's current Schedule of Fees. A Response to Crossing Order is currently identified on the Exchange's Schedule of Fees as a Response to Special Order. With this proposed rule change, Responses to Special Orders will now be identified as Responses to Crossing Orders. The Exchange is not proposing any substantive change and is simply making a name change for the purpose of identifying these orders consistently throughout the Schedule of Fees.

[13] These ten (10) FX options are currently identified on the Exchange's Schedule of Fees as symbols traded pursuant to an incentive plan known as the FX Options Incentive Plan. With this proposed rule change, these ten (10) FX options will now be known as Early Adopter FX Option Symbols. The Exchange is not proposing any substantive change and is simply making a name change for the purpose of identifying this group of FX options consistently throughout the Schedule of Fees.

[14] The Exchange notes that DMA, FUM, HSX, OOG, BYT, HVY, RUF, JLO, SIN, RND, HHO, PMP, POW, TNY, WMX, IXZ, UKX and NXTQ are currently identified on the Exchange's Schedule of Fees as Singly Listed Indexes, while FBT, FXO, QQEW, CU, PLTM, SDOW, UDOW, SMDD, UMDD, SRTY, URTY, FIW and CQQQ are currently identified on the Exchange's Schedule of Fees as Singly Listed ETFs. However, eight (8) of the Singly Listed ETFs are now listed on at least one other exchange; therefore, ISE proposes to remove these products from its list of Singly Listed Symbols. The eight (8) products are FBT, CU, SDOQ, UDOW, UMDD, SRTY, URTY and CQQQ. With this proposed rule change, all of Singly Listed Indexes and Singly Listed ETFs will collectively be identified as Singly Listed Symbols. The Exchange is not proposing any substantive change and is simply adopting the term Singly Listed Symbol to include all singly listed products.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by organizing its Rules in such a way as to make them easy to locate by grouping transaction fees with other transaction fees and creating sections for categories that, in some cases, already exist on the Exchange's Schedule of Fees, to provide market participants an ability to view fees, which may be applicable to them, in one section or subsection of the Schedule of Fees. The Exchange believes that adopting a Table of Contents will provide greater clarity to the Schedule of Fees and allow market participants to readily locate fees within the Schedule of Fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[17] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2012–65 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–65. 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–ISE–2012–65 and should be submitted on or before August 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19081 Filed 8–3–12; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67546; File No. SR–BOX–2012–010]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule for Trading on BOX

July 31, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 27, 2012, BOX Options Exchange LLC (the ''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 Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BOX Options Exchange LLC (the ''Exchange'') proposes to amend its Fee Schedule for trading on its options facility, BOX Market LLC (''BOX''). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on August 1, 2012. The text of the proposed rule change is available from the principal office of the Exchange, on the Exchange's Internet Web site at *http://boxexchange.com,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to implement a change to the BOX routing fees in Section III of the fee schedule. BOX believes the proposed structure will continue to provide an incentive to BOX Options Participants (''Participants'') to submit their customer orders for execution on BOX, will aid BOX in recovering some of its costs incurred in providing routing services to Participants, and will discourage potentially abusive and predatory order routing practices to evade fees on other exchanges.[5] BOX will continue to provide routing to away exchanges at no charge to Participants that execute more than 55% of their non-Professional, Public Customer transactions[6] on BOX, rather than those orders being executed at other exchanges after BOX routes them to an away exchange.

BOX uses third-party broker-dealers to route orders to other exchanges and incurs charges for each order routed to and executed at an away market, in addition to the transaction fees charged by other exchanges. BOX has been providing its routing services to Participants for a limited amount of their Public Customer Orders at no cost and has generally been able to cover such costs with revenue generated from transactions on BOX. In order to better recover BOX's increasing costs for routing such orders, the Exchange is proposing a modified routing fee structure so that BOX can continue to provide routing services to Participants at no charge if the Participants trade on BOX a greater percentage of their Public Customer volume traded through BOX each month, as opposed to BOX routing those orders away for execution.

Currently, if 60% or more of a Participants' Public Customer Orders executed through BOX each month are routed to and executed at an away exchange, BOX assesses a $0.50 per contract routing fee to all of that Participants' Public Customer orders routed to an away exchange for execution for the month. If BOX does not have sufficient liquidity at the NBBO to execute Public Customer Orders on BOX, such orders are routed to an away exchange for execution. BOX, however, believes that permitting Participants to continue routing a substantial percentage of outbound Public Customer Orders without any fees is resulting in some Participants intentionally sending orders to BOX when BOX is not at the NBBO, so that the orders will be routed to an away exchange; and BOX believes this activity pattern is designed to evade transaction fees on other exchanges. In part to curtail this activity that BOX believes is designed to take advantage of the BOX routing fee structure, the Exchange proposes this modified routing fee structure that provides an incentive to Participants whom execute a greater percentage of their Public Customer transactions on BOX. The proposed change will have no effect on the billing of orders of non-Participants, including any orders routed to BOX from away exchanges.

The Exchange proposes that BOX will continue to route Public Customer Orders to an away exchange without imposing any fee, to the extent that more than 55% of the Participants' Public Customer Orders sent to BOX each month execute on BOX. Executions on BOX would include orders executing on the BOX Book, or through any other BOX mechanism that may be available to execute Public Customer Orders (e.g., Price Improvement Period, Solicitation or Facilitation Auction Mechanisms). If 45% or more of a Participants' Public Customer Orders executed through BOX each month are routed to and executed at an away exchange, BOX will assess a $0.50 per contract routing fee to all of a Participants' Public Customer orders routed to an away exchange for execution for the month. BOX will calculate the percentage of contracts executed on BOX compared to the percentage routed and executed away at the end of each month.

Instructing BOX to route orders away if they are not able to be executed on BOX is voluntary for BOX Participants. Participants may choose not to route their Public Customer Orders to another exchange. Participants may also avoid paying the proposed routing fee by choosing to designate their orders as Fill and Kill (''FAK''). FAK orders are not eligible for routing to away exchanges. FAK orders are executed on BOX, if possible, and then cancelled. Imposing a routing fee structure that provides a benefit to Participants for trading on BOX will allow BOX to recoup a portion of the costs incurred for providing routing services, while also providing an incentive to Participants to trade on BOX and benefit from BOX routing services for a limited amount of their Public Customer Orders at no charge.

In contemplation of this proposed fee change, BOX considered the costs incurred for providing routing services and the benefit provided to Participants for whom orders are routed, as well as the revenue the Exchange receives from transactions executed on BOX. The Exchange believes the proposed change to BOX routing fees is fair, equitable, and not unfairly discriminatory as BOX attempts to balance its costs incurred for routing and the benefit for Participants that use the service. Additionally, the Exchange has considered the Exchange costs and the benefits to the BOX market and Participants' given their ability to have their orders routed to an away exchange. Finally, the Exchange proposes this fee change in part to attempt to balance the costs and benefits considering the volumes of Public Customer transactions routed to away exchanges and the volume of transactions executed on BOX. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on August 1, 2012.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Options Participants and other persons using its facilities. The Exchange believes the changes proposed are an equitable allocation of reasonable fees and charges among BOX Options Participants.

BOX believes that the proposed routing fee structure for routing non-Professional, Public Customer Orders to other market venues is reasonable because the fee will allow BOX to recoup its transaction costs attendant with offering routing services. BOX uses third-party broker-dealers to route orders to other exchanges and incurs charges for each order routed to and executed at an away market, in addition to the transaction fees charged by other

[5] Note that BOX does not route broker-dealer proprietary orders and thus does not assess them any routing fees. Based on BOX market data, BOX believes certain Participants are intentionally submitting orders to BOX when limited liquidity is on BOX at the national best bid or offer (''NBBO''). This limited liquidity is not enough to fill the orders submitted, and thus, BOX is required, in accordance with its obligations to customer orders under the national market system plan for Options Order Protection, to route such orders to a market that is displaying liquidity at the NBBO.

[6] For the purposes of the discussion in this proposed rule change, these non-Professional, Public Customer Orders will be referred to as Public Customer Orders.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

exchanges. BOX has been providing its routing services to Participants for a limited amount of their Public Customer Orders at no cost and has been able to cover such costs with revenue generated from transactions on BOX. In order to better recover BOX's increasing costs for routing such orders, the Exchange is proposing a modified routing fee structure. The Exchange believes this routing fee structure will allow BOX to continue to provide routing services to Participants at no charge if the Participants trade a greater percentage of their Public Customer volume traded through BOX each month on BOX, as opposed to BOX routing those orders away for execution.

Additionally, BOX believes that assessing its routing fees to Participants based on the percentage of Public Customer Orders traded on BOX is an equitable allocation of a reasonable fee. Based on BOX market data, BOX believes some Participants are intentionally submitting orders to BOX when limited liquidity is on BOX at the NBBO. This limited liquidity is not enough to fill the orders submitted, and thus, BOX is required, in accordance with its obligations to customer orders under the national market system plan for Options Order Protection, route such orders to a market that is displaying liquidity at the NBBO. BOX data indicates that BOX generally routes less than 45% of a Participant's Public Customer Orders to BOX to an away exchange for execution. Additionally, BOX believes that permitting a Participant to have up to 45% of such orders routed to an away exchange for execution without being assessed any routing fee is reasonable and appropriate.

The Exchange believes the proposed routing fee structure is equitable and not unfairly discriminatory because the incentive to trade on BOX is available to all Participants on an equal basis. The Exchange believes it is reasonable and equitable to provide Participants (A) an incentive to trade on BOX, and (B) the ability to route a limited amount of customer orders at no cost, because transactions executed on BOX increase BOX market activity and market quality. Greater liquidity and additional volume executed on BOX aids the price and volume discovery process. Participant trading on BOX also results in revenue that BOX is able to use to provide routing services for a limited amount of customer orders at no cost to Participants. Accordingly, the Exchange believes that the proposal is not unfairly discriminatory because it promotes enhancing BOX market quality. The changes proposed by this filing are intended to provide an incentive to BOX Participants to submit orders for execution on BOX, to aid BOX in recovering its increasing routing costs, and to discourage Participants from engaging in abusive and predatory practices to evade fees on other exchanges.

Further, BOX operates within a highly competitive market. BOX, however, does not assess ongoing fees for access to BOX market data, or fees related to order cancellation. As stated, BOX incurs costs, including transaction fees at other exchanges, every time it routes a customer order to an away exchange for execution. Providing routing services draws on BOX system resources and routing more and more orders results in greater ongoing operational costs to BOX. As such, BOX aims to recover its increasing costs by assessing Participants fees for routing Public Customer Orders to away exchanges, if those Participants are submitting such orders to BOX so as to evade other exchanges' fees and take advantage of BOX routing services. BOX therefore believes that assessing the fee only to those Participants that have 45% or more of their Public Customer Orders routed to an away exchange for execution is reasonable, and an equitable allocation of its fees for providing routing services.

Finally, the Exchange notes that although routing is available to BOX Participants for customer orders, Participants are not required to use the routing services, but instead, BOX routing services are entirely voluntary. As discussed above, BOX Participants can manage their own routing to different options exchanges or can utilize a myriad of other routing solutions that are available to market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, fee, or other charge applicable only to a member.

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 Exchange 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–BOX–2012–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2012–010. 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

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2012–010 and should be submitted on or before August 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19082 Filed 8–3–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67547; File No. SR–CBOE–2012–048]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Relating to Distribution of Auction Messages

July 31, 2012.

I. Introduction

On June 6, 2012, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend rules regarding the universe of eligible responders to certain Exchange auctions and the redistribution of auction messages. The proposed rule change was published for comment in the **Federal Register** on June 22, 2012.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description

The Exchange proposes to amend several rules that govern its auction mechanisms to, among other things, permit it to broaden the class of persons that may respond to auction messages as well as specifically allow such participants to rebroadcast auction messages in options classes that have been opened to such responders. The proposed changes would amend Rule 6.13A, relating to the Simple Auction Liaison (''SAL''); Rule 6.14A, relating to the Hybrid Agency Liaison 2 system (''HAL2''); and Rule 6.53C, relating to Complex Orders on the Hybrid System, each of which are described in more detail below. In addition, CBOE also proposes to delete Rule 6.14, relating to the Hybrid Agency Liaison system (''HAL''), because, since the rollout of HAL2 in 2009, the Exchange has phased out HAL and no longer uses it for any classes.[4]

A. SAL

SAL is a feature within CBOE's Hybrid System designed to provide price improvement over the national best bid or offer (''NBBO'') by automatically initiating an auction process for an order that is eligible for automatic execution by the Hybrid System (''Agency Order'').[5] Currently, to the extent CBOE has activated SAL for a particular class, Market-Makers with an appointment in the relevant option class and Trading Permit Holders acting as agent for orders resting at the top of the Exchange's book opposite the Agency Order (''Qualifying Trading Permit Holders'') are permitted to submit auction responses.[6] However, the Exchange may determine, on a class-by-class basis, to permit SAL responses by *all* CBOE Market-Makers in addition to Qualifying Trading Permit Holders.[7]

CBOE now proposes to eliminate the concept of Qualifying Trading Permit Holders under Interpretation and Policy .05 to Rule 6.13A, and instead provide more broadly that it may determine on a class-by-class basis to permit *all* Trading Permit Holders,[8] rather than just CBOE Market-Makers and Qualifying Trading Permit Holders, to respond to SAL auction messages.[9] The Exchange also proposes to amend Interpretation and Policy .02 to Rule 6.13A to allow Trading Permit Holders to redistribute auction messages in classes in which the Exchange allows all Trading Permit Holders to submit SAL auction responses.[10] Finally, CBOE proposes a new Interpretation and Policy .05 to Rule 6.13A to provide that all pronouncements regarding determinations by the Exchange pursuant to Rule 6.13A and the Interpretations and Policies thereunder will be announced to Trading Permit Holders via Regulatory Circular.[11]

B. HAL2

HAL2 is a feature within CBOE's Hybrid System that provides automated order handling in designated classes trading on Hybrid for qualifying electronic orders that are not automatically executed by the Hybrid System.[12] For those classes, HAL2 will process (1) an eligible order that is marketable against the Exchange's disseminated quotation while that quotation is not the NBBO; [13] (2) an eligible order that would improve the Exchange's disseminated quotation and that is marketable against quotations by other exchanges that are participants in the Options Order Protection and Locked/Crossed Plan; (3) for Hybrid 3.0 classes, an eligible order that would improve the Exchange's disseminated quotation; and (4) an order submitted to HAL2 as a result of the price check parameters of Rule 6.13(b)(v).[14] HAL2 electronically exposes these orders at the NBBO price to allow Market-Makers appointed in that class as well as Trading Permit Holders acting as agent for orders at the top of the Exchange's book in the relevant series to step-up to the NBBO price.[15] Alternatively, the Exchange may determine on a class-by-class basis to make the exposure

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67209 (June 18, 2012), 77 FR 37724 (''Notice'').

[4] *See id.* at 37725. Further, the Exchange proposes to rename ''HAL2'' as ''HAL'' in the CBOE Rules to eliminate any potential confusion investors may have if there was a HAL2 but no HAL. For purposes of this order, however, the Commission is using the current terms to distinguish between ''HAL2'' and ''HAL.'' In addition, the Exchange proposes to amend Rules 6.2B, 6.13, 6.14A, 6.25, and 6.53 to delete cross-references to Rule 6.14 and HAL and to correct other cross-references to conform to numbering changes in this proposal throughout the rules. *See id.*

[5] *See id.* at 37724. The Exchange determines the eligible order size, eligible order types, eligible order origin code (*i.e.,* public customer orders, non-Market-Maker broker-dealer orders, and Market-Maker broker-dealer orders), and classes in which SAL is activated. *See* CBOE Rule 6.13A(a).

[6] *See* CBOE Rule 6.13A(b).

[7] *See* CBOE Rule 6.13A, Interpretation and Policy .05.

[8] According to CBOE, by definition, all Market-Makers are Trading Permit Holders; therefore, references to ''Trading Permit Holders'' include all Market-Makers. *See* Notice, *supra* note 3, at 37724 n. 3.

[9] *See id.* at 37724. The Exchange also proposes to move this language from Interpretation and Policy .05 to Rule 6.13A to paragraph (b) of Rule 6.13A.

[10] *See id.*

[11] *See id.* at 37725.

[12] *See* CBOE Rule 6.14A. The Exchange determines the eligible order size, eligible order types, eligible order origin code (*i.e.,* public customer orders, non-Market-Maker broker-dealer orders, and Market-Maker broker-dealer orders), and classes in which HAL2 is activated. *See* CBOE Rule 6.14A(a).

[13] Except that HAL2 will not be used to process such an order when the Exchange's quotation contains resting orders and does not contain sufficient Market-Maker quotation interest to satisfy the entire order. *See* CBOE Rule 6.14A(a)(i).

[14] *See* CBOE Rule 6.14A(a)(i)–(iv).

[15] *See* Notice, *supra* note 3, at 37725; CBOE Rule 6.14A(b). The duration of the exposure period may not exceed one second. *See* CBOE Rule 6.14A(b).

message available to all Market-Makers or to all Trading Permit Holders.[16]

Without making a substantive change to this provision, the Exchange now proposes to amend the HAL2 rule to conform the language to the new SAL and COA provisions that it has proposed in this filing. In other words, CBOE would continue to be able to allow *all* Trading Permit Holders to submit responses to the HAL2 exposure message.[17] CBOE also proposes to amend Interpretation and Policy .01 to Rule 6.14A to allow Trading Permit Holders to redistribute HAL2 exposure messages in classes in which the Exchange allows all Trading Permit Holders to submit HAL2 auction responses.[18]

In addition, the Exchange proposes a new Interpretation and Policy .03 to Rule 6.14A to provide that all pronouncements regarding determinations by the Exchange pursuant to Rule 6.14A and the Interpretations and Policies thereunder will be announced via Regulatory Circular.[19] Further, CBOE proposes to clarify that the existing provision that allows Trading Permit Holders acting as agent for orders at the top of the Exchange's book in the relevant option series to respond to exposure messages applies to such Trading Permit Holders that are representing orders on the *opposite side* of the order submitted to HAL. According to CBOE, the Hybrid System currently only accepts responses that are on the opposite side of the exposed order, and the proposed rule change amends Rule 6.14A to reflect this current practice.[20] Finally, the Exchange proposes to amend Rule 6.14A(b) to change the word ''flashed'' to ''exposed'' to create consistency of terminology in the Rule.

C. COA

COA is the automated complex order request for responses (''RFR'') auction process by which eligible complex orders [21] may be given an opportunity for price improvement before being booked in the electronic complex order book (''COB'') or on a PAR workstation.[22] To the extent COA is activated in a particular class, Market-Makers with an appointment in the relevant option class and Trading Permit Holders acting as agent for orders resting at the top of the COB in the relevant option series may submit responses to the RFR messages during the Response Time Interval.[23] The Exchange may determine on a class-by-class basis to permit COA responses by *all* CBOE Market-Makers in addition to Qualifying Trading Permit Holders.[24]

CBOE now proposes changes to the COA rules that mirror the changes, discussed above, that it is proposing for SAL. Specifically, CBOE now proposes to eliminate the concept of Qualifying Trading Permit Holders under Interpretation and Policy .07 to Rule 6.53C, and instead allow the Exchange to determine on a class-by-class basis to permit all Trading Permit Holders to respond to RFR messages.[25] In addition, the proposed rule change clarifies that only Trading Permit Holders acting as agent for orders at the top of the Exchange's book in the relevant option series may respond to RFR messages if they represent orders on the *opposite side* of the order submitted to COA.[26] Finally, the Exchange proposes to amend Interpretation and Policy .05 to Rule 6.53C to allow Trading Permit Holders to redistribute RFR messages in classes in which the Exchange allows all Trading Permit Holders to submit RFR responses.[27]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[28] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[29] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Commission believes the Exchange's proposal to permit it to open up SAL and COA auctions in specified classes to *all* Trading Permit Holders and allow redistribution of SAL, HAL2, and COA auction messages in those classes where the Exchange has broadened the universe of participation could protect investors and the public interest by enhancing competition in these auctions. CBOE's stated purpose in opening these auctions is to allow a greater number of market participants to submit responses to SAL auctions and COA RFRs, which CBOE believes has the potential to result in better prices for customers as responses to exposure or RFR messages could be at prices better than the NBBO.[30] The Commission agrees that broadening the universe of participants that receive these auction messages and that may respond to those messages is consistent with the protection of investors and the public interest. Among other things, if CBOE takes advantage of these new provisions to open up the SAL and COA auctions to more participants, these changes should promote broader awareness of, and provide increased opportunities for greater participation in, these auctions and, consequentially, facilitate the ability of CBOE to bring together participants and encourage more robust competition for price improvement in these auctions. Consistent with the protection of investors and the public interest, increased opportunities for participation and competition in these auctions could result in better prices for customers and participants

In addition, CBOE proposes to reorganize provisions of Rules 6.13A, 6.14A, and 6.53C regarding which Trading Permit Holders are eligible to respond to auction messages so that the requirements related to auction responses for SAL auctions, HAL2 auctions, and COAs all use similar language. These changes should make

[16] *See* CBOE Rule 6.14A(b).

[17] *See id.*

[18] *See* Notice, *supra* note 3, at 37725.

[19] *See id.*

[20] *See id.*

[21] The Exchange determines, on a class-by-class-basis, complex orders eligible for a COA considering the order's marketability (defined as a number of ticks away from the current market), size, complex order type, and complex order origin types (*i.e.,* non-broker-dealer public customer; broker-dealers that are not Market-Makers or specialists on an options exchange; and Market-Makers or specialists on an options exchange). *See* CBOE Rule 6.53C(d)(i)(2).

[22] *See* Notice, *supra* note 3, at 37725–26; CBOE Rule 6.53C(d). CBOE determines whether to activate COA on a class-by-class basis. *See* Notice, *supra* note 3, at 37725.

[23] *See* CBOE Rule 6.53C(d)(iii). ''Response Time Interval'' means the period of time during which responses to the RFR may be entered, the length of which is determined by the Exchange on a class-by-class basis, but which shall not exceed three seconds. *See* CBOE Rule 6.53C(d)(ii).

[24] *See* CBOE Rule 6.53C, Interpretation and Policy .07.

[25] *See* Notice, *supra* note 3, at 37726. The Exchange also proposes to move this language from Interpretation and Policy .07 to Rule 6.53C to paragraph (d)(iii) of Rule 6.53C.

[26] According to the Exchange, the CBOE Hybrid System currently only accepts responses that are on the opposite side of the Agency Order, and the proposed rule change amends Rule 6.53C to reflect this current practice. *See id.*

[27] *See id.*

[28] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 15 U.S.C. 78f(b)(5).

[30] *See* Notice, *supra* note 3, at 37726.

these substantially similar provisions easier to understand. CBOE also proposes to delete Rule 6.14, relating to HAL, while renaming ''HAL2'' as ''HAL.'' The Exchange has indicated that HAL is outdated and no longer in use.[31] The Commission believes that the deletion of the obsolete HAL rule and the renaming of ''HAL2'' as ''HAL'' should alleviate any potential confusion by CBOE Trading Permit Holders as well as investors.

For the reasons stated above, the Commission believes that the proposed changes to the SAL, COA, HAL, and HAL2 rules, discussed above, are consistent with Section 6(b)(5) of the Act.[32]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–CBOE–2012–048) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19145 Filed 8–3–12; 8:45 am]

BILLING CODE 8011–01–P

[31] *See id.* at 37725.

[32] 15 U.S.C. 78f(b)(5).

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67548; File No. SR–CBOE–2012–049]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Four New Order Types on the CBOE Stock Exchange

July 31, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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 adopt four new order types on the CBOE Stock Exchange (''CBSX''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add four new order types to CBSX: silent orders, silent-mid orders, silent-post-mid orders, and silent-mid-seeker orders.

A silent order is an order that is not displayed publicly on the CBSX Book but is to be executed at the National Best Bid (''NBB'') (for a ''buy'' order) or National Best Offer (''NBO'') (for a ''sell'' order). A silent order is an order with an optional contingency price which will indicate the highest price that a buyer is willing to pay or the lowest price at which a seller is willing to accept (such contingency price to be in $0.01 (full penny) increments only). If NBB is higher than this contingency price for a Buy order, or the NBO is lower than this contingency price for a Sell, Sell Short, or Sell Short Exempt order, the order, or remainder of the order, will be canceled prior to trading. The reason that the order, or remainder of the order, will be canceled prior to trading (as opposed to upon entry) in these circumstances is because it is possible that, when an order comes in, the NBB is lower than the contingency price (for a Buy order), but the order doesn't trade because there is not interest to trade with, and then the NBB moves to a point at which it is higher than the contingency price (at which point the order would cancel). The reverse would be true for Sell, Sell Short, or Sell Short Exempt orders.

A silent order may trade with any other type of order and is to execute following the execution of any displayed orders at the National Best Bid and Offer (''NBBO'') (if there are any displayed orders at the NBBO) and has a higher trading priority than All or None orders. A silent order will never be routed to an away market. When the NBBO is locked or crossed, a silent order will never trade, but instead rest on the CBSX Book and remain eligible to trade once the NBBO is no longer locked or crossed.

The following examples will explain how silent orders will trade on CBSX:

Consider, in example 1, a situation in which the NBBO is quoting at $1.01—$1.02, while CBSX is quoting $0.99–$1.02. A 100-lot silent order comes in to sell at the market, and rests behind a displayed 100-lot order to sell at $1.02 in the CBSX Book. A 500-lot order to buy at $1.02 comes in, and first trades with the displayed 100-lot order to sell at $1.02. Since there are no more displayed orders to sell at or better than $1.02, and $1.02 is at the NBBO, the silent order would then trade with the next 100 contracts in the 500-lot buy order. The remaining 300 lots of the buy order would be routed to the away exchange displaying the NBBO.

Consider now, in example 2, a situation in which the NBBO is once again quoting at $1.01—$1.02, while CBSX is quoting $0.99–$1.02. Again, a 100-lot silent order comes in to sell at the market, and rests behind a displayed 100-lot order to sell at $1.02 in the CBSX Book. A 100-lot buy order comes in at $1.02. This buy order would trade with the displayed 100-lot order to sell at $1.02, causing the CBSX market to move to $0.99–$1.03. The silent order would continue to rest while waiting for the opportunity to trade at the National Best Offer. If the NBO becomes $1.03, the silent order can then trade with any incoming orders to buy at $1.03 after any resting displayed orders to sell at $1.03 have already traded.

In this third example, consider a situation in which the NBBO is quoting at $1.00–$1.01 and CBSX is quoting at $0.99–$1.02. A 100-lot silent order comes in to buy at the market. A 10,000-lot Intermarket Sweep Order (''ISO'') comes in to sell at $0.99. The silent order would trade first at $1.00, since that is the NBBO, regardless of the fact that there are no current CBSX displayed orders at the NBBO. The remainder of the ISO trades against CBSX $0.99 orders until volume is

exhausted and any remainder is canceled.

A silent-mid order is an order that is not displayed publicly on the CBSX Book but is to be executed at the mid-point between the NBBO. A silent-mid order is an order with an optional contingency price which will indicate the highest price that a buyer is willing to pay or the lowest price at which a seller is willing to accept. A silent-mid order may trade in $0.005 increments if priced at or above $1 and $0.0001 increments if priced below $1. If the mid-point between the NBBO is not at a tradable increment, CBSX will round down to the nearest tradable increment. If the mid-point of the NBBO is higher than this contingency price for a Buy order or is lower than this contingency price for a Sell, Sell Short, or Sell Short Exempt order, the order, or remainder of the order, will be canceled prior to trading. The reason that the order, or remainder of the order, will be canceled prior to trading (as opposed to upon entry) in these circumstances is because it is possible that, when an order comes in, the mid-point of the NBBO is lower than the contingency price (for a Buy order), but the order doesn't trade because there is not interest to trade with, and then the mid-point of the NBBO moves to a point at which it is higher than the contingency price (at which point the order would cancel). The reverse would be true for Sell, Sell Short, or Sell Short Exempt orders.

A silent-mid order may trade with any other type of order and is to execute following the execution of any displayed orders at the NBBO (if there are any displayed orders at the NBBO) and has a higher trading priority than All or None orders and Silent-Post-Mid orders. A silent-mid order will never be routed to an away market. When the NBBO is locked or crossed, a silent-mid order will never trade, but instead rest on the CBSX Book and remain eligible to trade once the NBBO is no longer locked or crossed.

For example, consider a situation in which the NBBO is $13.00—$14.00, and a 1,000-lot silent-mid buy order comes to CBSX. That order rests undisplayed. Then a 500-lot order to sell at $13.00 comes in. The silent-mid order will trade 500 contracts with that sell order at $13.50. The remaining 500 contracts of the silent-mid order would continue to rest undisplayed.

A silent-post-mid order is an order that is not displayed publicly on the CBSX Book but is to be executed at the mid-point between the NBBO. A silent-post-mid order is an order with an optional contingency price which will indicate the highest price that a buyer is willing to pay or the lowest price at which a seller is willing to accept. A silent-post-mid order may trade in $0.005 increments if priced at or above $1 and $0.0001 increments if priced below $1. If the mid-point between the NBBO is not at a tradable increment, CBSX will round down to the nearest tradable increment. If a silent-post-mid order is to trade upon its arrival into the system (thereby ''removing'' liquidity), it will not trade, but instead rest until another order comes in for it to trade against. If the mid-point of the NBBO is higher than this contingency price for a Buy order or is lower than this contingency price for a Sell, Sell Short, or Sell Short Exempt order, the order, or remainder of the order, will be canceled prior to trading. The reason that the order, or remainder of the order, will be canceled prior to trading (as opposed to upon entry) in these circumstances is because it is possible that, when an order comes in, the mid-point of the NBBO is lower than the contingency price (for a Buy order), but the order doesn't trade because there is not interest to trade with, and then the mid-point of the NBBO moves to a point at which it is higher than the contingency price (at which point the order would cancel). The reverse would be true for Sell, Sell Short, or Sell Short Exempt orders.

A silent-post-mid order may trade with any other type of order and is to execute following the execution of any displayed orders at the NBBO (if there are any displayed orders at the NBBO) and has a higher trading priority than All or None orders but a lower priority than Silent-Mid orders. A silent-post-mid order will never be routed to an away market. When the NBBO is locked or crossed, a silent-post-mid order will never trade, but instead rest on the CBSX Book and remain eligible to trade once the NBBO is no longer locked or crossed. For example, consider a situation in which the NBBO is $13.00—$14.00, and 500-lot silent-mid order to sell rests on the CBSX Book. A 500-lot silent-post-mid buy order comes in. That order will not trade with the resting silent-mid sell order because the silent-post-mid buy order would be taking liquidity. Instead, the silent-post-mid buy order will rest on the CBSX Book until another sell order comes in for it to trade against, and the silent-mid sell order will do the same.

A silent-mid-seeker order is a take-only order that will never rest in the CBSX Book and is to be executed only at the mid-point between the NBBO. A silent-mid-seeker order may trade in $0.005 increments if priced at or above $1 and $0.0001 increments if priced below $1. If the mid-point between the NBBO is not at a tradable increment, CBSX will round down to the nearest tradable increment. If, upon the entry of a silent-mid-seeker order, there is undisplayed interest resting on the CBSX Book at the mid-point between the NBBO, the silent-mid-seeker order will interact with this interest. If the undisplayed resting interest is for a greater quantity than the silent-mid-seeker order, the silent-mid-seeker order will trade with the undisplayed resting interest up to the quantity of the silent-mid-seeker order, and the remainder of the undisplayed interest will remain resting on the CBSX Book. If the undisplayed resting interest is for a smaller quantity than the silent-mid-seeker order, the silent-mid-seeker order will trade with the undisplayed resting interest up to the quantity of the undisplayed resting interest, and the remainder of the silent-mid-seeker order will be canceled. If there is no undisplayed resting interest at the midpoint of the NBBO, the silent-mid-seeker order will be canceled. A silent-mid-seeker order will never be routed to an away market. When the NBBO is locked or crossed, a silent-mid-seeker order will be canceled. For example, consider a situation in which the NBBO is $13.00—$14.00, and 500-lot silent-mid order to sell rests on the CBSX Book. A 500-lot silent-mid-seeker buy order comes in. That order will trade with the resting silent-mid sell order.

Consider another example in which the NBBO is $13.00—$14.00, and no orders rest at the midpoint of the NBBO on the CBSX Book. A silent-mid-seeker order comes in. Because no orders rest at the midpoint of the NBBO on the CBSX Book, the silent-mid-seeker order would not rest on the CBSX Book, but instead be canceled.

The four new proposed order types are similar to Pegged Orders and Mid-Point Pegged Orders that may be entered on BATS Exchange, Inc. (''BATS'').[3] Like the four new CBSX order types, the Pegged and Mid-Point Pegged Orders are not displayed publicly,[4] have a lower priority than displayed orders,[5] and are never routed to away markets.[6] Like silent orders, Primary Pegged Orders are executed at the NBB (for a ''buy'' order) or the NBO (for a ''sell''

[3] *See* BATS Rules 11.9(c)(8)–(9). On BATS, various different types of orders and modifiers may be combined into one order. Explanations of different order types and the ways they operate can be found at *http://batstrading.com/resources/features/bats_exchange_definitions.pdf* (the ''BATS Order Description Sheet'').

[4] *See* BATS Rules 11.9(c)(8)–(9).

[5] *See* BATS Rules 11.9(c)(8)–(9) *and* 11.12(a)(2).

[6] *See* BATS Rules 11.9(c)(8)–(9).

order)[7] and also provide the user the option to enter such orders with or without a limit (contingency) price.[8] Like silent-mid orders, Mid-Point Peg Orders are executed at the mid-point of the NBBO.[9] Like silent-post-mid orders, Mid-Point Peg Orders can be designated to only add liquidity and not trade if they are to take liquidity.[10] Like silent-mid-seeker orders, Mid-Point Peg Orders can be designated to immediately cancel if there is no resting interest at the midpoint of the NBBO.[11]

While there are differences between the CBSX's four new proposed order types and the BATS Pegged and Mid-Point Pegged Orders, these differences are not substantive. CBSX uses different terminology than BATS to describe these order types because the proposed language is consistent with other language used in the CBSX rules and because CBSX believes that the proposed language is clearer and more descriptive. Another difference is that, while the BATS orders optionally allow for the pegging of the order price to be offset from the opposite side of the NBBO from the order, the proposed CBSX order types are more restrictive in only permitting the pegging of the order on either the bid (for buy orders), offer (for sell orders) or midpoint (due to system reasons).

One further difference is that, whereas BATS automatically adjusts the price of a Pegged or Mid-Point Peg Order in response to changes in the NBBO,[12] the CBSX System is not enabled to make such adjustments each time the NBBO changes. However, the CBSX System will adjust the price of resting silent, silent-mid and silent-post-mid orders prior to effecting any transaction involving such orders. As such, the same execution price would result as would if the price of such orders had been adjusted in response to each change in the NBBO.

Finally, whereas BATS creates a new timestamp for Pegged and Mid-Point Pegged Orders each time the orders are automatically adjusted,[13] the CBSX System prohibits the creation of such timestamps. However, CBSX maintains market data that allows CBSX to create an accurate history of any adjustments in price to the order, thereby functionally achieving the same goal as occurs on BATS. As such, orders will maintain their original timestamps as provided when the order came in and will receive priority, in regards to other undisplayed orders, based on the time at which they originally came in.

The Exchange believes that the addition of these new order types will enhance order execution opportunities on CBSX and should help provide market participants with flexibility in executing transactions that meet the specific requirements of the order type. The silent order, silent-mid order, silent-post-mid order and silent-mid-seeker order will allow for additional opportunities for liquidity providers to passively interact with interest on the CBSX Book.

Once the CBSX System is so enabled to permit the use of the silent order, silent-mid order, silent-post-mid order and silent-mid-seeker order, and such use has been appropriately tested, CBSX intends to announce the availability of the silent order, silent-mid order, silent-post-mid order and silent-mid-seeker order to the CBSX Traders via Regulatory Circular prior to the implementation of the silent order, silent-mid order, silent-post-mid order and silent-mid-seeker order.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[14] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest by providing new order execution opportunities, similar to those available on other exchanges, to CBSX market participants. Silent orders perfect the mechanism for a free and open market by providing investors the opportunity to enter an order that is not displayed publicly but is to be executed at the NBB (for a ''buy'' order) or NBO (for a ''sell'' order). Silent-mid orders perfect the mechanism for a free and open market by providing investors the opportunity to enter an order that is not displayed publicly but is to be executed at the mid-point between the NBBO. Silent-post-mid orders perfect the mechanism for a free and open market by providing investors the opportunity to enter an order that is not displayed publicly but is to be executed at the mid-point between the NBBO and only add liquidity. Silent-mid-seeker orders perfect the mechanism for a free and open market by providing investors the opportunity to enter an order that is not displayed publicly but is to be executed at the mid-point between the NBBO and only take liquidity. Also, all four new order types are similar to order types already offered on BATS.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. Impose any significant burden on competition; and

C. 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)[17] of the Act and Rule 19b–4(f)(6)[18] thereunder.

At any time within 60 days of the filing of this 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.

[7] *See* BATS Rule 11.9(c)(8).

[8] *See* BATS Rule 11.9(c)(8), which states that Pegged Orders can be specified that the order's price will either be inferior to or equal the inside quote by an amount set by the entering party on the same side of the market.

[9] *See* BATS Rule 11.9(c)(9).

[10] *See* BATS Order Description Sheet, which states that pegged orders can be designated ''Add Liquidity Only'' *and* BATS Rule 11.9(c)(6), which states that the BATS Post Only Order ''will not remove liquidity from the BATS book.''

[11] *See* BATS Order Description Sheet, which states that ''midpoint orders can have a time in force (TIF) of immediate or cancel (IOC)'' *and* BATS Rule 11.9(b)(1) which states that limit orders can have the time-in-force of ''Immediate-or-Cancel.''

[12] *See* BATS Rules 11.9(c)(8)–(9).

[13] *See* BATS Rules 11.9(c)(8)–(9).

[14] 15 U.S.C. 78s(b)(1).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–049 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–049. 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–CBOE–2012–049 and should be submitted on or before August 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19144 Filed 8–3–12; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7971]

60–Day Notice of Proposed Information Collection: Reporting Requirements for Responsible Investment in Burma

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department will accept comments from the public up to October 5, 2012.

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

- *Web:* Persons with access to the Internet may view and comment on this notice by going to the Federal regulations Web site at *www.regulations.gov.* You can search for the document by: selecting ''Notice'' under Document Type, entering the Public Notice number as the ''Keyword or ID'', checking the ''Open for Comment'' box, and then click ''Search''. If necessary, use the ''Narrow by Agency'' option on the Results page.
- *Email: BurmaPRA@state.gov.*
- *Mail (paper, or CD submissions):* U.S. Department of State, DRL/EAP Suite 7817, Burma Human Rights Officer, 2201 C St. NW., Washington, DC 20520.
- *Fax:* None.
- *Hand Delivery or Courier:* None.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Stacey May, U.S. Department of State, DRL/EAP Suite 7817, 2201 C St. NW., Washington, DC 20520, who may be reached on 202–647–8260 or at *maysa2@state.gov.*

SUPPLEMENTARY INFORMATION: • *Title of Information Collection:* Reporting Requirements on Responsible Investment in Burma.

- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* U.S. Department of State, DRL/EAP.
- *Form Number:* None.
- *Respondents:* U.S. persons and entities engaged in new investment in Burma in an amount over $500,000 in aggregate, per OFAC General License 17, which authorizes new investment in Burma.
- *Estimated Number of Respondents:* 150.
- *Estimated Number of Responses:* 150.
- *Average Hours Per Response:* 21 hours.
- *Total Estimated Burden:* 3,150 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

Section 203(a)(1)(B) of the International Emergency Economic Powers Act (IEEPA) grants the President authority to, inter alia, prevent or prohibit any acquisition or transaction involving any property, in which a foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States, if the President declares a national emergency with respect to any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States. See 50 U.S.C. 1701 *et seq.*

In Executive Order 13047 of May 20, 1997, the President determined that the actions and policies of the Government

of Burma, including its large-scale repression of the democratic opposition in Burma, constituted an unusual and extraordinary threat to the national security and foreign policy of the United States, declared a national emergency to deal with that threat, and prohibited new investment in Burma. In subsequent Executive Orders, the President modified the scope of the national emergency to address additional concerns with the actions and policies of the Government of Burma. In Executive Order 13448 of October 18, 2007, the President modified the emergency to address the continued repression of the democratic opposition in Burma, manifested in part through the commission of human rights abuses and pervasive public corruption. In Executive Order 13619 of July 11, 2012, the President further modified the emergency to address, inter alia, human rights abuses particularly in ethnic areas. In response to several political reforms by the Government of Burma and pursuant to authority granted by IEEPA, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued a general license (GL 17) on July 11, 2012 authorizing new investment in Burma, subject to certain restrictions and conditions.

In order to support the Department of State's efforts to assess the extent to which new U.S. investment authorized by GL 17 furthers U.S. foreign policy goals of improving human rights protections and facilitating political reform in Burma, GL 17 requires U.S. persons engaging in new investment in Burma to report to the Department of State information related to such investment, as laid out in the ''Reporting Requirements on Responsible Investment in Burma,'' (hereafter referred to as the ''collection''). This collection is authorized by section 203(a)(2) of IEEPA, which grants the President authority to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in section 203(a)(1) of IEEPA.

A copy of the ''Reporting Requirements on Responsible Investment'' can be reviewed at *http://www.humanrights.gov/wp-content/uploads/2012/07/Burma-Responsible-Investment-Reporting-Reqs.pdf.*

Methodology:

The Department of State will collect the information requested via electronic submission.

Additional Information:

It is the overarching policy goal of the U.S. Government to support political reform in Burma towards the establishment of a peaceful, prosperous, and democratic state that respects human rights and the rule of law. In the past, some foreign investment in Burma has been linked to human rights abuses, particularly in the area of natural resource development in ethnic minority regions. For example, some foreign investments have entailed acquisition and control of land in disputed ethnic minority territories exacerbating or contributing to both social unrest and armed conflict and leading to adverse community and environmental impacts. Increased military/security presence in disputed ethnic minority areas to provide security for foreign investment projects is reported to have led to seizures of farm land, involuntary relocations, forced labor, torture, summary execution, and sexual violence. In June 2011, a 17-year ceasefire agreement with the Kachin Independence Army (KIA) broke down, and both the Burmese Government and the KIA have since publicly attributed the renewed armed fighting at least partially to foreign-funded investment projects, which include power generation, oil and gas, jade, and gold mining investment projects in the region. The Burma Army has reportedly forced civilians to work as porters and human mine sweepers in northern Shan State in connection with the Shwe Gas pipeline and there have been numerous recent reports of forced labor, torture, forced conscription, rape and sexual violence in Kachin and Shan states along the Shwe Gas pipeline corridor.

The collection will help the Department of State, in consultation with other relevant government agencies, to evaluate whether easing the ban on investment by U.S. persons advances U.S. foreign policy goals to address the national emergency with respect to Burma. In addition, the Department of State will use the collection as a basis to conduct informed consultations with U.S. businesses to encourage and assist such businesses to develop robust policies and procedures to address any potential adverse human rights, worker rights, anti-corruption, environmental, or other impacts resulting from their investments and operations in Burma. The Department of State will use the collection of information about new investment with the Myanmar Oil and Gas Enterprise (MOGE) to track investment that involves MOGE and to identify investors with whom it may be beneficial to have targeted consultation on anti-corruption and human rights policies. The public, including civil society actors in Burma, may use publicly available information resulting from the collection to engage U.S. businesses on their responsible investment policies and procedures and to monitor the Burmese government's management of revenues from investment.

U.S. persons to whom this requirement applies will be required to submit a version of the report to the U.S. Government for public release, from which information considered in good faith to be exempt from disclosure under FOIA Exemption 4—i.e. trade secrets or commercial or financial information that is privileged or confidential—may be withheld. The Department of State will make this version of the report publically available in order to promote transparency with respect to new U.S. investments in Burma. In the past, the absence of transparency or publicly available information with respect to foreign investment activities in Burma has contributed to corruption and misuse of public funds, the erosion of public trust, and social unrest in ethnic minority areas and has led to further human rights abuses and repression by the government and military. Public disclosure of certain aspects of the collection therefore will promote the policy of transparency through new U.S. investment, a key U.S. foreign policy objective in Burma.

Burmese civil society groups, particularly those representing ethnic minority communities, have requested that the Department of State make public certain information obtained through the collection on investments purportedly made for the benefit of the Burmese people, as a means of holding their own government accountable. Nobel Peace Prize laureate Aung San Suu Kyi, leader of Burma's democratic opposition party and recently elected to a seat in Burma's parliament, also underscored the importance of transparency in her recent remarks in Bangkok, noting that she did not want ''more investment to mean more possibilities for corruption.'' This was among the most specific of the recommendations she made to the international community, stressing that ''Transparency is very important if we are going to avoid problems in the future* * * So whatever investments, governmental agreements, whatever aid might be proposed, please make sure that it is transparent, that the people of Burma are in a position to understand

what has been done, and how and for whom the benefits are intended.''

Therefore public release of portions of this collection is aimed at providing civil society this type of information to both ensure the transparency of U.S. investment in Burma and to encourage civil society to partner with their government and U.S. companies towards building responsible investment, which ultimately promotes U.S. foreign policy goals.

Dated: July 31, 2012.

Daniel Baer,

Deputy Assistant Secretary, Department of State.

[FR Doc. 2012–19283 Filed 8–2–12; 4:15 pm]

BILLING CODE 4710–18–P

TRADE REPRESENTATIVE

[Dispute No. WT/DS440/1]

WTO Dispute Settlement Proceeding Regarding China—Anti-Dumping and Countervailing Duties on Certain Automobiles From the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on July 9, 2012, the United States requested consultations with the Government of the People's Republic of China (''China'') under the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement'') concerning China's antidumping and countervailing duty measures on certain automobiles from the United States. That request may be found at *www.wto.org,* contained in a document designated as WT/DS440/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before August 31, 2012 to assure timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically at *www.regulations.gov,* docket number USTR–2012–0016. If you are unable to provide submissions at *www.regulations.gov* , please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Dan Stirk, Associate General Counsel, Office of the United States Trade Representative, (202) 395–3150; and Joseph Rieras, Assistant General Counsel, Office of the United States Trade Representative, (202) 395–3150.

SUPPLEMENTARY INFORMATION: USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such a panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by the United States

On July 9, 2012, the United States requested consultations concerning China's antidumping and countervailing duty measures on certain automobiles from the United States. In November 2009, China initiated antidumping and countervailing duty investigations on exports of certain automobiles from the United States. In December 2011, China imposed antidumping and countervailing duties on those products.

In the course of its antidumping and countervailing investigations concerning certain automobiles from the United States, and in imposing duties on those products, China appears to have acted inconsistently with its obligations under the *General Agreement on Tariffs and Trade* (''GATT 1994''), the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (''AD Agreement''), and the *Agreement on Subsidies and Countervailing Measures* (''SCM Agreement''). China's actions which appear to be inconsistent with its obligations include initiation of an investigation without sufficient evidence, failure to disclose essential facts underlying its conclusions, failure to adequately explain its findings and conclusions in sufficient detail, failure to provide non-confidential summaries of submissions, failure to objectively examine the evidence, failure to make determinations based on positive evidence, and failure to disclose calculations and data used to reach its conclusions.

Specifically, the United States asserts in the request for consultations that China's antidumping and countervailing duty measures on certain automobiles from the United States appear to be inconsistent with the following provisions of the GATT 1994, the AD Agreement, and the SCM Agreement:

1. Articles 5.3 and 5.4 of the AD Agreement, and Articles 11.3 and 11.4 of the SCM Agreement, because: (a) China failed to examine the degree of support for, or opposition to, the application expressed by domestic producers of the like product prior to initiating the antidumping and countervailing duty investigations; (b) China initiated the investigations when domestic producers supporting the application accounted for less than 25 per cent of total production of the like product produced by the domestic industry; and (c) China failed to examine or review the accuracy and adequacy of the evidence provided in the application.

2. Article 11.3 of the SCM Agreement because the application for a countervailing duty investigation failed to contain information reasonably available to the applicant and therefore there was insufficient evidence in the application to justify the initiation of a countervailing duty investigation with respect to several programs.

3. Article 6.5.1 of the AD Agreement and Article 12.4.1 of the SCM Agreement because China failed to require the applicant to provide adequate non-confidential summaries of allegedly confidential information.

4. Article 6.9 of the AD Agreement because China failed to adequately disclose the calculations and data used to establish the antidumping duty rates it determined.

5. Articles 12.2 and 12.2.2 of the AD Agreement because China failed to provide in sufficient detail the findings and conclusions reached on all issues of fact and law it considered material, and the reasons for the acceptance or rejection of relevant arguments or claims.

6. Article 6.8, including Annex II, paragraph 1, and Articles 6.9, 12.2, and 12.2.2 of the AD Agreement and Articles 12.7, 12.8, 22.3, and 22.5 of the SCM Agreement because: (a) China improperly based its determination of the ''all others'' antidumping and countervailing duty rates on the facts available; (b) China failed to disclose the essential facts underlying its ''all others'' rate determinations; (c) China failed to set forth in sufficient detail the findings and conclusions reached on all issues of fact and law it considered material in its ''all others'' rate determinations; and (d) with respect to the ''all others'' rates, China failed to make available all relevant information on the matters of fact and law and

reasons which have led to the imposition of the final measures.

7. Articles 3.1 and 4.1 of the AD Agreement and Articles 15.1 and 16.1 of the SCM Agreement because China made a determination of injury using an improper definition of the domestic industry and as a result failed to base its determination on positive evidence and conduct an objective examination of the facts with respect to the domestic industry producing the subject imports.

8. Articles 3.1 and 3.2 of the AD Agreement and Articles 15.1 and 15.2 of the SCM Agreement because China's analysis of the effects of imports under investigation on the price of the like product was not based upon an objective examination of the record and positive evidence.

9. Articles 3.1, 3.4, and 3.5 of the AD Agreement and Articles 15.1, 15.4, and 15.5 of the SCM Agreement because: (a) China's analysis of the alleged causal link was not based upon an objective examination of the record and positive evidence, including an examination of all relevant economic factors and indices having a bearing on the state of the industry, an examination of all relevant evidence before the authorities, or an examination of any known factors other than allegedly dumped and subsidized imports which at the same time were injuring the domestic industry, and (b) China failed to meet the requirement that injuries caused by other factors must not be attributed to the allegedly dumped and subsidized imports.

10. Article 6.2 of the AD Agreement because China failed to grant interested parties a full opportunity for the defense of their interests.

11. Article 1 of the AD Agreement as a consequence of the breaches of the AD Agreement described above.

12. Article 10 of the SCM Agreement as a consequence of the breaches of the SCM Agreement described above.

13. Article VI of the GATT 1994 as a consequence of the breaches of the AD and SCM Agreements described above.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *www.regulations.gov,* docket number USTR–2012–0016. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *www.regulations.gov,* enter docket number USTR–2012–0016 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Submit a Comment'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page).

The *www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comments'' field, or by attaching a document using an ''Upload File'' field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comments'' field.

A person requesting that information, contained in a comment that he submitted, be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''Business Confidential'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted at *www.regulations.gov.* The non-confidential summary will be placed in the docket and will be open to public inspection.

USTR may determine that information or advice contained in a comment submitted, other than business confidential information, is confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted at *www.regulations.gov.* The non-confidential summary will be placed in the docket and will be open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR–2012–0016, accessible to the public at *www.regulations.gov.*

The public file will include non-confidential comments received by USTR from the public regarding the dispute. If a dispute settlement panel is convened, or in the event of an appeal from such a panel, the following documents will be made available to the public at *www.ustr.gov:* the United States' submissions, any non-confidential submissions received from other participants in the dispute, and any non-confidential summaries of submissions received from other participants in the dispute. In the event that a dispute settlement panel is convened, or in the event of an appeal from such a panel, the report of the panel, and, if applicable, the report of the Appellate Body, will also be available on the Web site of the World Trade Organization at *www.wto.org.* Comments open to public inspection may be viewed at *www.regulations.gov.*

Bradford L. Ward,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2012–19154 Filed 8–3–12; 8:45 am]

BILLING CODE 3290–F2–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket Number: OST–1995–177]

Agency Request for Renewal of a Previously Approved Collection: Disclosure of Change-of-Gauge Services

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Written comments should be submitted by October 5, 2012.

ADDRESSES: You may submit comments (identified by DOT Docket Number

OST–1995–177) through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Snoden, (202) 366–4834, Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0538.

Title: Disclosure of Code Sharing Arrangements and Long-Term Wet Leases.

Type of Review: Renewal of an information collection.

Abstract: Change-of-gauge service is scheduled passenger air transportation for which the operating carrier uses one single flight number even though passengers do not travel in the same aircraft from origin to destination but must change planes at an intermediate stop. In addition to one-flight-to-one-flight change-of-gauge services, change-of-gauge services can also involve aircraft changes between multiple flights on one side of the change point and one single flight on the other side. As with one-for-one change-of-gauge services, the carrier assigns a single flight number for the passenger's entire itinerary even though the passenger changes planes, but in addition, the single flight to or from the exchange point itself has multiple numbers, one for each segment with which it connects and one for the local market in which it operates.

The Department recognizes various public benefits that can flow from change-of-gauge services, such as a lowered likelihood of missed connections. However, although change-of-gauge flights can offer valuable consumer benefits, they can be confusing and misleading unless consumers are given reasonable and timely notice that they will be required to change planes during their journey.

Section 41712 of Title 49 of the U.S. code authorizes the Department to decide if a U.S. air carrier or foreign air carrier or ticket agent (including travel agents) has engaged in unfair or deceptive practices. Under this authority, the Department has adopted various regulations and policies to prevent unfair or deceptive practices or unfair methods of competition. The Department requires as a matter of policy that customers be given notice of aircraft changes for change-of-gauge flights. (See Department Order 89–1–31, page 5.) The Department proposed to adopt the extant regulations, however, because it was not convinced that these rules and policies resulted in effective disclosure all of the time.

Respondents: All U.S. air carriers, foreign air carriers, computer reservations systems (CRSs), and travel agents doing business in the United States, and the traveling public.

Number of Respondents: 16,000, excluding travelers.

Frequency: At 15 seconds per call and an average of 1.5 calls per trip, a total of 22.5 seconds per respondent or traveler, for the approximately 33% of estimated change-of-gauge itineraries that involve personal contact.

Total Annual Burden: Annual reporting burden for this data collection is estimated at 76,313 hours for all travel agents and airline ticket agents, based on 15 seconds per phone call and an average of 1.5 phone calls per trip, for the approximately 33% of estimated change-of-gauge itineraries that involve personal contact. Most of this data collection (third party notification) is accomplished through highly automated computerized systems.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on July 31, 2012.

Todd M. Homan,

Director, Office of Aviation Analysis.

[FR Doc. 2012–19111 Filed 8–3–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Dane County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The purpose of this NOI is to update the notice issued in the **Federal Register**, Vol. 71, No. 112, Monday, June 12, 2006, Notices. The FHWA and WisDOT are updating this notice to advise the public that an Environmental Impact Statement (EIS) is continuing to be prepared for proposed transportation improvements on the United States Highway (US) 51 corridor in the Madison Urban Area, Dane County, Wisconsin. The general location is between U.S. 12/18 (Madison South Beltline Highway) and Wisconsin State Highway (WIS) 19. The EIS is being prepared in conformance with 40 CFR 1500 and FHWA regulations. The NOI is being updated to reflect the current status of the environmental study, changes in contact information, and significant coordination efforts etc that have been completed since the revised NOI was issued in June 2006.

The project was placed on ''Hold'' by the WisDOT in the Summer of 2010 because it was determined the type and cost of the improvements being considered met the revised definition of a WisDOT ''Major Project'' requiring approval by the Wisconsin Legislature's Transportation Projects Commission (TPC). In November 2011, the TPC approved the EIS study for the project as part of WisDOT's Majors Program, and efforts to continue with the EIS study were initiated in April 2012. The Project limits, Purpose & Need, and Range of Alternatives being evaluated have not changed

FOR FURTHER INFORMATION CONTACT: Johnny Gerbitz, Field Operations Engineer, Federal Highway Administration, 525 Junction Rd, Suite 8000, Madison, Wisconsin, 53717–2157, Telephone: (608) 829–7500. You may also contact Rebecca Burkel, Director, Bureau of Technical Services, Wisconsin Department of Transportation, P.O. Box 7965, Madison, Wisconsin, 53707–7965: Telephone: (608) 516–6336.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable

communications software from the Government Printing Offices' Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of **Federal Register**'s home page at: *http://www.archives.gov/*and the Government Printing Offices' database at: *http://www.gpoaccess.gov/nara/index.html.*

Background

The FHWA, in cooperation with the Wisconsin Department of Transportation, is continuing to prepare an Environmental Impact Statement (EIS) on proposed improvements to address safety, operational and capacity concerns on an approximate 11-mile (17-kilometer) portion of U.S. 51 between Terminal Drive/Voges Road (Village of McFarland) and WIS 19 (Village of DeForest) in Dane County. These improvements are being considered to address existing and future transportation demand on U.S. 51 as identified in the 2003 Stoughton Road Needs Assessment Technical Report; safety and operational concerns documented in the 2010 Traffic, Safety and Needs Report; and to identify land which may need to be preserved for future transportation improvements.

FHWA's decision to prepare an EIS is based on the initial environmental assessment that indicates the proposed action is likely to have significant impacts on the environment, including wetlands. The EIS will evaluate the social, economic, and environmental impacts of the alternatives including no build, improvements within the existing highway corridor, and possible improvements on new location.

Information describing the proposed action and soliciting comments has been sent to appropriate Federal, State, and Local agencies, American Indian Tribes, private agencies and organizations, and citizens who have expressed or are known to have an interest in this proposal. Coordination will continue to be solicited through public information meetings, agency coordination meetings, and other meetings with interested parties throughout the environmental analysis process

During the Needs Assessment activities, coordination was conducted with State and Federal review agencies, and there was extensive coordination with Local Officials. Several ongoing focus group meetings and workshops have been held since 2002. A Policy Advisory Committee (PAC) consisting of neighborhood & business representatives and elected officials has met periodically when their input on new information seems appropriate since the study began in 2002. A Technical Advisory Committee (TAC) comprised of technical staff from Local, State, and Federal agencies with stakeholder interests has also been actively involved in the development of alternatives and their impacts since 2004. A Pre-Consultation/NEPA 404 Merger Scoping Meeting was held with State and Federal agencies in April 2005. Later, the project Purpose and Need (NEPA/404 Concurrence Point #1) and the Range of Alternatives (NEPA/404 Concurrence Point #2) were also concurred in by State and Federal resource agencies in 2005. The expanded coordination procedures provided under Section 6002 of the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA–LU) as codified in 23 U.S.C. 139 were implemented in 2007. Opportunities to be a Participating and/or Cooperating Agency and to provide input on the project's Coordination Plan (CP) and Impact Assessment Methodology (IAM) were afforded to all Local, State, and Federal agencies and American Indian Tribes with interest in the project area. Public input was obtained on the draft project CP and IAM plan at the October 2007 Public Information Meeting (PIM). The completed project CP and IAM plan was issued in October 2008. A follow-up Agency Coordination Meeting and PIM are planned for 2012 in order to update all interested parties on the current status of the EIS study and the issuance of an updated CP and IAM plan.

Two PIMs were held in 2006 and 2007 before the project was placed on ''hold'' by the WisDOT. At least two additional PIMs are planned while the Draft EIS is being written in order to update the public on the current status of the EIS study and to obtain additional public input. Following completion and publishing of the Draft EIS, a Public Hearing will be held to address the impacts of each alternative. Public notices will be given announcing the time and place of the meetings, and the Draft EIS will be available for public and agency review and comment prior to the Public Hearing. After the Draft EIS is circulated for comment, and comments from the Public Hearing are evaluated, the State and Federal resource agencies will be asked to concur in the Preferred Alternative selected by WisDOT (NEPA/404 Concurrence Point #3). Information on the Preferred Alternative, anticipated impacts, and proposed mitigation measures are also be planned to be shared with the public at another PIM before the Final EIS is published and distributed. Any additional substantive comments received on the Final EIS will be addressed in the Record of Decision (ROD).

This study shall comply with Title VI of the Civil Rights Act and of Executive Order 12898, which prohibits discrimination on the basis of race, color, age, sex, or country of national origin in the implementation of this action. To ensure that the full range of issues related to this proposed action is addressed, and all substantive issues are identified, comments and suggestions are invited from all interested parties.

In order to ensure that the full range of issues related to this proposed action is addressed, and all substantive issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the draft EIS should be directed to FHWA or the Wisconsin Department of Transportation at the addresses provided under the heading **FOR FURTHER INFORMATION CONTACT**.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: August 1, 2012.

Johnny M. Gerbitz,

Field Operations Engineer, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. 2012–19090 Filed 8–3–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2012–0162]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 17 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective August 6, 2012. The exemptions expire on August 6, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/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.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's 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, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On June 18, 2012, FMCSA published a notice of receipt of Federal diabetes exemption applications from 17 individuals and requested comments from the public (77 FR 36333). The public comment period closed on July 18, 2012, and no comments were received.

FMCSA has evaluated the eligibility of the 17 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 17 applicants have had ITDM over a range of 1 to 23 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the June 18, 2012, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA did not receive any comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the 17 exemption applications, FMCSA exempts Bruce R. Bennett (MN), Stephen W. Best (PA), Steven L. Cornwell (IA), Steven D. Hancock (IN), Michael A. Hendrickson (OR), James B. Hills (KS), Charles Keegan, Jr. (NJ), Londell W. Luther (MD), Darrell L. Meadows (TX), John P. Miller (OK), Gary J. Rice (VT), Jose A. Rosario (NY), Jordan D. Seeburger (PA), Allyn E. Smith (SD), Hayden P. Thielen (MN), Larry J. Vanzalen (MI), and Jason R. Zeorian (NE) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person

fails to comply with the terms and conditions of the 1/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. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: July 27, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–19119 Filed 8–3–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0214]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 12 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before September 5, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0214 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 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.'' FMCSA can renew exemptions at the end of each 2-year period. The 12 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Michael J. Bechta

Mr. Bechta, age 28, had had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/80. Following an examination in 2012, his ophthalmologist noted, ''With these parameters, in my opinion, Michael is safe and qualified visually to drive commercial vehicles.'' Mr. Bechta reported that he has driven straight trucks for 7 years, accumulating 36,400 miles. He holds a Class C operator's license from Pennsylvania. His driving record for the last 3 years shows one crash, which he was not cited for, and no convictions for moving violations in a CMV.

Bryan G. Brockus

Mr. Brockus, 42, had an enucleation of his left eye due to a traumatic injury sustained as a child. The visual acuity in his right eye is 20/20. Following an examination in 2012, his ophthalmologist noted, ''In my opinion, this patient has sufficient vision to perform the driving tasks to operate a commercial vehicle.'' Mr. Brockus reported that he has driven straight trucks for 14 years, accumulating 252,000 miles, and tractor-trailer combinations for 3 years, accumulating 15,000 miles. He holds a Class A Commercial Driver's License (CDL) from Idaho. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Larry Clay

Mr. Clay, 55, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2012, his optometrist noted, ''I do believe Mr Clay has sufficient vision to perform his job in operating a commercial vehicle.'' Mr. Clay reported that he has driven straight trucks for 10 years, accumulating 52,000 miles. He holds a Class D operator's license from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael T. DeKorte

Mr. DeKorte, 42, has had amblyopia and Peter's Anomaly in his left eye since childhood. The best corrected visual acuity in his right eye is 20/15, and in his left eye, 20/400. Following an examination in 2012, his ophthalmologist noted, ''no restriction or visual impairment that should limit ability to operate a commercial vehicle.'' Mr. DeKorte reported that he has driven straight trucks for 23 years, accumulating 460,000 miles, and tractor-trailer combinations for 23 years, accumulating 460,000 miles. He holds a Class A CDL from Michigan. His driving record for the last 3 years shows no crashes and one conviction for speeding in a CMV; he exceeded the speed limit by 5 mph.

Erric L. Gomersall

Mr. Gomersall, 45, has had macular scarring and histoplasmosis in his right eye since 2005. The best corrected visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2012, his ophthalmologist noted, ''In my medical opinion Erric Gomersall does have the visual ability to perform the driving tasks required to operate a commercial vehicle.'' Mr. Gomersall reported that he has driven tractor-trailer combinations for 6 years, accumulating 780,000 miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows one crash, which he was not cited for, and no convictions for moving violations in a CMV.

Larry E. Johnsonbaugh, Jr.

Mr. Johnsonbaugh, 42, has a prosthetic left eye due to a traumatic injury sustained in 1992. The visual acuity in his right eye is 20/20. Following an examination in 2012, his ophthalmologist noted, ''Mr. Johnsonbaugh is well adapted to his monocular status and, therefore, with a normal right eye with a full visual field he should not have any limitations in operating a commercial vehicle.'' Mr. Johnsonbaugh reported that he has driven straight trucks for 20 years, accumulating 364,000 miles. He holds a Class C operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Albert Lewis

Mr. Lewis, 65, has a prosthetic left eye due to a retinal detachment since 1980. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2011, his optometrist noted, ''In my professional opinion, Albert Lewis has stable vision and should continue to be able to perform the driving tasks required to operate a commercial vehicle.'' Mr. Lewis reported that he has driven straight trucks for 9 years, accumulating 270,000 miles, and tractor-trailer combinations for 16 years, accumulating 1.3 million miles. He holds a Class A CDL from Alabama. His driving record for the last 3 years shows no crashes and one conviction for speeding in a CMV; he exceeded the speed limit by 21 mph.

John B. Middleton

Mr. Middleton, 70, has had retinal telangiectasis in his left eye since the 1980s. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/80. Following an examination in 2012, his optometrist noted, ''He has sufficient vision to perform tasks required to operate a commercial vehicle.'' Mr. Middleton reported that he has driven straight trucks for 3 years, accumulating 36,000 miles, and tractor-trailer combinations for 52 years, accumulating 5.2 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ronald W. Patten

Mr. Patten, 59, has had retinal scarring in his left eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/20, and in his left eye, hand motion vision. Following an examination in 2012, his optometrist noted, ''In my medical opinion, Ronald Patten has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Patten reported that he has driven straight trucks for 9 years, accumulating 315,000 miles, and tractor-trailer combinations for 32 years, accumulating 3.4 million miles. He holds a Class A CDL from Maine. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kirk W. Scott

Mr. Scott, 42, has had glaucoma in his right eye due to a traumatic injury sustained in 1981. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''In my medical opinion the applicant has sufficient vision to perform the driving tasks require to operate a commercial vehicle.'' Mr. Scott reported that he has driven straight trucks for 5 years, accumulating 48,000 miles, and tractor-trailer combinations for 5 years, accumulating 288,000 miles. He holds a Class A CDL from Connecticut. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael F. Sprouse

Mr. Sprouse, 52, has had loss of vision in his right eye due to a traumatic injury sustained in 1992. The best corrected visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''Mr. Sprouse has sufficient enough vision to perform the tasks necessary to drive a commercial vehicle.'' Mr. Sprouse reported that he has driven tractor-trailer combinations for 20 years, accumulating 1.3 million miles. He holds a Class A CDL from South Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John C. Steedley

Mr. Steedley, 48, has had refractive amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''In my medical opinion, Mr. Steedley has sufficient vision to perform the driving task required to operate a commercial vehicle.'' Mr. Steedley reported that he has driven tractor-trailer combinations for 26 years, accumulating 1 million miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

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. The Agency will consider all comments received before the close of business September 5, 2012. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: July 27, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–19123 Filed 8–3–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0159]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 10 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective August 6, 2012. The exemptions expire on August 6, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Background

On June 18, 2012, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (77 FR 36336). That notice listed 10 applicants' case histories. The 10 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 10 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 10 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including complete loss of vision, enucleation, amblyopia, prosthesis, and optic atrophy. In most cases, their eye conditions were not recently developed. Eight of the applicants were either born with their vision impairments or have had them since childhood. The individuals that sustained their vision conditions as adults have had it for a period of 12 to 40 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 10 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 4 to 41 years. In the past 3 years, one of the drivers was involved in a crash, and none of the drivers was convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the June 18, 2012, notice (77 FR 36336).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive

in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 10 applicants, one of the drivers was involved in a crash, and none was convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 10 applicants listed in the notice of June 18, 2012 (77 FR 36336).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 10 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following:

(1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the 10 exemption applications, FMCSA exempts Donald S. Dickerson (WV), Michael J. Ernst (NE), Derek L. Jones, Sr. (GA), Richard L. Miller (IN), James R. Morgan (MI), William C. Sanders (TN), Dan P. Till (TX), Richard D. Tucker II (NC), Jay A. Turner (OH), and Jack L. Woolever (MO) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: July 30, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–19124 Filed 8–3–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Notice of Fiscal Year 2013 Safety Grants and Solicitation for Applications

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

ACTION: Notice; change in application due dates.

SUMMARY: This notice informs the public of FMCSA's Fiscal Year (FY) 2013 safety grant opportunities and FMCSA's projected application due dates. FMCSA announces these grant opportunities based on authorities provided for in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, as amended by the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141, (2012). The Agency's safety grant programs in FY 2013 include the Motor Carrier Safety Assistance Program (MCSAP) Basic and Incentive grants; New Entrant Safety Audit grants; MCSAP High Priority grants; Commercial Motor Vehicle (CMV) Operator Safety Training grants; Border Enforcement grants (BEG); Commercial Driver's License Program Improvement (CDLPI) grants; Performance and Registration Information Systems Management (PRISM) grants; Safety Data Improvement Program (SaDIP) grants; and the Commercial Vehicle Information Systems and Networks (CVISN) grants. The Commercial Driver's License Information System (CDLIS) Modernization grants were not continued in the MAP–21 authorization and, therefore, FMCSA will not be soliciting applications for this grant program in FY 2013.

FOR FURTHER INFORMATION CONTACT: Please contact the following FMCSA staff with questions or needed information on the Agency's grant programs:

MCSAP Basic/Incentive Grants—Jack Kostelnik, *jack.kostelnik@dot.gov,* 202–366–5721.

New Entrant Safety Audits Grants—Jack Kostelnik, *jack.kostelnik@dot.gov,* 202–366–5721.

MCSAP High Priority Grants—*Cim Weiss, cim.weiss@dot.gov,* 202–366–0275.

CMV Operator Safety Training Grants—Crystal Polk, *crystal.polk@dot.gov,* 202–366–0734.

BEG—Jackie Cambridge, *jackie.cambridge@dot.gov,* 202–366–1351.

CDLPI Grants—James Ross, *james.ross@dot.gov,* 202–366–0133.

SaDIP Grants—Jackie Cambridge, *jackie.cambridge@dot.gov,* 202–366–1351.

PRISM Grants—Julie Otto, *julie.otto@dot.gov,* 202–366–0710.

CVISN Grants—Julie Otto, *julie.otto@dot.gov,* 202–366–0710.

All staff may be reached at FMCSA, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background and Purpose

For each grant program, FMCSA will post a notice of funding availability (NOFA) at *www.grants.gov.* The NOFA will provide specific information on the application process; national funding priorities for FY 2013; evaluation criteria; required documents and certifications; grantee matching share and maintenance of expenditure requirements; and additional information related to the availability of funds. General information is provided below for each individual grant program.

To ensure the timely review and award of all grants, applications must be submitted in accordance with the instructions provided in each NOFA and contain all required information and attachments. FMCSA strongly encourages applicants to dedicate the resources necessary to submit timely and complete applications. Applications will be returned if required documents are missing or incomplete or additional information is needed.

MCSAP Basic and Incentive Grants

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, §§ 4101(a), 4106, 119 Stat. 1144, 1714, 1717–19 (2005), as amended by Moving Ahead for Progress in the 21st Century Act, Public Law 112–141 §§ 32601, 32603(a), (2012) authorizes FMCSA's Motor Carrier Safety Grants. MCSAP Basic and Incentive formula grants are governed by 49 U.S.C. 31102–31104 and 49 CFR Part 350. Under the Basic and Incentive grant programs, a State lead MCSAP agency, as designated by its Governor, is eligible to apply for MCSAP Basic and Incentive grant funding by submitting a commercial vehicle safety plan (CVSP). See 49 CFR 350.201, 350.205, and 350.213. Pursuant to 49 U.S.C. 31103 and 49 CFR 350.303, FMCSA will reimburse each lead State MCSAP agency no more than 80 percent of eligible costs incurred in a fiscal year. Each State will provide a 20 percent match to qualify for the program. The FMCSA Administrator waives the requirement for matching funds for the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (49 CFR 350.305). In accordance with 49 CFR 350.323, the MCSAP Basic grant funds will be distributed proportionally to each State's lead MCSAP agency using the following four, equally weighted (25 percent) factors:

(1) 1997 road miles (all highways) as defined by the FMCSA;

(2) All vehicle miles traveled as defined by the FMCSA;

(3) Population—annual census estimates as issued by the U.S. Census Bureau; and

(4) Special fuel consumption (net after reciprocity adjustment) as defined by the FMCSA.

A State's lead MCSAP agency may qualify for MCSAP Incentive funds pursuant to 49 CFR 350.327(a) if the agency can demonstrate that the State's CMV safety program meets or exceeds any or all of the following five categories:

(1) Reduction in the number of large truck-involved fatal crashes;

(2) Reduction in the rate of large-truck-involved fatal crashes or maintenance of a large-truck-involved fatal crash rate that is among the lowest 10 percent of such rates for MCSAP recipients;

(3) Upload of CMV crash reports in accordance with current FMCSA policy guidelines;

(4) Verification of Commercial Driver's Licenses during all roadside inspections; and

(5) Upload of CMV inspection data in accordance with current FMCSA policy guidelines.

Incentive funds are distributed in accordance with 49 CFR 350.327(b).

The FMCSA calculates the amount of Basic and Incentive funding each State is to receive. This information is provided to the States and is made available on the Agency's Web site. The projected FY 2013 distribution is available at *http://www.fmcsa.dot.gov/safety-security/safety-initiatives/mcsap/mcsapforms.htm.* The amount indicated is based on FY 2012 estimated awards,

pending final authorization, and does not include incentive funding that may be available to States. The MCSAP Basic and Incentive formula grants are awarded based on the State's submission of the CVSP, which FMCSA must approve prior to distribution of funds. Therefore, the evaluation factors for discretionary grant programs described in the section below titled ''Application Information for FY 2013 Grants'' are not applicable. MCSAP Basic and Incentive grant applications must be submitted electronically through grants.gov (*http://www.grants.gov*).

New Entrant Safety Audit Grants

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, § 4107(b), 119 Stat. 1144, 1720 (2005), amended by SAFETEA–LU Technical Corrections Act of 2008, Public Law 110–244, § 301(b), 122 Stat. 1572, 1616 (2008), as amended by Moving Ahead for Progress in the 21st Century Act, Public Law 112–141, § 32603(e), (2012) authorizes grant funding to conduct interstate New Entrant safety audits consistent with 49 CFR Parts 350.321 and 385.301. Eligible recipients are State and local governments. The goal of the New Entrant Safety Assurance Program is to reduce CMV involved crashes, fatalities, and injuries through consistent, uniform, and effective safety programs. Grantees may use these funds for salaries and related expenses of New Entrant auditors, including training and equipment, and to perform other eligible activities that are directly related to conducting safety audits. The FMCSA's share of these grant funds will be 100 percent pursuant to 49 U.S.C. 31144. More information about the New Entrant Safety Assurance Program application and award process can be found at *http://www.fmcsa.dot.gov/about/grants/New-Entrant/app-process.aspx.* New Entrant grant applications must be submitted electronically through grants.gov (*http://www.grants.gov*).

MCSAP High Priority Grants

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, § 4107(a), 119 Stat. 1144, 1719–20 (2005), as amended by SAFETEA–LU Technical Corrections Act of 2008, Public Law 110–244, § 4101(a), § 4107, 122 Stat. 1572, 1616, as amended by Moving Ahead for Progress in the 21st Century Act, Public Law 112–141, §§ 32603(a), 32603(d), (2012) authorizes grant funding for activities and projects that improve CMV safety and compliance with CMV regulations. The goal of the MCSAP High Priority grant program is to increase public awareness and education, demonstrate new technologies and reduce the number and rate of CMV crashes. Funding is also available for projects that are national in scope. Eligible recipients are State agencies, local governments, and organizations representing government agencies that use and train qualified officers and employees in coordination with State motor vehicle safety agencies. Participation of local law enforcement agencies is encouraged. Interested local law enforcement agencies should carefully review the NOFA when it is available on www.grants.gov for special considerations and application review processes. For grants awarded for public education and outreach activities, the Federal share will be 100 percent. For all other High Priority grants, FMCSA will provide reimbursements for no more than 80 percent of all eligible costs, and recipients will be required to provide a 20 percent match. Examples of High Priority activities include innovative traffic enforcement projects, with particular emphasis on texting and hand-held cell phone prohibitions, work zone enforcement, rural road safety, and innovative traffic enforcement initiatives such as Ticketing Aggressive Cars and Trucks (TACT). TACT provides a research-based safety model that can be replicated by States when conducting a high-visibility traffic enforcement program to promote safe driving behaviors among car and truck drivers. The objective of this program is to reduce the number of commercial truck and bus-related crashes, fatalities and injuries resulting from improper operation of motor vehicles and aggressive driving behavior. More information regarding TACT can be found at *http://www.fmcsa.dot.gov/safety-security/tact/abouttact.htm.* More information about the High Priority application and award process can be found at *http://www.fmcsa.dot.gov/about/grants/MCSAP–High-Priority/index.aspx.* High Priority grant applications must be submitted through grants.gov (*http://www.grants.gov*).

CMV Operator Safety Training Grants

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, § 4134, 119 Stat. 1144, 1744–45 (2005), as amended by Moving Ahead for Progress in the 21st Century Act, Public Law 112–141, § 32603(g), (2012) authorizes grant funds to train current and future drivers in the safe operation of CMVs, as defined in 49 U.S.C. 31301(4). Eligible awardees include State governments, local governments and accredited post-secondary educational institutions (public or private) such as colleges, universities, vocational-technical schools and truck driver training schools. Funding priority for this discretionary grant program will be given to institutions serving economically distressed regions of the United States as demonstrated in the application. The Federal share of these funds will be 80 percent, and recipients will be required to provide a 20 percent match. More information about the CMV Operator Safety Training grant application and award process can be found at *http://www.fmcsa.dot.gov/about/grants/CMV/app-process.aspx.* CMV Operator Safety Training grant applications must be submitted electronically through grants.gov (*http://www.grants.gov*).

Border Enforcement Grants

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, §§ 4101(c)(2), 4110, 119 Stat. 1144, 1715, 1721–22 (2005), as amended by Moving Ahead for Progress in the 21st Century Act, Public Law 112–141, §§ 32603(c) and 32603(h), (2012) authorizes grant funds to conduct CMV safety programs and related enforcement activities and projects near international borders or relating to international commerce. Pursuant to 49 U.S.C. 31107, eligible awardees include State governments that share a land border with Canada or Mexico, and any local government, or entities (i.e., accredited post-secondary public or private educational institutions such as universities) in that State. FMCSA encourages local agencies to coordinate their application with the State lead CMV inspection agency to prevent redundancy. Applications must include a Border Enforcement Plan. As established by SAFETEA–LU, the Federal share of these funds will be 100 percent. More information about the BEG application and award process can be found at *http://www.fmcsa.dot.gov/about/grants/beg/app-process.aspx.* BEG grant applications must be submitted electronically through grants.gov (*http://www.grants.gov*).

CDLPI Grants

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, §§ 4101(c)(1), 4124, 119 Stat. 1144, 1715, 1736–37 (2005), as amended by Moving Ahead for Progress in the 21st Century Act, Public Law 112–141, §§ 32603(c), 32604, (2012) authorizes grant funds to improve States'

implementation of the Commercial Driver's License (CDL) program and ensure compliance with the requirements of 49 CFR Part 383 and 384. Eligible expenses include computer hardware and software, publications, testing, personnel, training, quality control, CDL program coordinators, and to implement or maintain an employer notification system for CDL suspension or revocation. Pursuant to 49 U.S.C. 31313, funds may not be used to rent, lease, or buy land or buildings. The agency designated by each State as having the primary driver licensing responsibility, including development, implementation, and maintenance of the CDL program, is eligible to apply for basic grant funding. State agencies, local governments, and other entities that can support a State's effort to improve its CDL program, or conduct projects on a national scale to improve the national CDL program, may also apply for projects under the High Priority and Emerging Issues component of this grant. Priority will be given to proposals that help States comply with the Federal Motor Carrier Safety Regulations (FMCSR), with specific emphasis on correcting previously-identified areas of non-compliance. The Federal share of funds for projects awarded under this grant is established by SAFETEA–LU as 100 percent. Information for the CLDPI application and award process also can be found at *http://www.fmcsa.dot.gov/about/grants/CDLPI/app-process.aspx.* CLDPI grant applications must be submitted electronically through grants.gov (*http://www.grants.gov*).

SaDIP Grants

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, §§ 4101(c)(5), 4128, 119 Stat. 1144, 1715, 1742 (2005), as amended by Moving Ahead for Progress in the 21st Century Act, Public Law 112–141, § 32603(c), (2012) authorizes grant funds for the Safety Data Improvement Program to support improving the overall quality of CMV data reported by a State. Specifically, the goal of this program is to improve the timeliness, efficiency, accuracy and completeness of State processes and systems used to collect, analyze and report large truck and bus crash and inspection data, as described 49 USC 31102. Eligible recipients are State agencies, including the Territories of Puerto Rico, Guam, American Samoa, the Northern Marianas, and the U.S. Virgin Islands, and the District of Columbia. SaDIP applications must address the FMCSA State Safety Data Quality (SSDQ) map, which provides a color-coded, pictorial representation of the State's overall performance using the SSDQ methodology. This methodology was developed by FMCSA to evaluate the completeness, timeliness, accuracy, and consistency of the State-reported CMV crash and inspection records in the Motor Carrier Management Information System (MCMIS). The SSDQ methodology is comprised of nine measures and one Overriding Indicator. Ratings are updated quarterly, and individual State performance is portrayed through the color-coded rating system: Green (good performance), Yellow (fair performance), and Red (poor performance). The color-coded rating system depicts each State's Overall Rating which considers all nine SSDQ measures, except those measures with a rating of ''Insufficient Data,'' plus the Overriding Indicator. Priority will be given to proposals received from States rated Yellow and Red on the SSDQ Map. The applicant must certify that it has (1) conducted a comprehensive audit of its commercial motor vehicle safety data system within the preceding two years; (2) developed a plan that identifies and prioritizes its commercial motor vehicle safety data needs and goals; and (3) identified performance-based measures to determine progress toward those goals. The FMCSA will provide reimbursements for no more than 80 percent of all eligible costs; recipients are required to provide a 20 percent match. More information about the SaDIP application and award process can be found at *http://www.fmcsa.dot.gov/about/grants/SaDIP/app-process.aspx.* SaDIP grant applications must be submitted electronically through grants.gov (*http://www.grants.gov*).

PRISM Grants

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, §§ 4101(c)(3), 4109, 119 Stat. 1144, 1715, 1720–21 (2005), as amended by Moving Ahead for Progress in the 21st Century Act, Public Law 112–141, §§ 32602, 32603(c), (2012) authorizes FMCSA to award grants funds to States to implement the PRISM requirements that link Federal motor carrier safety information systems with State CMV registration and licensing systems. This program enables a State to determine the safety fitness of a motor carrier, a registrant, or both, when licensing or registering CMV and while the license or registration is in effect. The PRISM program directly benefits highway safety helping to remove unsafe motor carriers from the nation's highways through the potential and actual imposition of vehicle registration sanctions on motor carriers issued a Federal Out of Service order. No matching funds are required. More information about the PRISM program process can be found at *http://www.fmcsa.dot.gov/safety-security/prism/prism-process.aspx.* PRISM grant applications must be submitted electronically through grants.gov (*http://www.grants.gov*).

CVISN Grants

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, §§ 4101(c)(4), 4126, 119 Stat. 1144, 1715, 1738–41 (2005), as amended by Moving Ahead for Progress in the 21st Century Act, Public Law No.112–141, §§ 32603(c), 32605, (2012) authorizes FMCSA to award grant funds to States to deploy, operate, and maintain elements of their CVISN Program, including commercial vehicle, commercial driver, and carrier-specific information systems and networks. The agency in each State designated as responsible for the development, implementation, and maintenance of a CVISN-related system is eligible to apply for grant funding. Section 4126 of SAFETEA-LU establishes two types of CVISN projects: Core and Expanded. Core CVISN deployment project(s) eligibility includes the projects necessary to support the State's most current Core CVISN Program Plan and Top-Level Design (PP/TLD) approved by FMCSA. If a State does not have a Core CVISN PP/TLD, it may apply for up to $100,000 in funds to either create or update one. A State may also apply for funds to prepare an Expanded CVISN PP/TLD if FMCSA acknowledged the State as having completed Core CVISN deployment. Eligibility includes the projects necessary to support a State's Expanded CVISN deployment PP/TLD approved by FMCSA. If a State does not have an existing or up-to-date Expanded CVISN PP/TLD, it may apply for up to $100,000 in funds to either compile or update an Expanded CVISN Program Plan and Top-Level Design.

FY 2013 CVISN grant emphasis areas include to increase the deployment of the Commercial Vehicle Information Exchange Window (CVIEW); improve the quality of data uploads; and improve the use of safety and productivity performance metrics. A State may receive no more than an aggregate total of $2.5M in CVISN Core funding. A State may receive no more than $1M in CVISN Expanded funding in any fiscal year. Awards for approved CVISN grant applications are made to all Core CVISN

applicants first and then to Expanded CVISN applicants. States must provide a match of 50 percent. CVISN grant applications must be submitted electronically through grants.gov (*http://www.grants.gov*).

Application Information for FY 2013 Grants: General information about the FMCSA grant programs is available in the Catalog of Federal Domestic Assistance (CFDA) which can be found on the internet at *http://www.cfda.gov.* To apply for funding, applicants must register with grants.gov at *http://www.grants.gov/applicants/get_registered.jsp* and submit an application in accordance with instructions provided. Because the registration and certification process for grants.gov requires several steps, first-time applicants are strongly encouraged to begin the process well in advance of the application deadline.

Evaluation Factors: The below evaluation factors will be used in reviewing the applications for all FMCSA discretionary grants. Additional factors may be included in each NOFA. These factors are:

(1) Prior performance (completion of identified programs and goals per the project plan submitted under previous grants awarded to the applicant);

(2) Effective Use of Prior Grants (timely use of available funds in previous awards);

(3) Safety and Cost Effectiveness (expected impact on safety relative to the investment of grant funds; where appropriate, cost per unit was calculated and compared with national averages to determine effectiveness; in other areas, proposed costs are compared with historical information to confirm reasonableness);

(4) Applicability to announced priorities (grant applications that specifically address these issues are given priority consideration);

(5) Ability of the applicant to support the strategies and activities in the proposal for the entire project period of performance;

(6) Use of innovative approaches in executing a project plan to address identified safety issues;

(7) Feasibility of overall program coordination and implementation based upon the project plan; and

(8) Other objective and performance-based criteria that FMCSA deems appropriate, such as consistency with national priorities, overall program balance, and geographic diversity.

Estimated Application Due Dates: For the following grant programs, FMCSA will consider funding complete applications or plans submitted by the following anticipated dates (final due dates will be indicated in the grants.gov funding opportunity notice):

MCSAP Basic and Incentive Grants—August 1, 2012.
Border Enforcement Grants—August 20, 2012.
New Entrant Safety Audit Grants—September 5, 2012.
MCSAP High Priority Grants—September 17, 2012.
CDLPI Grants—November 5, 2012.
SaDIP Grants—November 13, 2012.
CVISN Grants—November 19, 2012.
PRISM Grants—December 3, 2012.
CMV Operator Safety Training Grants—December 10, 2012.

Applications submitted after due dates may be considered on a case-by-case basis and are subject to availability of funds.

Issued on: July 27, 2012.

William A. Quade,

Associate Administrator for Enforcement and Program Delivery.

[FR Doc. 2012–19109 Filed 8–3–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2012–0006–N–8]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than October 5, 2012.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Ms. Janet Wylie, Office Planning and Administration, RPD–3, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 20, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0584. Alternatively, comments may be transmitted via facsimile to (202) 493–6170, or via email to Ms. Wylie at *janet.wylie@dot.gov,* or to Ms. Toone at *kim.toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Wylie, Office of Planning and Administration, RPD–3, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 20 Washington, DC 20590 (telephone: (202) 493–6353) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that

soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Below is a brief summary of the information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Solicitation of Applications and Notice of Funds Availability for High-Speed Rail Corridors and Intercity Passenger Rail Service-Capital Assistance and Planning Grants Program.

OMB Control Number: 2130–0584.

Status: Regular Review.

Type of Request: Revision of a currently approved collection.

Abstract: After 60 years and more than 1.8 trillion investment dollars, the United States has developed the world's most advanced highway and aviation systems. During this time, the nation has made a relatively modest investment in passenger rail systems. As congestion on highways and in the air continues to grow and environmental costs mount, there is a growing need for diverse transportation options.

In 2009, President Obama announced a new vision to address the nation's transportation challenges. He called for a collaborative effort among the Federal government, States, railroads, and other stakeholders to help transform America's transportation system. The President's vision seeks to create an efficient high-speed passenger rail system to connect inner-city communities across America.

Developing a comprehensive high-speed intercity passenger rail network requires a long-term commitment at both the Federal and State levels. The President has jump-started the process with $2 billion provided by the Department of Transportation (DOT) Appropriations Act of 2010 (FY10 Appropriations), $8 billion provided by the American Recovery and Reinvestment Act (ARRA), $90 million provided by the DOT Appropriations Act of 2009 (FY09 Appropriations), and approximately $1.8 million remaining funds from the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2008 (FY08 Appropriations). Additional or future funding for high-speed intercity passenger rail may come from a variety of sources, including annual appropriations, one-time appropriations, redistribution of previously allocated or obligated funds, or distribution of residual funding from previous sources.

The Federal Railroad Administration (FRA) allocates funds to applicants with plans or programs that align with the President's key strategic transportation goals: creating safe and efficient transportation choices, building a foundation for economic competitiveness, promoting energy efficiency and environmental quality, and supporting interconnected livable communities. Grants are being administered for the following types of projects:

- Service Development Programs—Aimed at new high-speed rail corridor services or substantial upgrades to existing corridor services. Grants are intended to fund a set of inter-related projects that constitute a phase (or geographic section) of a long-range corridor plan.
- Individual Projects—Aimed at discrete capital projects that will result in service benefits or other tangible improvements on a corridor. These projects include completion of preliminary engineering (PE), National Environmental Policy Act (NEPA) documentation, final design (FD), and construction, which can include equipment procurements to provide improved service and modernized fleets throughout the country
- Planning Projects—Aimed at helping to establish a pipeline of future construction projects and corridor development programs by completing Service Development Plans and service-level environmental analysis for corridors that are at an earlier stage of the development process, as well as State Rail Plans.

As the President outlined in his March 20, 2009 memorandum, ''Ensuring Responsible Spending of Recovery Act Funds,'' implementing agencies are to ''develop transparent, merit-based selection criteria that will guide their available discretion in committing, obligating, or expending funds under the Recovery Act.'' In order to achieve this goal, FRA created an application process that contains clear selection criteria and evaluation procedures.

The Application Process

In essence, the application process is grounded on three key principles: (1) promoting collaboration and shared responsibility among the Federal Government and States, groups of States within corridor regions, and governments, railroads and other private entities; (2) managing, rather than eliminating, risk through program management structure, controls and procedures that permit prudent but effective investments; and (3) ensuring early success while building a sustainable program to meet near-term economic recovery goals while developing public consensus for a long-term program. FRA has issued interim program guidance as well as detailed instructions to clearly explain the application process.

The applications include the standard items, such as the SF 424, all ARRA-relevant forms, and other necessary and relevant technical documents that are project-specific and voluntary.

In order to determine eligibility for funds, FRA must solicit applications and collect information from parties interested in obtaining and utilizing these funds for eligible projects.

Following allocation of funds to applicants, FRA must collect information from recipients in the form of various required reports in order to effectively monitor and track the progress of all funded projects. This process consists of:

- Tracking project activities and progress against the approved milestones in the Statement of Work through quarterly submission of the FRA Quarterly Progress Report.
- Comparing the rate of a project's actual expenditures to the planned amounts in the approved project budget through the quarterly submission of the Federal Financial Report (SF–425).
- Tracking cumulative funds and job creation through the quarterly submission of the ARRA 1512(c) Report for ARRA recipients.
- Capturing the cumulative activities and achievements of the project, with respect to objectives and milestones, through the one-time submission of the Final Performance Report.

This collection of information is necessary in order to comply with the funding agreements outlined in the Notice of Grant Agreement and, for ARRA recipients, satisfy legal obligations identified in Section 1501(c).

Form Number(s): FRA F 6180.132, FRA F 6180.133, FRA F 6180.134, FRA F 6180.135, FRA F 6180.138, FRA F 6180.139, SF–425.

Affected Public: States and local governments, government sponsored authorities and corporations, railroads.

REPORTING BURDEN

Burden time per response	Total No. of response	Total burden hours
32 hours—Service Development Programs	80—Applications	2,560
32 hours—PE/NEPA Projects	122—Applications	3,904
32 hours—FD/Construction Projects	211—Applications	6,752
32 hours—Planning Projects	70—Applications	2,240
32 hours—Multi-State Planning Projects	4—Applications	128
2—Financial Report (SF–425)	150—Grants	1,200
1—Quarterly Progress Report	150—Grants	600
20—Final Performance Report	150—Grants	3,000

Total Estimated Responses: 937.

Total Estimated Annual Burden: 20,384 hours.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on August 1, 2012.

Michael Logue,

Associate Administrator for Administration, Federal Railroad Administration.

[FR Doc. 2012–19177 Filed 8–3–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0100]

National Emergency Medical Services Advisory Council (NEMSAC); Notice of Federal Advisory Committee Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Meeting Notice—National Emergency Medical Services Advisory Council.

SUMMARY: The NHTSA announces a meeting of NEMSAC to be held in the Metropolitan Washington, DC, area. This notice announces the date, time, and location of the meeting, which will be open to the public. The purpose of NEMSAC is to provide a nationally recognized council of emergency medical services representatives and consumers to provide advice and recommendations regarding Emergency Medical Services (EMS) to DOT's NHTSA and to the Federal Interagency Committee on EMS (FICEMS).

DATES: The meeting will be held on August 29, 2012, from 9 a.m. to 5:30 p.m. EDT, and on August 30, 2012, from 8 a.m. to 12 p.m. EDT. A public comment period will take place on August 29, 2012 between 4:30 p.m. and 5 p.m. EDT. Written comments must be received by August 24, 2012.

ADDRESSES: The meeting will be held in the Archivists Room of the National Archives Building at 700 Pennsylvania Ave. NW., Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Drew Dawson, Director, U.S. Department of Transportation, Office of Emergency Medical Services, 1200 New Jersey Avenue SE., NTI–140, Washington, DC 20590, telephone number 202–366–9966; email *Drew.Dawson@dot.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.). The NEMSAC will meet on Wednesday and Thursday, August 29–30, 2012, in the Archivists Room of the National Archives Building at 700 Pennsylvania Avenue NW., Washington, DC 20408.

Tentative Agenda of National EMS Advisory Council Meeting, August 29–30, 2012

The tentative agenda includes the following:

Wednesday, August 29, 2012 (9 a.m. to 5:30 p.m. EDT)

(1) Opening Remarks.

(2) Briefing on Ethics and the Federal Advisory Committee Act.

(3) Discussion on the Purpose, Function, Bylaws and Code of Conduct of NEMSAC.

(4) Overview of NHTSA, the Office of EMS, FICEMS and Federal EMS Programming.

(5) Update on Programs from the NHTSA Office of EMS and FICEMS Agencies.

(6) Review of Previous NEMSAC Recommendations.

(7) Public Comment Period (4:30 p.m. to 5 p.m. EDT).

(8) Business of the Council.

Thursday, August 30, 2012 (8 a.m. to 12 p.m. EDT)

(1) Discussion of New and Emerging Issues.

(2) Discussion of NEMSAC Committee Structure.

(3) Unfinished Business/Continued Discussion from Previous Day.

(4) Next Steps and Adjourn.

Required Registration Information: This meeting will be open to the public; however, pre-registration is required to comply with security procedures. Picture I.D. must be provided to enter the National Archives Building and it is suggested that visitors arrive 20–30 minutes early in order to facilitate entry. Please be aware that visitors to the National Archives are subject to search when entering and exiting the building and must pass through a magnetometer. Weapons of any kind are strictly forbidden in the building unless authorized through the performance of the official duties of your employment (i.e. law enforcement officer).

There will not be a teleconference option for this meeting. Individuals wishing to attend must register online at *www.regonline.com/NEMSAC_August2012* no later than August 24, 2012. Attendees should enter the Archives Building at the Research Entrance on Pennsylvania Avenue.

Public Comment: Members of the public who wish to make comments on Wednesday, August 29, 2012, between 4:30 p.m. and 5 p.m. EDT are requested to register in advance. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to 5 minutes. Written comments from members of the public will be distributed to NEMSAC members at the meeting and should reach the NHTSA Office of EMS by August 24, 2012. Written comments may be submitted by either one of the following methods: (1) You may submit comments by email: *nemsac@dot.gov* or (2) you may submit comments by fax: (202) 366–7149.

A final agenda as well as meeting materials will be available to the public

online through *www.ems.gov* prior to August 29, 2012.

Issued on: August 1, 2012.

Jeffrey P. Michael,

Associate Administrator for Research and Program Development.

[FR Doc. 2012–19110 Filed 8–3–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0095, Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 2005 Chevrolet Suburban Multi-Purpose Passenger Vehicles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2005 Chevrolet Suburban multi-purpose passenger vehicles (MPV) that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2005 Chevrolet Suburban MPV) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 5, 2012.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *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. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. 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.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Skytop Rover, Co., of Philadelphia, Pennsylvania (Skytop) (Registered Importer 06–343,) has petitioned NHTSA to decide whether nonconforming 2005 Chevrolet Suburban MPVs are eligible for importation into the United States. The vehicles which Skytop believes are substantially similar are 2005 Chevrolet Suburban MPVs that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 2005 Chevrolet Suburban MPVs to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

Skytop submitted information with its petition intended to demonstrate that non-U.S. certified 2005 Chevrolet Suburban MPVs, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that non-U.S. certified 2005 Chevrolet Suburban MPVs are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 101 *Controls Telltales, and Indicators,* 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 108 *Lamps, Reflective Devices and Associated Equipment,* 111 *Rearview Mirrors,* 113 *Hood Latch System,* 114 *Theft Protection,* 116 *Motor Vehicle Brake Fluids,* Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems,* 119 *New Pneumatic Tires for Vehicles other than passenger Cars,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver from the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and*

Door Retention Components, 207 *Seating Systems,* 208 *Occupant Crash Protection,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire and rim information placard.

The petitioner states that each vehicle will be inspected prior to importation for compliance with the Theft Prevention Standard in 49 CFR part 541 and that anti-theft devices will be installed on all vehicles not already so equipped.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565 and that a certification label must be affixed to the driver's door jamb to meet the requirements of 49 CFR part 567.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 30, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–19122 Filed 8–3–12; 8:45 am]

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FEDERAL REGISTER

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Part II

Small Business Administration

13 CFR Chapter I

Small Business Innovation Research Program Policy Directive; Small Business Technology Transfer Program Policy Directive; Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program Policy Directives; Final Rules and Notice

SMALL BUSINESS ADMINISTRATION

13 CFR Chapter I

RIN 3245–AF84

Small Business Innovation Research Program Policy Directive

AGENCY: Small Business Administration.

ACTION: Final policy directive with request for comments.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its Small Business Innovation Research (SBIR) Policy Directive. The purpose of these amendments is to implement those provisions of the National Defense Authorization Act for Fiscal Year 2012 affecting the program.

DATES: You must submit your comments on or before October 5, 2012.

ADDRESSES: You may submit comments, identified by RIN: 3245–AF84, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail, Hand Delivery/Courier:* Edsel Brown, Assistant Director, Office of Technology, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

SBA will post all comments to this policy directive on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to Edsel Brown, or send an email to *SBIRComments@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Edsel Brown, Assistant Director, Office of Technology, at (202) 401–6365.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Small Business Act (Act) requires that the U.S. Small Business Administration (SBA) issue a policy directive setting forth guidance to the Federal agencies participating in the SBIR program. The SBIR Policy Directive outlines how agencies must generally conduct their SBIR programs. Each agency, however, can tailor their SBIR Program to meet the needs of the individual agency, as long as the general principles of the program set forth in the Act and directive are followed.

With this notice, SBA is issuing an amended policy directive, which implements the recent changes made to the SBIR Program as part of the SBIR/STTR Reauthorization Act of 2011 (Reauthorization Act). In fact, the Reauthorization Act requires that SBA issue amendments to the SBIR Policy Directive and publish the amendments in the **Federal Register** by the end of June 2012.

Although the SBIR Policy Directive is intended for use by the SBIR participating agencies, SBA believes that public input on the directive from all parties involved in the program would be invaluable. Therefore, SBA is soliciting public comments on this final directive, and may amend the directive in response to these comments at a later time. The Reauthorization Act made several key changes to the SBIR Program relating to eligibility, the SBIR award process, SBIR Program administration, and fraud, waste and abuse and SBA has addressed these issues in the directive. Although SBA has explained in detail the changes in the preamble, SBA believed it would be beneficial to all if it set forth an abbreviated outline of some of the key provisions and amendments to the Policy Directive in an Executive Summary.

A. Eligibility

With respect to eligibility for an SBIR award, the directive:

- Addresses the new requirements permitting small business concerns that are majority-owned by multiple venture capital operating companies (VCOCs), hedge funds or private equity firms to participate in the program;
- Permits an STTR Phase I awardee to receive an SBIR Phase II award;
- Permits certain agencies to issue an SBIR Phase II award to a small business that did not receive an SBIR Phase I award; and
- States that a small business may receive two, sequential Phase II awards.

For example, SBA amended the directive to address the two new statutory exceptions to the general rule that only SBIR Phase I awardees may receive an SBIR Phase II award. According to the Reauthorization Act, a Federal agency may now issue an SBIR Phase II award to an STTR Phase I awardee in order to further develop the work performed under the STTR Phase I award. In addition, the Reauthorization Act states that, for fiscal years 2012–2017, the National Institutes of Health (NIH), Department of Defense (DoD) and the Department of Education (Education) may issue a Phase II award to a small business that did not receive an SBIR Phase I award.

B. SBIR Award Process

With respect to the SBIR award process, the Policy Directive incorporates the new statutory requirements, including the following:

- Increasing the minimum percentage of an agency's extramural R/R&D budget that must be awarded to small businesses under the program;
- Establishing agency measures to evaluate an SBIR Phase I applicant's success with prior Phase I and Phase II awards;
- Ensuring agencies make award decisions within the statutorily required time frames; and
- Increasing the dollar thresholds for Phase I and Phase II awards.

For example, SBA has amended the Policy Directive to clarify that the SBIR Program is extended until September 30, 2017 and to address the increase in the minimum percentages of an agency's extramural budget for R/R&D that must be awarded to SBCs under the SBIR program. As required by statute, the minimum percentages increase by 0.1% each fiscal year through fiscal year 2016 and then by 0.2% in fiscal year 2017.

Further, SBA amended the directive to set forth the criteria by which agencies must establish standards, or benchmarks, to measure the success of certain Phase I awardees in receiving Phase II awards and to measure the success of certain Phase I awardees in receiving Phase III awards. The purpose of these standards, or benchmarks, is to ensure that repeat Phase I awardees are attempting to and have some success in receiving Phase II awards and commercializing their research. As a result, these benchmarks will only apply to those Phase I applicants that have received a certain number of prior Phase I awards.

In addition, the Reauthorization Act requires agencies to make SBIR award decisions within a certain amount of time after the close of the solicitation. The purpose of this statutory amendment is to reduce the gap in time between submission of application and time of award, which is an important issue for many small businesses.

Further, the SBIR Policy Directive sets forth the new maximum thresholds for Phase I and Phase II awards at $150,000 and $1,000,000, respectively. SBA will adjust these amounts every year for inflation and will post the adjusted numbers on *www.SBIR.gov.*

C. SBIR Program Administration

With respect to each agency's administration of the SBIR Program, the Policy Directive incorporates the following new requirements:

• Addressing statutory changes for technical assistance provided to SBIR awardees;

• Creating and setting forth the policies for the new pilot program that permits agencies to use SBIR money for administration of the SBIR program; and

• Setting forth the new reporting and data collection requirements.

The Act had previously permitted agencies to contract with vendors to provide technical assistance to SBIR awardees (*e.g.* assist SBIR awardees in making better technical decisions on SBIR projects and commercializing the SBIR product or process). The Reauthorization Act amended this current requirement, and SBA has amended the directive, to permit agencies to contract with a vendor for a period of up to 5 years, permit an agency to provide technical assistance to an SBIR awardee in an amount up to $5,000 per year (previously the limit had been $4,000 per award), and permit the small business to elect to acquire the technical assistance services itself.

In addition, the Reauthorization Act creates a pilot program that permits agencies to use SBIR funds for certain administrative purposes. Prior to this amendment, agencies were not permitted to use SBIR funds for any purpose other than awards and technical assistance to small businesses. Therefore, SBA has amended the SBIR Policy Directive to set forth when and how agencies may begin using this pilot program authority and to explain that agencies may use no more than 3% of their SBIR funds for one or more of the specified activities.

SBA has also amended the Policy Directive to address the reporting requirements for both the SBIR participating agencies and SBIR applicants, many of which are newly required by various parts of the Reauthorization Act. Both applicants and agencies will be able to provide the statutorily required information into one or more of seven specific databases, collectively referred to as Tech-Net, which will be available at *www.SBIR.gov.* The seven databases are the: (1) Solicitations; (2) Company Registry; (3) Application Information; (4) Award Information; (5) Commercialization; (6) Annual Report; and (7) Other Reports Databases.

The directive explains that the Solicitations Database will collect all solicitations and topic information from the participating SBIR agencies. The Company Registry will house company information on all SBIR applicants and information on SBC applicants that are majority-owned by multiple VCOCs, hedge funds or private equity firms. The Application Information Database will contain information concerning each SBIR application, which will be uploaded by an SBIR agency. The Award Information Database will store information about each SBIR awardee and must also be uploaded by the SBIR agency. The Commercialization Database will store commercialization information for SBCs that have received SBIR awards. The Annual Report Database will include all of the information required by the Small Business Act, including the new requirements set forth in the Reauthorization Act regarding the Annual Report that SBA submits to Congress. SBA receives the information for the annual report from the various SBIR agencies and departments. The Other Reports Database will include information that is required by statute to be submitted, but does not fit into any of the other databases.

D. Fraud, Waste and Abuse

Finally, this Policy Directive incorporates several amendments relating to fraud, waste and abuse, such as:

• Requiring small businesses to certify they are meeting the program's requirements during the life cycle of the funding agreement; and

• Establishing specific measures to ensure agencies are preventing fraud, waste and abuse in the program.

As in the past, each small business that receives SBIR funding must certify that it is in compliance with the laws relating to the program. However, SBA has amended the directive to state that these SBIR awardees must also submit certifications that they meet the program's requirement at certain points during the life cycle of the award and provides agencies with the discretion to request additional certifications throughout the life cycle of the award.

In addition to lifecycle certifications, the Policy Directive includes other measures to prevent fraud, waste and abuse in the SBIR Program. For example, agencies must include on their Web site and in each solicitation any telephone hotline number or Web-based method for how to report fraud, waste and abuse; designate at least one individual to serve as the liaison for the SBIR Program, Office of Inspector General (OIG) and the agency's Suspension and Debarment Official (SDO); include on the agency's Web site successful prosecutions of fraud, waste and abuse in the SBIR Program; and create or ensure there is a system to enforce accountability (*e.g.,* creating templates for referrals to the OIG or SDO), among other things.

Additional detail about all of these amendments to the directive is set forth below.

II. Background

In 1982, Congress enacted the Small Business Innovation Development Act of 1982 (SBIDA), Public Law 97–219 (codified at 15 U.S.C. 638), which established the Small Business Innovation Research Program (SBIR Program). The statutory purpose of the SBIR Program is to stimulate technological innovation by strengthening the role of innovative small business concerns (SBCs) in Federally-funded research and research and development (R/R&D).

SBIDA requires the U.S. Small Business Administration (SBA) to ''issue policy directives for the general conduct of the SBIR programs within the Federal Government.'' 15 U.S.C. 638(j)(1). The purpose of the Policy Directive is to provide guidance to the Federal agencies participating in the program.

On December 31, 2011, the President signed into law the National Defense Authorization Act for Fiscal Year 2012 (Defense Reauthorization Act), Public Law 112–81, 125–Stat. 1298, Section 5001, Division E of the Defense Authorization Act contains the SBIR/STTR Reauthorization Act of 2011 (Reauthorization Act), which amends the Small Business Act and makes several amendments to the SBIR Program. The Reauthorization Act requires that SBA issue amendments to the SBIR Policy Directive and publish the amendments in the **Federal Register** by June 27, 2012.

As a result of the abbreviated time frame set forth in the Reauthorization Act by which SBA is required to issue the amended Policy Directive, the Agency was unable to conduct public outreach prior to drafting and issuing the directive. Therefore, SBA is soliciting public comments on this final directive, and may amend the directive in response to these comments at a later time at *www.SBIR.gov.* SBA also plans to conduct public outreach sessions following publication, such as town hall meetings and webinars, to gather additional input on these statutory provisions and SBA's implementation. SBA will release more information about these public sessions later. The SBA notes that it consulted with the SBIR participating agencies when drafting these amendments.

III. Amendments

SBA has amended the SBIR Policy Directive to address the various sections of the Reauthorization Act. SBA's amendments are set forth in an analysis below, based on the specific section of the directive. SBA welcomes comments on all issues arising from this notice.

SBA notes that it intends to update its Policy Directive on a regular basis and over the next year it plans to restructure and reorganize the directive as well as address certain policy issues (*e.g.,* those concerning data rights). However, at this time it is amending the directive primarily to implement the new provisions contained in the Reauthorization Act.

A. Section 1—Purpose

Section 5144 of the Reauthorization Act requires SBA to issue regulations or guidelines to simplify the application and award process. The Reauthorization Act requires SBA to issue such guidelines or regulations after an opportunity for notice and public comment. The regulations or guidelines must take into consideration the unique needs of each Federal agency, yet ensure that program proposal, selection, contracting, compliance, and audit procedures are simplified and standardized across participating agencies. This includes reducing the paperwork and regulatory compliance burden on small business concerns applying to and participating in the SBIR Program.

SBA has amended the directive to fulfill this statutory requirement to simplify and standardize the proposal, selection, contracting, compliance, and audit procedures for the SBIR program to the extent practicable while allowing the SBIR agencies flexibility in the operation of their individual SBIR Programs. Wherever possible, SBA has attempted to reduce the paperwork and regulatory compliance burden on SBCs applying to and participating in the SBIR Program while still meeting the statutory reporting and data collection requirements. For example, as discussed later in this notice, SBA has created a program data management system for collecting and storing application information that will be utilized by all SBIR agencies.

SBA requests comments on other ways it can simplify and standardize these requirements. Specifically, SBA requests comments on ways to simplify and improve the application process, including streamlining that process.

B. Section 2—Summary of Statutory Provisions

SBA has implemented section 5101 of the Reauthorization Act and amended section 2 to clarify that the SBIR Program is extended until September 30, 2017, unless otherwise provided in law. In addition, SBA has implemented section 5102 of the Reauthorization Act and amended section 2 of the directive to address the increase in the minimum percentages of an agency's extramural budget for R/R&D that must be awarded to SBCs under the SBIR program. As required by statute, the minimum percentages increase by 0.1% each fiscal year through fiscal year 2016 and then the minimum percentage will be 3.2% for fiscal year 2017 and for every fiscal year after that. The directive clarifies that agencies may exceed these minimum percentages and make additional awards to SBCs under this program.

C. Section 3—Definitions

SBA has amended the definition of ''commercialization'' as required by section 5125 of the Reauthorization Act. SBA has also added a definition for the term ''covered small business concern,'' which is defined in section 5107 of the Reauthorization Act, and the term ''Federal laboratory,'' which is defined in section 5109 of the Reauthorization Act.

Further, SBA has amended the definition for the term ''small business concern'' by simply referencing its size regulations at 13 CFR 121.701–705. Those size regulations define the ownership and size requirements for the SBIR and STTR Programs. SBA has recently issued a rule proposing to amend those regulations and the definition of ''small business concern'' for purposes of the SBIR and STTR Programs as a result of certain provisions of the Reauthorization Act (*see* 77 FR 30227 (May 22, 2012)). SBA believes the proposed rule will not become final until late 2012. In order to ensure that any changes made to the definition of ''small business concern,'' which become effective in the regulation in late 2012, are incorporated into the Policy Directive, it is best to simply reference the regulation in the Policy Directive at this time. When SBA issues the final regulations defining ''small business concern,'' SBA intends to amend the Policy Directive to explicitly incorporate the new definition rather than only reference the regulation.

D. Section 4—Competitively Phased Structure of the Program

SBA amended the introductory paragraph to this section of the Policy Directive to explain that agencies must issue SBIR awards pursuant to competitive and merit-based selection procedures. This amendment implements section 5162 of the Reauthorization Act.

SBA also amended this paragraph to explain that agencies may not use investment of venture capital, hedge funds or private equity firms as a criterion for a Phase I, Phase II, or Phase III award. This amendment is required by section 5107(a) of the Reauthorization Act.

1. Section 4(a)—Phase I Awards

SBA has amended this section of the directive, which addresses Phase I awards, to incorporate the provisions of section 5165 of the Reauthorization Act concerning agency measures of progress towards commercialization. Specifically, section 5165 requires that agencies establish standards, or benchmarks, to measure the success of Phase I awardees in receiving Phase II awards. These are referred to as the ''Phase I-Phase II'' Transition Rate benchmarks in the Policy Directive. Section 5165 also requires agencies to establish benchmarks to measure the success of Phase I awardees in receiving Phase III awards. These are referred to as the ''Commercialization Rate'' benchmarks in the Policy Directive.

SBIR agencies must establish the Phase I-Phase II benchmark rate and have received SBA approval for the rate by October 1, 2012. Agencies must establish the Commercialization Rate and have received SBA approval for the rate by October 1, 2013. Any subsequent changes in the benchmarks must be approved by SBA.

Once established, agencies will only apply these benchmarks to those Phase I applicants that have received more than 20 Phase I awards or more than 15 Phase II awards over the prior 5 fiscal years (excluding the most recently completed two fiscal years). However, at the agency's option, it may apply the benchmark to a Phase I applicant that has received more than 20 Phase I awards over the prior 10 or 15 fiscal years (excluding the most recently completed fiscal year) or has received more than 15 Phase II awards over the prior 10 or 15 fiscal years (excluding the most recently completed two fiscal years).

With the Phase I-Phase II Transition Rate, each agency must establish the minimum number of Phase II awards a

small business must have received for a given number of Phase I awards over the preceding 5, 10, or 15 fiscal years (excluding the most recently completed fiscal year). For example, an agency may state that its Phase I-Phase II Transition Rate requires an SBIR Phase I applicant to have received at least one Phase II award for every five Phase I awards received in the prior 10 fiscal years. Another agency could state that its Phase I-Phase II Transition Rate requires an SBIR Phase I applicant to have received at least one Phase II award for every ten Phase I awards received in the prior 5 fiscal years. Agencies will set the benchmark as appropriate for the specific agency's SBIR Program, taking into consideration the fact that Phase I is intended to explore high-risk, early-stage research and therefore many Phase I awards will not result in a Phase II award.

With the Commercialization Rate, each agency must establish the level of Phase III commercialization results a small business must have received from work performed under prior Phase II awards over the preceding 5, 10, or 15 fiscal years (excluding the most recently completed two fiscal years). Agencies have discretion to define this benchmark in a number of ways, including: In financial terms (e.g., dollar value of revenues and additional investment per dollar value of Phase II awards); in terms of the share of Phase II awards that have resulted in the introduction of a product to the market relative to the number of Phase II awards received; or by other means (*e.g.,* a commercialization score or index). SBA is aware that some agencies currently have a commercialization benchmark they are using. The directive provides the agencies with the discretion to continue to use those benchmarks or establish new Commercialization Rates relevant to that agency.

We note that the Reauthorization Act refers to ''the success of small business concerns with respect to the receipt of Phase III SBIR or STTR awards'' when determining the Commercialization Rate benchmark. However, the SBA understands that the intent of this provision is to measure success at commercializing SBIR technology not only in the Federal procurement market in the form of Phase III awards, but also in the private market place through sales or other means. Therefore, SBA has drafted the Policy Directive in a manner consistent with this understanding.

SBA will maintain a system that records all Phase I and Phase II awards and calculates these benchmark rates. The small business will be able to provide these rates to the SBIR agency with its application. The Reauthorization Act requires that each agency determine whether an SBIR Phase I applicant meets *both* of these benchmarks. If the applicant does not meet both of the benchmarks, then by statute it is not eligible for the Phase I award and it is not eligible for any other SBIR Phase I awards from that agency for a period of one year from the date it submitted the application to the agency and was determined ineligible for failure to meet the benchmark. That applicant, however, may be eligible for a Phase I award from a different agency if it meets that particular agency's benchmarks. If the applicant does meet the particular agency's benchmark rates, the agency will still evaluate the applicant's commercial potential for the specific R&D in that application and base this evaluation on agency-specific criteria.

The purpose of this statutory provision is to ensure that SBIR awardees are attempting to commercialize their R&D. SBA understands that not all Phase I awardees will receive Phase II awards due to many factors, such as the exploratory nature of Phase I awards, insufficient funding for Phase II awards, and changes in requirements for the agency. SBA has taken all of this into consideration when drafting these benchmark provisions, while also allowing agencies flexibility in setting the benchmarks.

2. § Section 4(b)—Phase II Awards

SBA has amended this section of the directive, which addresses Phase II awards, to set forth two new statutory exceptions to the general rule that only SBIR Phase I awardees may receive an SBIR Phase II award. According to section 5104 of the Reauthorization Act, a Federal agency may now issue an SBIR Phase II award to an STTR Phase I awardee in order to further develop the work performed under the STTR Phase I award.

In addition, section 5106 of the Reauthorization Act states that, for fiscal years 2012–2017, the National Institutes of Health (NIH), Department of Defense (DoD) and the Department of Education (Education) may issue a Phase II award to a small business that did not receive an SBIR Phase I award. NIH, DoD, and Education must issue a written determination that the small business has demonstrated the scientific and technical merit and feasibility of the ideas that appear to have commercial potential. The agencies must submit this written determination to SBA prior to award.

SBA has also amended this section of the directive to state that agencies may not use an invitation, pre-screening, or pre-selection process for determining eligibility for a Phase II award. Agencies must set forth a notice in each solicitation stating that all Phase I awardees are eligible to apply for a Phase II award and must provide specific guidance on how to apply. This amendment is required by section 5105 of the Reauthorization Act.

Finally, SBA amended this section to address section 5111 of the Reauthorization Act, concerning multiple Phase II awards. Specifically, agencies may now issue one additional, sequential Phase II award to continue the work of an initial Phase II award. Therefore, a small business may receive no more than two SBIR Phase II awards for the same R&D project, and the awards must be made sequentially.

3. Section 4(c)—Phase III Award

SBA amended this section to address the specific statutory directive at section 5108 of the Reauthorization Act that agencies, to the greatest extent practicable, shall issue Phase III awards to the SBIR awardee that developed the technology. Agencies may issue sole source Phase III awards to the SBIR Phase I or Phase II awardee to meet this statutory requirement. At times, agencies have failed to use this authority, bypassed the small business that created the technology, and pursued the Phase III work with another business. Congress has expressed, again, and now in stronger terms, a clear intent for the agencies to issue Phase III awards to the SBIR awardees that created the technology so that these small businesses can commercialize it.

SBA requests comments, however, on whether it should define ''to the greatest extent practicable'' with respect to when agencies shall issue these Phase III awards, and if so, how it should define the phrase. For example, if the agency elects not to issue a Phase III sole source award to the SBIR Phase II awardee for follow-on Phase III work, then SBA requests comments on what other ways, if any, the agency could meet this statutory requirement (*e.g.,* whether SBIR preference is an option within the context of a full and open competition).

E. Section 6—Eligibility and Application (Proposal) Requirements

1. Section 6(a)—Eligibility Requirements

SBA amended this section of the directive to address the new statutory

requirements concerning small businesses that are majority-owned by venture capital operating companies (VCOCs), hedge funds or private equity firms. Specifically, section 5107 of the Reauthorization Act states that businesses that are owned in majority part by VCOCs, private equity firms or hedge funds may be eligible to participate in the SBIR Program, under certain conditions.

First, SBA must amend its size regulations, at 13 CFR part 121, to address ownership, control, and affiliation for these businesses. SBA has issued a proposed rule addressing this issue, with a request for comments.

Second, if the agency elects to use this authority, it must submit a written determination letter to SBA, the Senate Committee on Small Business and Entrepreneurship, the House Committee on Small Business and the House Committee on Science, Space, and Technology. The agency must explain how awards to small business that are majority-owned by multiple VCOCs, hedge funds or private equity firms will induce similar and additional funding of small business innovations, contribute to the mission of the agency, demonstrate a need for public research, and otherwise fulfill the capital needs of small businesses for SBIR projects.

Third, small businesses that are majority-owned by multiple VCOCs, hedge funds or private equity firms must register with the SBA prior to submitting an SBIR application. The registration is available at *www.SBIR.gov,* and will be available when the SBA issues a final rule amending 13 CFR part 121 concerning ownership and control of SBIR applicants.

Finally, agencies electing to use this authority may only issue a certain percentage of their SBIR awards to small businesses that are majority-owned by multiple VCOCs, hedge funds or private equity firms. The National Institute of Health (NIH), Department of Energy (DOE), and the National Science Foundation (NSF) may award not more than 25% of their SBIR funds to such small businesses. All other SBIR agencies may award not more than 15% of their SBIR funds to these small businesses. If the agency has not exceeded these maximum statutory percentages, the participating agencies may make awards to small businesses that are majority-owned by multiple VCOCs, hedge funds or private equity firms under the STTR Program. If an agency exceeds this maximum statutory percentage of awards to small businesses that are majority-owned by multiple VCOCs, hedge funds or private equity firms, it must transfer this excess amount from its non-SBIR and non-STTR R&D funds to the SBIR funds.

SBA also amended this section to address the new statutory requirement concerning ''covered small business concerns.'' Section 5107 defines a covered small business concern as a small business that was not majority-owned by multiple VCOCs, hedge funds or private equity firms at the time of application but then is so-owned at the time of the award. If the agency makes an award to such a firm more than 9 months after the closing date of the solicitation, the firm is eligible (so long as it meets all other eligibility criteria such as performance of work, etc.). In addition, by statute, if an agency makes such an award to a ''covered small business concern,'' the agency must transfer an amount equal to the amount of that award from its non-SBIR and non-STTR R&D funds to the agency's SBIR funds.

SBA considered amending the requirement concerning the principal investigator's primary employment. Specifically, SBA considered further defining primary employment to mean that the principal investigator must perform at least 51% of his/her work (as opposed to the current requirement that they perform a minimum of one half), based on a 40-hour workweek, in the employ of the small business. SBA seeks comments on whether this further clarification is needed.

2. Section 6(b)—Proposal Requirements

SBA amended this section to address the certification requirements at the time a SBC submits its proposal and at the time it receives an SBIR award. Section 5143 of the Reauthorization Act requires each SBIR awardee to certify that it is in compliance with the laws relating to the program. SBA's Administrator is required to develop, in consultation with the Council of Inspectors General on Integrity and Efficiency, the procedures and requirements for this certification after providing notice of and an opportunity for public comment on such procedures and requirements. SBA requested public input on its certification requirements in a proposed rule. SBA will consider further input received on this final directive.

In the directive, SBA explains that all applicants that are majority-owned by multiple VCOCs, hedge funds or private equity firms must submit a certification and register with *www.SBIR.gov* (once SBA issues a final regulation amending 13 CFR part 121). The specifics relating to the certification and registration database are discussed later in the section.

Further, all SBIR awardees must submit a certification at the time of award stating that it meets the size, ownership and other requirements of the SBIR Program. The directive explains that agencies may request similar certifications prior to award, such as at the time of submission of the application. Some agencies, including NSF, currently require SBIR applicants to submit such a certification to ensure eligibility at time of award. The specifics relating to the certification is discussed later in this notice.

In addition to the certification requirements, sections 5132–5135 of the Reauthorization Act requires that SBIR applicants and awardees provide, and agencies collect, certain information concerning their ownership, investors, and principal investigators, among other things. In an effort to streamline and simplify this data collection, SBA requires that the small business provide this information to the databases available at *www.SBIR.gov,* rather than to each individual agency with each SBIR application or award. The specifics relating to this certification and data collection are discussed below.

F. Section 7—SBIR Funding Process

1. Section 7(c)—Selection of Awardees

Section 5126 of the Reauthorization Act requires agencies to make award decisions within a certain amount of time after the close of the solicitation. The purpose of this statutory amendment is to reduce the gap in time between submission of application and time of award, which is an important issue for many small businesses. For example, if an agency takes a long time to make an award, it may be difficult for the small business to retain its key personnel, such as the principal investigator.

The Reauthorization Act requires, and the directive explains, that NIH and NSF must issue a notice to each applicant as to whether it has been selected for an award within one year from the closing date of the solicitation. The directive states that NIH and NSF should then issue the actual award within 15 months of the closing date of the solicitation. All other agencies must issue a notice to each applicant as to whether it has been selected for an award within 90 calendar days from the closing date of the solicitation. The directive states that the agencies should then issue the actual award within 180 calendar days of the closing date of the solicitation.

If an agency will not be able to issue the notice within the statutorily required time, it must request an extension of time from SBA. The written request must specify the number of additional days needed to make the award decision and must be submitted to the SBA at least 10 business days prior to when the agency is required to issue the award decision to the applicants. SBA explains in the Policy Directive that even if it grants an extension of time, the SBIR agency still has the responsibility to work toward issuing quicker awards and meeting the statutory timeframes.

2. Section 7(i)—Dollar Value of Awards

SBA amended this section of the directive to implement section 5103 of the Reauthorization Act, which sets the maximum thresholds for Phase I and Phase II awards at $150,000 and $1,000,000, respectively. SBA will adjust these amounts every year for inflation and will post the adjusted numbers on *www.SBIR.gov.*

Section 5103 of the Reauthorization Act also states that agencies may exceed these thresholds by no more than 50%, unless the agency requests and is granted a waiver from SBA. SBA has amended the directive to set forth this new statutory requirement. In addition, as stated in the directive, when submitting a request for a waiver to exceed the award guidelines, the waiver must be for a specific topic and not for the agency as a whole. SBA notes that the Reauthorization Act only permits a waiver by topic. Further, the directive explains that when seeking the waiver, the agency must provide evidence showing that the limitations on the award size will interfere with its mission and that the research costs for the topic area differ significantly from other areas, among other things.

G. Section 8—Terms of Agreement Under SBIR Awards

As discussed above, section 5143 of the Reauthorization Act requires each applicant that applies for and each small business that receives SBIR funding to certify that it is in compliance with the laws relating to the program. Section 5143 specifically states that such certifications may cover the life cycle of the funding agreement.

As a result, SBA has amended this section of the directive to state that for Phase I awards, agencies must require that awardees submit a certification as to whether it is in compliance with specific SBIR Program requirements at the time of final payment or disbursement. For Phase II awards, agencies must require that awardees submit a certification as to whether it is in compliance with specific SBIR Program requirements prior to receiving more than 50% of the total award amount and prior to final payment or disbursement. The directive provides the agencies with the discretion to request additional certifications throughout the life cycle of the award since SBA is aware that some agencies request certification at the time of each payment.

SBA notes that these certifications are in addition to and different in content from the certification required at the time of award. SBA requests comments on the certification requirements, including whether additional certifications should be required to prevent fraud, waste and abuse.

H. Section 9—Responsibilities of SBIR Participating Agencies and Departments

1. Section 9(c)—Discretionary Technical Assistance

The Small Business Act currently permits agencies to contract with vendors, who provide technical assistance to SBIR awardees. Section 5121 of the Reauthorization Act amended this current requirement to permit agencies to contract with vendors for a period of up to 5 years. In addition, the Reauthorization Act states that the contract with the vendor cannot be based upon the total number of Phase I or Phase II awards. The contract, however, may be based on the total amount of awards for which actual technical assistance was provided. The directive addresses these new requirements.

The Reauthorization Act permits an agency to provide technical assistance to an SBIR awardee in an amount up to $5,000 per year (previously the limit had been $4,000 per award). This amount is in addition to the award amount.

The Reauthorization Act also permits the small business to elect to acquire the technical assistance services itself. Some believe that allowing a small business to obtain such services itself may create conflicts or potential abuses. To negate these concerns, SBA has required that the applicant must request to do so in its SBIR application, and must demonstrate that the individual or entity selected can provide the specific technical services needed. If the awardee demonstrates this requirement sufficiently, the Reauthorization Act states that the agency must permit the awardee to acquire the needed technical assistance itself, as an allowable cost. SBA has incorporated these new statutory requirements into the directive. SBA welcomes comments on this amendment and other ways it can limit potential abuses of the technical assistance allowance.

2. Section 9(e)—Interagency Actions

SBA amended the directive to address section 5104 of the Reauthorization Act, which requires that when one agency issues an SBIR Phase II award to an SBIR Phase I awardee of another agency, both agencies must issue a written determination that the topics of the awards are the same. The agencies must submit this report to SBA.

3. Section 9(f)—Limitation on Use of Funds

Section 5141 of the Reauthorization Act creates a pilot program that permits agencies to use SBIR funds for certain administrative purposes. Prior to this amendment, agencies were not permitted to use SBIR funds for any purpose other than awards and technical assistance to small businesses.

SBA has amended the SBIR Policy Directive to state that beginning on October 1, 2012, and ending on September 30, 2015, and upon establishment by SBA of the agency-specific performance criteria, SBA shall allow agencies to use no more than 3% of their SBIR funds for one or more specific activities. Specifically, the funding is to be used to assist with the substantial expansion in commercialization reporting; fraud, waste and abuse prevention; expanded reporting requirements; and other new activities required by the SBIR Program. The administrative funds are not to be used to replace the agency's current administrative funding for the SBIR Program (*e.g.,* pay for current personnel) but to supplement the agency's current administrative funding (*e.g.* pay for new personnel to assist solely with SBIR funding agreements) and cover the costs of new program initiatives.

The Reauthorization Act requires agencies to use some of these funds to increase participation by socially and economically disadvantaged small businesses (SDBs) and women-owned small businesses (WOSBs) in the SBIR Program, and small businesses in states with a historically low level of participation in the program. The agency may request a waiver of this statutory requirement by submitting a written statement explaining why there is a sufficient need for the waiver, and that the outreach objectives of the agency are already being met. The directive addresses this requirement.

The Reauthorization Act states that agencies may not use the SBIR funds for any of these administrative purposes

until SBA establishes performance criteria to measure the benefits of using the funds and to ultimately determine whether the pilot program should be continued, discontinued, or made permanent. The Policy Directive explains that in order to help SBA establish the agency-specific performance criteria, each agency must submit an annual work plan to SBA at least 30 calendar days prior to the start of a fiscal year. The work plan must set forth a prioritized list of initiatives to be supported in alignment with reporting requirements, the estimated amounts to be spent on each initiative, milestones for implementing the initiatives, the expected results to be achieved, and the assessment metrics for each initiative. The work plan must explain how these initiatives are above and beyond the agency's current practices and how they will enhance the program.

After review of the work plan, SBA will establish the performance metrics for that fiscal year by which use of these funds will be evaluated for that fiscal year. SBA will create a simplified template for agencies to use when creating their work plans. Agencies will submit work plans to SBA each fiscal year the pilot program is in operation.

The Policy Directive also explains that any activities relating to fraud, waste and abuse prevention in the work plan must be coordinated with the agency's Office of Inspector General (OIG). If the agency allocates more than $50,000,000 to its SBIR Program for a fiscal year, it may share some of these administrative funds with its OIG when the OIG performs fraud, waste and abuse activities for the agency's SBIR Program.

SBA also amended this section of the Policy Directive to address the new statutory requirement set forth in section 5109 of the Reauthorization Act that permits agencies to subcontract a portion of an SBIR funding agreement to a Federal laboratory. Although agencies may permit small businesses to subcontract a portion of the work to the Federal laboratory without requesting a waiver from SBA, the agency cannot require a small business to subcontract a portion of the award to the laboratory.

4. Section 9(g)—Preventing Fraud, Waste, and Abuse

Section 5143 of the Reauthorization Act requires SBA to amend the Policy Directive to include measures to prevent fraud, waste and abuse in the SBIR Program. SBA has amended the directive to define and provide examples of fraud, waste and abuse as it relates to the SBIR Program. In addition, SBA has amended the directive to state that each SBIR agency must take certain measures to reduce fraud, waste and abuse in the program.

For example, at the recommendation of the Council for Inspectors General on Integrity and Efficiency, the SBA has included the requirement for certification by the small business during the life cycle of the funding agreement. As discussed above, this means that in addition to requiring a certification at the time of award, agencies must request certifications by the small business concern during certain points in time of a Phase I and Phase II funding agreement to ensure that the awardee is in compliance with the program's requirements.

The directive explains that agencies must also take other measures to reduce fraud, waste and abuse, such as: (1) Including on their Web site and in each solicitation any telephone hotline number or web-based method for how to report fraud, waste and abuse; (2) designating at least one individual to serve as the liaison for the SBIR Program, OIG and the agency's Suspension and Debarment Official (SDO); (3) including on the agency's Web site successful prosecutions of fraud, waste and abuse in the SBIR Program (relating to any SBIR agency); and (4) creating or ensuring there is a system to enforce accountability (*e.g.,* creating templates for referrals to the OIG or SDO), among other things. In addition, the directive requires the agencies to work with their specific OIG, who will help establish fraud detection indicators. For example, one agency, acting in concert with its OIG, uses a commercial software that searches for redundancy or plagiarism in the applications submitted. This is one form of a fraud detection indicator.

SBA welcomes comments on other ways agencies may reduce fraud, waste and abuse in the program.

5. Section 9(h)—Interagency Policy Committee

Section 5124 of the Reauthorization Act instructs the Office of Science and Technology Policy (OSTP) to create the Interagency Policy Committee, comprised of OSTP, the SBIR and STTR participating agencies and SBA. The purpose of this committee is to review issues relating to the SBIR program, such as commercialization assistance, and make recommendations on ways to improve the program. SBA has amended the directive to address this new committee.

6. Section 9(i)—National Academy of Science Report

Section 5137 of the Reauthorization Act requires the National Academy of Sciences (NAS) to continue its study of the SBIR Program. NAS must consult with and consider the views of SBA, as well as other interested parties, when drafting the report. In addition, the statute requires certain agencies, in consultation with SBA, to enter into an agreement with NAS in furtherance of the report. SBA has amended the Policy Directive to address this new requirement, since NAS will be issuing the report not later than 4 years after December 31, 2011 and then every subsequent four years. Details about the study are set forth in Appendix X.

I. Section 10—Agency and SBIR Applicant/Awardee Reporting Requirements

SBA has amended this section of the Policy Directive to address the reporting requirements for both the SBIR participating agencies and SBIR applicants, many of which are newly required by various parts of the Reauthorization Act. In an effort to streamline and standardize the various reporting requirements, SBA will be gathering this information at one source—*www.SBIR.gov.* Both applicants and agencies will be able to provide the statutorily required information into one or more specific databases, collectively referred to as Tech-Net and to be phased in over a period of time according to a plan that is complementary to but not part of the Policy Directive.

SBA published a notice in the **Federal Register**, 77 FR 16313, on March 20, 2012 explaining this data collection and seeking comments. One of the comments expressed concern that SBA was unnecessarily seeking information from small businesses. This is not the case. The Reauthorization Act sets forth a number of data requests SBA and the SBIR agencies are required to collect from small businesses. This data collection is intended to ensure that only those small businesses that meet the requirements of the program receive an SBIR award and to enable assessment of the program.

SBA has sought to reduce any burdens this data collection may have on small businesses. Because SBA will be collecting the data into one location, small business and agencies will only have to input certain information once, and then update as necessary. For example, when a small business inputs information for the Company Registry, some of the information will populate some fields in other databases, such as

the Commercialization Database. Likewise, if an agency provides awardee information into the Awardee database, some of information will populate the Annual Report Database.

The seven databases addressed in the directive are the: (1) Solicitations; (2) Company Registry; (3) Application Information; (4) Award Information; (5) Commercialization; (6) Annual Report; and (7) Other Reports Databases. SBA currently has some of these databases ready for operation with the needed data fields and anticipates a phased implementation for the remaining databases and data fields.

The directive explains that the Solicitations Database will collect all solicitations and topic information from the participating SBIR agencies. It will serve as the primary source for small businesses searching for SBIR solicitations. Agencies must therefore update this database within 5 business days after a solicitation's open date. SBA will have a Master Schedule showing all agency solicitation open and close dates.

The Company Registry will house company information on all SBIR applicants. It will contain information on SBC applicants that are majority-owned by multiple VCOCs, hedge funds or private equity firms, which by statute are required to register in an SBA database prior to submitting an SBIR application. This database will also house the registration information for those SBCs that receive an award as a result of the Commercialization Readiness Pilot Program for Civilian Agencies. All potential SBIR applicants will be required to register in the Company Registry prior to submitting an SBIR application.

SBA believes it is important to maintain such a Company Registry for several reasons. First, in order to prevent fraud, waste and abuse it would be best to house the data in one place so that the company must register itself and use that same registration (same name and identifying number) for each application. In addition, at the time the company registers, SBA intends to have online information relating to eligibility to ensure that the business understands the requirements of the program. Second, certain information on applicants is required by statute and therefore it would be best to have the applicant enter the data once (and update as needed), instead of each time it submits an application to an agency. Third, this registration is no different than others used in Federal contracting, such as the Central Contractor Registration (CCR). There are numerous small business that are registered in CCR and it does not appear to be a burden or difficult for small businesses to register their information into a central database in order to receive a contracting benefit afforded small businesses.

The directive also explains that the Application Information Database will contain information concerning each SBIR application, which will be uploaded by an agency at least quarterly. Some of the information inputted by the SBIR applicant into the Company Registry will filter to this database. Other information, such as the contact information for the Federal employee reviewing the applications and making awards, will need to be inputted by the agency. This database will also contain information required by section 5135 of the Reauthorization Act, including information relating to the names of key individuals that will carry out the project and the percentage of effort the individual will contribute to the project.

The Award Information Database will store information about each SBIR awardee and must be updated by the agency quarterly. Award data is generally reviewable and searchable by the public. Some of the information collected from the Company Registry and Application Information Database will filter to this database.

The Commercialization Database will store commercialization information for SBCs that have received SBIR awards. This includes information relating to revenue from the sale of new products or services resulting from the R&D conducted under a Phase II award and any business or subsidiary established for the commercial application of a product or services for which an SBIR award is made, among other things. The information contained in this database will be used by SBCs and agencies to determine whether the SBC meets the agency's commercialization benchmarks, discussed above, and for program evaluation purposes. SBCs may provide the information to the SBA's database directly or to the agency, which will collect it and upload it to SBA's database.

The Annual Report Database will include all of the information required by the Small Business Act, including the new requirements set forth in the Reauthorization Act regarding the Annual Report that SBA submits to Congress. SBA receives the information for the annual report from the various SBIR agencies and departments. To reduce the burden on the agencies and departments, data from the other databases will filter to the Annual Report Database. SBA requests that agencies provide the other information for the annual report to SBA by March 15th each year.

Some of the information that agencies will be required to provide by March 15 includes new information required by the Reauthorization Act, such as an analysis of the various activities considered for inclusion in the Commercialization Readiness Pilot Program for civilian agencies set forth in section 12(c) of the directive and a description and the extent to which the agency is increasing outreach and awards to SDBs and WOSBs.

The Other Reports Database will include information that is required by statute to be submitted, but does not fit into any of the other databases. For example, section 5110 of the Reauthorization Act requires agencies to provide SBA notice of any case or controversy before any Federal judicial or administrative tribunal concerning the SBIR Program of the Federal agency. A case or controversy between a Federal or administrative tribunal would not include agency level protests of awards unless and until the protest is before a Federal court or administrative body. It would include litigation that is before a Federal or State court, or administrative tribunal such as the Government Accountability Office.

Further, section 5161 of the Reauthorization Act requires that agencies provide an annual report to the SBA, the Senate Committee on Small Business and Entrepreneurship, the House Committee on Small Business, and the House Committee on Science, Space, and Technology on the SBIR and STTR Programs and the benefits of these programs to the United States. The statute requires the final report be posted online so it can be made available to the public. This section lists this and other new reporting requirements, set forth in the Reauthorization Act, for the SBIR agencies.

Finally, SBA has a new section in the directive that identifies all of the waivers that may be requested and submitted by an agency to SBA, and which are discussed in various other parts of the directive. The following waivers may be granted by SBA: (1) An extension for additional time between the solicitation closing date and notification of recommendation for award; (2) permission to exceed the award guidelines for Phase I and Phase II awards by more than 50% for a specific topic; (3) permission to not use its SBIR funds, as part of the pilot allowing for the use of such funds for certain SBIR-related costs, to increase participation by SDBs and WOSBs in

the SBIR Program, and small businesses in states with a historically low level of SBIR awards; and (4) permission to issue a funding agreement that includes a provision for subcontracting a portion of that agreement back to the issuing agency if there is no exception to this requirement in the directive.

J. Section 11—Responsibilities of SBA

SBA has amended this section of the directive to incorporate some new responsibilities of SBA and to include many responsibilities and activities SBA has undertaken over the last several years with respect to the program. These areas of responsibility include: (1) Policy, outreach, collection and publication of data; (2) monitoring implementation of the program and reporting to Congress; and (3) additional efforts to improve performance.

First and most obvious, is that SBA is responsible for establishing the policies and procedures for the program by publishing and updating the SBIR Policy Directive and promulgating regulations. As discussed above, SBA is also responsible for issuing waivers.

SBA also conducts outreach to achieve a number of objectives including educating the public and the agencies about the SBIR Program, highlighting successful SBC achievements, and maintaining www.SBIR.gov. Similarly, SBA must collect and maintain program-wide data within the Tech-Net data system (available at www.SBIR.gov). This data includes information on all Phase I and II awards from across all SBIR participating agencies, as well as Fiscal Year Annual Report data.

SBA also provides oversight and monitors the implementation of the SBIR Program. This includes monitoring agency SBIR funding allocations and program solicitation and awards as well as ensuring each participating agency has taken steps to maintain a fraud, waste and abuse prevention system to minimize its impact on the program.

SBA is also responsible for defining areas of performance consistent with statute (*e.g.,* timelines for award, simplification of SBIR application process) and defining metrics against that performance. SBA will therefore measure performance against goals set by the SBIR agencies. The purpose of these performance metrics and goals is to evaluate and report on the progress achieved by the agencies in improving the SBIR Program. SBA discusses in detail the performance metrics and goals in section 10(i) of the directive.

In addition to the above, SBA continuously seeks to improve the performance of the program and will make recommendations and modifications for such improvement. This may include sharing and recommending agency ''best practices'' and other program-wide initiatives.

All of these SBA responsibilities are set forth in section 11 of the directive.

K. Section 12—Supporting Programs and Initiatives

This section of the policy directive sets forth various programs, including a new pilot program that seeks to enhance the commercialization efforts of small businesses. These programs include the Federal and State Technology Partnership (FAST) Program, the DoD Commercialization Program, the Commercialization Readiness Pilot Program for Civilian Agencies and the Technology Development Programs of the different agencies.

Section 5122 of the Reauthorization amended the DoD Commercialization Program by converting it from a pilot program into an authorized program. The purpose of this program is for DoD to accelerate the transition of technologies, products and services developed under the SBIR Program to Phase III. The Reauthorization amended the program by creating an incentive requirement for any contract with a value of at least $100 million. For those contracts, DoD may establish goals for the transition of SBIR technologies into the prime contractor's subcontracting plan and require the prime to report the number and value of subcontracts entered into for Phase III work with a prior SBIR awardee.

Section 5141 of the Reauthorization Act also amended the DoD Commercialization Program by stating that for FY 2013 through FY 2015, the Secretary of Defense and each Secretary of a military department may use no more than 3% of its SBIR funds for administration of this Commercialization Program. This means that the only SBIR funds that can be used for the administration of the DoD Commercialization Program must come from the Pilot to Allow for Funding of Administrative, Oversight, and Contract Processing Costs, discussed above. When that pilot program expires, which is the end of FY 2015, DoD may use not more than 1% of its SBIR funds available to DoD or the military departments to administer the Commercialization Program. Section 12 of the directive addresses this DoD program.

Section 12 of the directive also sets forth the new Commercialization Readiness Pilot Program for the civilian agencies. This new program is authorized by section 5123 of the Reauthorization Act and terminates on September 30, 2017, unless otherwise extended.

This Commercialization Readiness Pilot Program is different from the DoD Commercialization Program. Under this program, civilian agencies participating in the SBIR Program may allocate not more than 10% of its SBIR funds: (1) For follow-on awards to small businesses for technology development, testing, evaluation, and commercialization assistance for SBIR or STTR Phase II technologies; or (2) for awards to small businesses to support the progress of research, research and development, and commercialization conducted under the SBIR or STTR programs to Phase III.

Before establishing this pilot program, an SBIR agency must submit a written application to SBA not later than 90 days before the first day of the fiscal year in which the pilot program is to be established. The written application must set forth a compelling reason that additional investment in SBIR or STTR technologies is necessary, including unusually high regulatory, systems integration, or other costs relating to development or manufacturing of identifiable, highly promising small business technologies or a class of such technologies expected to substantially advance the mission of the agency. SBA must make its determination regarding an application submitted not later than 30 days before the first day of the fiscal year for which the application is submitted and will publish its determination in the **Federal Register**. Under this pilot program, SBIR agencies may make an award to a SBC up to three times the dollar amount generally established for Phase II awards under section 7(i)(1) of this directive. When making an award under this pilot program, the agency is required to consider whether the technology to be supported by the award is likely to be manufactured in the United States.

L. Appendix—Instructions for SBIR Program Solicitation Preparation

SBA amended this section of the Policy Directive to address the certification requirements set forth in section 5143 of the Reauthorization Act. Specifically, section 5143 recommends that SBCs receiving an SBIR award certify their eligibility for the program and award.

SBA has created three new certifications to be used by agencies. The first certification is for SBIR applicants that are majority-owned by multiple VCOCs, hedge funds or private equity firms. The certification, to be submitted to the agency by the SBC with its application, states that the SBC has

registered with the Company Registry Database and meets the statutory requirements for eligibility of such small businesses.

The second certification is required for all SBCs that receive an SBIR award, although agencies may request that SBCs provide a certification at the time of application, as well. This certification addresses the ownership and control requirements for the program set forth in SBA's regulations and the performance of work requirements for the small business and principal investigator. The certification also addresses whether all or a portion of the work under the project has been submitted to another agency for consideration of an award and whether the other agency has or has not funded the work. The purpose of this part of the certification is to ensure that two or more agencies do not fund the same or similar work.

The third certification is required for all SBIR awardees that are working on an SBIR award. This is referred to as the life cycle certification. It seeks to ensure that once awarded the SBIR funding agreement, the small business concern continues to meet the program's requirements (*e.g.* performing the required percentage of work, employing the principal investigator). Agencies will set forth in the funding agreement those specific points in time that the small business must submit the certification during the life of the award.

Finally, this section of the directive also addresses the requirement in section 5140 of the Reauthorization Act that agencies request permission from SBCs to disclose the title and abstract of the proposed project, as well as the name and other information of the corporate official of the SBC, to appropriate local and state economic development organizations, if the proposal does not result in an SBIR award. Every applicant must include this information in its proposal cover sheet.

M. Other Appendices

The remaining appendices generally set forth the data fields that will be used to collect the information from SBCs and agencies for the various databases. This information collection is further addressed in SBA's Paperwork Reduction Act submission.

IV. Request for Comments

SBA was required by the Reauthorization Act to publish the final directive within a short timeframe. As a result, SBA was unable to gather public input prior to drafting these provisions, although SBA did work with the various SBIR participating agencies to gather input and feedback on these provisions. SBA therefore requests comments on all matters addressed relating to implementation of the Reauthorization Act. SBA will review and consider all comments received to determine whether amendments are needed to improve the general conduct of the SBIR Program.

Notice of Final Policy Directive; Small Business Innovation Research Program

To: The Small Business Innovation Research Program Managers

Subject: SBIR/STTR Reauthorization Act of 2011 (Reauthorization Act)—Amendments to the Small Business Innovation Research Program

1. *Purpose.* The purpose of this notice is to set forth a final SBIR Policy Directive, which incorporates recent amendments made to the Small Business Act by the SBIR/STTR Reauthorization Act of 2011.

2. *Authority.* Section 9(j)(3) of the Small Business Act (15 U.S.C. 638(j)) requires the Administrator of the U.S. Small Business Administration (SBA) to issue an SBIR Program Policy Directive for the general conduct of the SBIR Program. Further, section 5151 of the Reauthorization Act requires the SBA to issue a final directive, incorporating the Reauthorization Act's amendments within 180 days after its enactment.

3. *Procurement Regulations.* It is recognized that the Federal Acquisition Regulations and agency supplemental regulations may need to be modified to conform to the requirements of the final Policy Directive. SBA's Administrator or designee must review and concur with any regulatory provisions that pertain to areas of SBA responsibility. SBA's Office of Technology coordinates such regulatory actions.

4. *Personnel Concerned.* This Policy Directive serves as guidance for all federal government personnel who are involved in the administration of the SBIR Program, issuance and management of Funding Agreements or contracts pursuant to the SBIR Program, and the establishment of goals for small business concerns in research or research and development acquisition or grants.

5. *Originator.* SBA's Office of Technology.

6. *Date.* The policy directive is effective on the date of publication in the **Federal Register**. Agencies are not required to, but can amend, an SBIR solicitation that was issued on or before the date of this Policy Directive to address these new requirements. Further, public comment may be submitted for 60 days following publication in the **Federal Register**.

Authorized By:

Sean Greene,

Associate Administrator for the Office of Investment and Innovation Small Business Administration.

Dated: July 19, 2012.

Karen G. Mills,

Administrator.

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1. Purpose

(a) Section 9(j) of the Small Business Act (Act) requires that the Small Business Administration (SBA) issue an SBIR Program Policy Directive for the general conduct of the SBIR Program within the Federal Government.

(b) This Policy Directive fulfills SBA's statutory obligation to provide guidance to the participating Federal agencies for the general operation of the SBIR Program. Additional or modified instructions may be issued by SBA as a result of public comment or experience. With this directive, SBA fulfills the statutory requirement to simplify and standardize the program proposal, selection, contracting, compliance, and audit procedures for the SBIR program to the extent practicable, while allowing the SBIR agencies flexibility in the operation of their individual SBIR Program. Wherever possible, SBA has attempted to reduce the paperwork and regulatory compliance burden on SBCs applying to and participating in the SBIR program, while still meeting the statutory reporting and data collection requirements.

(c) The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns (SBCs) in Federally-funded research or research and development (R/R&D). Specific program purposes are to: (1) Stimulate technological innovation; (2) use small business to meet Federal R/R&D needs; (3) foster and encourage participation by socially and economically disadvantaged small businesses (SDBs), and by women-owned small businesses (WOSBs), in technological innovation; and (4) increase private sector commercialization of innovations derived from Federal R/R&D, thereby increasing competition, productivity and economic growth.

(d) Federal agencies participating in the SBIR Program (SBIR agencies) are obligated to follow the guidance provided by this Policy Directive. Each agency is required to review its rules, policies, and guidance on the SBIR Program to ensure consistency with this Policy Directive and to make any necessary changes in accordance with each agency's normal procedures. This is consistent with the statutory authority provided to SBA concerning the SBIR Program.

2. Summary of Statutory Provisions

(a) The Small Business Innovation Research Program is codified at section 9 of the Small Business Act, 15 U.S.C. § 638. The SBIR Program is authorized until September 30, 2017, or as otherwise provided in law subsequent to that date.

(b) Each Federal agency with an extramural budget for R/R&D in excess of $100,000,000 must participate in the SBIR Program and reserve the following minimum percentages of their R/R&D budgets for awards to small business concerns for R/R&D:

(1) Not less than 2.5% of such budget in each of fiscal years 1997 through 2011;

(2) Not less than 2.6% of such budget in fiscal year 2012;

(3) Not less than 2.7% of such budget in fiscal year 2013;

(4) Not less than 2.8% of such budget in fiscal year 2014;

(5) Not less than 2.9% of such budget in fiscal year 2015;

(6) Not less than 3.0% of such budget in fiscal year 2016; and

(7) Not less than 3.2% of such budget in fiscal year 2017 and each fiscal year after.

A Federal agency may exceed these minimum percentages.

(c) In general, each SBIR agency must make these awards for R/R&D through the following uniform, three-phase process:

(1) Phase I awards to determine, insofar as possible, the scientific and technical merit and feasibility of ideas that appear to have commercial potential.

(2) Phase II awards to further develop work from Phase I that meets particular program needs and exhibits potential for commercial application.

(3) Phase III awards where commercial applications of SBIR-funded R/R&D are funded by non-Federal sources of capital; or where products, services or further research intended for use by the Federal Government are funded by follow-on non-SBIR Federal Funding Agreements.

(d) SBIR agencies must report to SBA on the calculation of the agency's extramural budget within four months of enactment of each agency's annual Appropriations Act.

(e) The Act explains that agencies are authorized and directed to cooperate with SBA in order to carry out and accomplish the purpose of the SBIR Program. As a result, each SBIR agency shall provide information to SBA in order for SBA to monitor and analyze each agency's SBIR Program and to report these findings annually to the Senate Committee on Small Business and Entrepreneurship and to the House Committees on Science and Small Business. For more information on the agency's reporting requirements, including the frequency for specific reporting requirements, see section 10 of the Policy Directive.

(f) SBA establishes databases to collect and maintain, in a common format, information that is necessary to assist SBCs and assess the SBIR Program.

(g) SBA implements the Federal and State Technology (FAST) Partnership Program to strengthen the technological competitiveness of SBCs, to the extent that FAST is authorized by law.

(h) The competition requirements of the Armed Services Procurement Act of 1947 (10 U.S.C. 2302, et seq.) and the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 3101, et seq.) must be read in conjunction with the procurement notice publication requirements of section 8(e) of the Small Business Act (15 U.S.C. 637(e)). The following notice publication requirements of section 8(e) of the Small Business Act apply to SBIR agencies using contracts as a SBIR funding agreement.

(1) Any Federal executive agency intending to solicit a proposal to contract for property or services valued above $25,000 must transmit a notice of the impending solicitation to the Governmentwide point of entry (GPE) for access by interested sources. See FAR 5.201. The GPE, located at *https://www.fbo.gov,* is the single point where Government business opportunities greater than $25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. In addition, an agency must not issue its solicitation for at least 15 days from the date of the publication of the GPE. The agency may not establish a deadline for submission of proposals in response to a solicitation earlier than 30 days after the date on which the solicitation was issued.

(2) The contracting officer must generally make available through the GPE those solicitations synopsized through the GPE, including specifications and other pertinent information determined necessary by the contracting officer. See FAR 5.102.

(3) Any executive agency awarding a contract for property or services valued at more than $25,000 must submit a synopsis of the award through the GPE if a subcontract is likely to result from such contract. See FAR 5.301.

(4) The following are exemptions from the notice publication requirements:

(i) In the case of agencies intending to solicit Phase I proposals for contracts in excess of $25,000, the head of the agency may exempt a particular solicitation from the notice publication requirements if that official makes a written determination, after consulting with the Administrator of the Office of Federal Procurement Policy and the SBA Administrator, that it is inappropriate or unreasonable to publish a notice before issuing a solicitation.

(ii) The SBIR Phase II award process is exempt.

(iii) The SBIR Phase III award process is exempt.

3. Definitions

(a) *Act.* The Small Business Act (15 U.S.C. 631, et seq.), as amended.

(b) *Additionally Eligible State.* A State in which the total value of funding agreements awarded to SBCs (as defined in this section) under all agency SBIR Programs is less than the total value of funding agreements awarded to SBCs in a majority of other States, as determined by SBA's Administrator in biennial fiscal years and based on the most recent statistics compiled by the Administrator.

(c) *Applicant.* The organizational entity that qualifies as an SBC at all pertinent times and that submits a contract proposal or a grant application

for a funding agreement under the SBIR Program.

(d) *Affiliate.* This term has the same meaning as set forth in 13 CFR part 121—Small Business Size Regulations, section 121.103, What is affiliation? (available at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=03878acee7c064a02cac0d870e00ef43;rgn=div6;view=text;node=13%3A1.0.1.1.17.1;idno=13;cc=ecfr*). Further information about SBA's affiliation rules and a guide on affiliation is available at *www.SBIR.gov* and *www.SBA.gov/size.*

(e) *Awardee.* The organizational entity receiving an SBIR Phase I, Phase II, or Phase III award.

(f) *Commercialization.* The process of developing products, processes, technologies, or services and the production and delivery (whether by the originating party or others) of the products, processes, technologies, or services for sale to or use by the Federal government or commercial markets.

(g) *Cooperative Agreement.* A financial assistance mechanism used when substantial Federal programmatic involvement with the awardee during performance is anticipated by the issuing agency. The Cooperative Agreement contains the responsibilities and respective obligations of the parties.

(h) *Covered Small Business Concern.* A small business concern that:

(1) Was not majority-owned by multiple venture capital operating companies (VCOCs), hedge funds, or private equity firms on the date on which it submitted an application in response to a solicitation under the SBIR program; and

(2) Is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms on the date of the SBIR award.

(i) *Eligible State.* A State: (1) where the total value of SBIR and Small Business Technology Transfer (STTR) Program awards made to recipient businesses in the State during fiscal year 1995 was less than $5,000,000 (as reflected in SBA's database of fiscal year 1995 awards); and (2) that certifies to SBA's Administrator that it will, upon receipt of assistance, provide matching funds from non-Federal sources in an amount that is not less than 50% of the amount of assistance provided.

(j) *Essentially Equivalent Work.* Work that is substantially the same research, which is proposed for funding in more than one contract proposal or grant application submitted to the same Federal agency or submitted to two or more different Federal agencies for review and funding consideration; or work where a specific research objective and the research design for accomplishing the objective are the same or closely related to another proposal or award, regardless of the funding source.

(k) *Extramural Budget.* The sum of the total obligations for R/R&D minus amounts obligated for R/R&D activities by employees of a Federal agency in or through Government-owned, Government-operated facilities. For the Agency for International Development, the ''extramural budget'' must not include amounts obligated solely for general institutional support of international research centers or for grants to foreign countries. For the Department of Energy, the ''extramural budget'' must not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs. (Also see section 7(i) of this Policy Directive for additional exemptions related to national security.)

(l) *Feasibility.* The practical extent to which a project can be performed successfully.

(m) *Federal Agency.* An executive agency as defined in 5 U.S.C. § 105, and a military department as defined in 5 U.S.C. 102 (Department of the Army, Department of the Navy, Department of the Air Force), except that it does not include any agency within the Intelligence Community as defined in Executive Order 12333, section 3.4(f), or its successor orders.

(n) *Federal Laboratory.* As defined in 15 U.S.C. § 3703, means any laboratory, any federally funded research and development center, or any center established under 15 U.S.C. §§ 3705 & 3707 that is owned, leased, or otherwise used by a Federal agency and funded by the Federal Government, whether operated by the Government or by a contractor.

(o) *Funding Agreement.* Any contract, grant, or cooperative agreement entered into between any Federal agency and any SBC for the performance of experimental, developmental, or research work, including products or services, funded in whole or in part by the Federal Government.

(p) *Funding Agreement Officer.* A contracting officer, a grants officer, or a cooperative agreement officer.

(q) *Grant.* A financial assistance mechanism providing money, property, or both to an eligible entity to carry out an approved project or activity. A grant is used whenever the Federal agency anticipates no substantial programmatic involvement with the awardee during performance.

(r) *Innovation.* Something new or improved, having marketable potential, including: (1) Development of new technologies: (2) refinement of existing technologies: or (3) development of new applications for existing technologies.

(s) *Intellectual Property.* The separate and distinct types of intangible property that are referred to collectively as ''intellectual property,'' including but not limited to: (1) Patents; (2) trademarks; (3) copyrights; (4) trade secrets; (5) SBIR technical data (as defined in this section); (6) ideas; (7) designs; (8) know-how; (9) business; (10) technical and research methods; (11) other types of intangible business assets; and (12) all types of intangible assets either proposed or generated by an SBC as a result of its participation in the SBIR Program.

(t) *Joint Venture.* See 13 CFR 121.103(h).

(u) *Key Individual.* The principal investigator/project manager and any other person named as a ''key'' employee in a proposal submitted in response to a program solicitation.

(v) *Principal Investigator/Project Manager.* The one individual designated by the applicant to provide the scientific and technical direction to a project supported by the funding agreement.

(w) *Program Solicitation.* A formal solicitation for proposals issued by a Federal agency that notifies the small business community of its R/R&D needs and interests in broad and selected areas, as appropriate to the agency, and requests proposals from SBCs in response to these needs and interests. Announcements in the **Federal Register** or the GPE are not considered an SBIR Program solicitation.

(x) *Prototype.* A model of something to be further developed, which includes designs, protocols, questionnaires, software, and devices.

(y) *Research or Research and Development (R/R&D).* Any activity that is:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

(z) *Small Business Concern.* A concern that meets the requirements set forth in 13 CFR 121.702 (available at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=03878acee7c064a02cac0d870e00ef43;rgn=div8;*

view=text;node=13%3A1.0.1.1.17.1.273.45;idno=13;cc=ecfr).

(aa) *Socially and Economically Disadvantaged SBC (SDB).* See 13 CFR part 124, Subpart B.

(bb) *Socially and Economically Disadvantaged Individual.* See 13 CFR 124.103 & 124.104.

(cc) *SBIR Participants.* Business concerns that have received SBIR awards or that have submitted SBIR proposals/applications.

(dd) *SBIR Technical Data.* All data generated during the performance of an SBIR award.

(ee) *SBIR Technical Data rights.* The rights an SBIR awardee obtains in data generated during the performance of any SBIR Phase I, Phase II, or Phase III award that an awardee delivers to the Government during or upon completion of a Federally-funded project, and to which the Government receives a license.

(ff) *Subcontract.* Any agreement, other than one involving an employer-employee relationship, entered into by an awardee of a funding agreement calling for supplies or services for the performance of the original funding agreement.

(gg) *Technology Development Program.*

(1) The Experimental Program to Stimulate Competitive Research of the National Science Foundation as established under 42 U.S.C. 1862g;

(2) The Defense Experimental Program to Stimulate Competitive Research of the Department of Defense;

(3) The Experimental Program to Stimulate Competitive Research of the Department of Energy;

(4) The Experimental Program to Stimulate Competitive Research of the Environmental Protection Agency;

(5) The Experimental Program to Stimulate Competitive Research of the National Aeronautics and Space Administration;

(6) The Institutional Development Award Program of the National Institutes of Health; and

(7) the Agriculture and Food Research Initiative (AFRI) of the Department of Agriculture.

(hh) *United States.* Means the 50 states, the territories and possessions of the Federal Government, the Commonwealth of Puerto Rico, the District of Columbia, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(ii) *Women-Owned SBC (WOSB).* An SBC that is at least 51% owned by one or more women, or in the case of any publicly owned business, at least 51% of the stock is owned by women, and women control the management and daily business operations.

4. Competitively Phased Structure of the Program

The SBIR Program is a phased process, uniform throughout the Federal Government, of soliciting proposals and awarding funding agreements for R/R&D, production, services, or any combination, to meet stated agency needs or missions. Agencies must issue SBIR awards pursuant to competitive and merit-based selection procedures. Agencies may not use investment of venture capital or investment from hedge funds or private equity firms as a criterion for an SBIR award. Although matching funds are not required for Phase I or Phase II awards, agencies may require a small business to have matching funds for certain special awards (*e.g.,* to reduce the gap between a Phase II and Phase III award). In order to stimulate and foster scientific and technological innovation, including increasing commercialization of Federal R/R&D, the program must follow a uniform competitive process of the following three phases, unless an exception applies:

(a) *Phase I.* Phase I involves a solicitation of contract proposals or grant applications to conduct feasibility-related experimental or theoretical R/R&D related to described agency requirements. These requirements, as defined by agency topics contained in a solicitation, may be general or narrow in scope, depending on the needs of the agency. The object of this phase is to determine the scientific and technical merit and feasibility of the proposed effort and the quality of performance of the SBC with a relatively small agency investment before consideration of further Federal support in Phase II.

(1) Several different proposed solutions to a given problem may be funded.

(2) Proposals will be evaluated on a competitive basis. Agency criteria used to evaluate SBIR proposals must give consideration to the scientific and technical merit and feasibility of the proposal along with its potential for commercialization. Considerations may also include program balance with respect to market or technological risk or critical agency requirements.

(3) *Agency benchmarks for progress towards commercialization.* Agencies must determine whether an applicant has met the agency's benchmark requirements for progress towards commercialization. For Phase I eligibility purposes, agencies will establish a threshold for the application of these benchmarks where they are applied only to Phase I applicants that have received more than 20 Phase I awards over the prior 5, 10, or 15 fiscal years (excluding the most recently completed fiscal year) or has received more than 15 Phase II awards over that period (excluding the most recently completed two fiscal years). Agencies must base these benchmarks on the SBC's SBIR awards across all SBIR agencies.

(i) Agencies must apply two benchmark rates addressing an applicant's progress towards commercialization—the Phase I-Phase II Transition Rate and the Commercialization Rate.

(A) The Phase I-Phase II Transition Rate benchmark sets the minimum required number of Phase II awards the applicant must have received for a given number of Phase I awards during a specified period.

(B) The Commercialization Rate benchmark sets the minimum Phase III commercialization results a Phase I applicant must have realized from its prior Phase II awards.

(ii) An applicant that does not meet either of these benchmarks at the time it submits its application to the agency is not eligible for that particular SBIR Phase I award and any other new SBIR Phase I awards (and any Phase II awards issued pursuant to paragraph (b)(1)(ii) below) of that agency for a period of one year from the date of the proposal or application submission. The agency must provide written notification of its determination and the one year restriction on Phase I awards to the applicant and to SBA. See section 9(b) for further information about how an agency establishes these benchmarks.

(iii) *Establishing the Phase I-Phase II Transition Rate.* Beginning October 1, 2012, each agency must establish an SBA-approved Phase I-Phase II Transition Rate benchmark. The agency must report any subsequent change in the benchmark rate to SBA for approval.

(A) The benchmark will establish the number of Phase II awards a small business concern must have received for a given number of Phase I awards over the prior 5, 10 or 15 fiscal years, excluding the most recently completed fiscal year. For example, if a SBC submits its application on January 2012, the agency may require that the SBC have received at least one Phase II award for every 10 Phase I awards it received during fiscal years 2001 through 2010.

(B) Agencies must set the benchmark as appropriate for their programs and industry sectors. When setting this benchmark, agencies should consider that Phase I is designed and intended to explore high-risk, early-stage research and, as a result, a significant share of

Phase I awards will not result in a Phase II award.

(iv) *Establishing the Commercialization Rate.* Beginning October 1, 2013, each agency must establish an SBA-approved Commercialization Rate benchmark that establishes the level of Phase III commercialization results a SBC must have received from work it performed under prior Phase II awards, over the prior 5, 10 or 15 fiscal years, excluding the most recently completed two fiscal years. The agency must report any subsequent change in the benchmark rate to SBA for approval. Agencies may define this benchmark:

(A) in financial terms, such as by using the ratio of the dollar value of revenues and additional investment resulting from prior Phase II awards relative to the dollar value of the Phase II awards received over the prior 5, 10 or 15 fiscal years, excluding the most recently completed two fiscal years; or

(B) in terms of the share of Phase II awards that have resulted in the introduction of a product to the market relative to the number of Phase II awards received over the prior 5, 10, or 15 fiscal years, excluding the most recently completed two fiscal years; or

(C) by other means such as using a commercialization scoring system that rates awardees on their past commercialization success.

(v) Agencies must submit these benchmarks to SBA for approval. SBA will publish the benchmark and seek public comment. The benchmark will become effective when SBA publishes the final, approved benchmark on *www.SBIR.gov*. If SBA approves a benchmark for a fiscal year, then the agency must report any subsequent change in the benchmark to SBA for approval.

(vi) SBA will maintain a system that records all Phase I and Phase II awards and calculates the Phase I–II Transition Rates for all Phase I awardees and the Commercialization Rates for all Phase II awardees. The small business will then be required to provide this information to the agency as part of its application.

(vii) If the applicant meets these benchmarks, the agency must still evaluate the commercial potential of the specific application and can base this evaluation on agency-specific criteria.

(4) Agencies may require the submission of a Phase II proposal as a deliverable item under Phase I.

(b) Phase II.

(1) The object of Phase II is to continue the R/R&D effort from the completed Phase I. Unless an exception set forth in paragraphs (i) or (ii) below applies, only SBIR Phase I awardees are eligible to participate in Phases II and III. This includes those awardees identified via a ''novated'' or ''successor in interest'' or similarly-revised funding agreement, or those that have reorganized with the same key staff, regardless of whether they have been assigned a different tax identification number. Agencies may require the original awardee to relinquish its rights and interests in an SBIR project in favor of another applicant as a condition for that applicant's eligibility to participate in the SBIR Program for that project.

(i) A Federal agency may issue an SBIR Phase II award to an STTR Phase I awardee to further develop the work performed under the STTR Phase I award. The agency must base its decision upon the results of work performed under the Phase I award and the scientific and technical merit, and commercial potential of the Phase II proposal. The STTR Phase I awardee must meet the eligibility and program requirements of the SBIR Program in order to receive the SBIR Phase II award.

(ii) During fiscal years (FY) 2012 through 2017, the National Institutes of Health (NIH), Department of Defense (DoD) and the Department of Education may issue a Phase II award to a small business concern that did not receive a Phase I award for that R/R&D. Prior to such an award, the heads of those agencies, or designees, must issue a written determination that the small business has demonstrated the scientific and technical merit and feasibility of the ideas that appear to have commercial potential. The determination must be submitted to SBA prior to issuing the Phase II award.

(2) Funding must be based upon the results of work performed under a Phase I award and the scientific and technical merit, feasibility and commercial potential of the Phase II proposal. Phase II awards may not necessarily complete the total research and development that may be required to satisfy commercial or Federal needs beyond the SBIR Program. The Phase II funding agreement with the awardee may, at the discretion of the awarding agency, establish the procedures applicable to Phase III agreements. The Government is not obligated to fund any specific Phase II proposal.

(3) The SBIR Phase II award decision process requires, among other things, consideration of a proposal's commercial potential. Commercial potential includes the potential to transition the technology to private sector applications, Government applications, or Government contractor applications. Commercial potential in a Phase II proposal may be evidenced by:

(i) The SBC's record of successfully commercializing SBIR or other research;

(ii) The existence of Phase II funding commitments from private sector or other non-SBIR funding sources;

(iii) The existence of Phase III, follow-on commitments for the subject of the research; and

(iv) Other indicators of commercial potential of the idea.

(4) Agencies may not use an invitation, pre-screening, or pre-selection process for eligibility for Phase II. Agencies must note in each solicitation that all Phase I awardees may apply for a Phase II award and provide guidance on the procedure for doing so.

(5) A Phase II awardee may receive one additional, sequential Phase II award to continue the work of an initial Phase II award.

(6) Agencies may issue Phase II awards for testing and evaluation of products, services, or technologies for use in technical weapons systems.

(c) *Phase III.* SBIR Phase III refers to work that derives from, extends, or completes an effort made under prior SBIR funding agreements, but is funded by sources other than the SBIR Program. Phase III work is typically oriented towards commercialization of SBIR research or technology.

(1) Each of the following types of activity constitutes SBIR Phase III work:

(i) Commercial application (including testing and evaluation of products, services or technologies for use in technical or weapons systems) of SBIR-funded R/R&D financed by non-Federal sources of capital (**Note:** The guidance in this Policy Directive regarding SBIR Phase III pertains to the non-SBIR federally-funded work described in (ii) and (iii) below. It does not address private agreements an SBIR firm may make in the commercialization of its technology, except for a subcontract to a Federal contract that may be a Phase III.);

(ii) SBIR-derived products or services intended for use by the Federal Government, funded by non-SBIR sources of Federal funding;

(iii) Continuation of R/R&D that has been competitively selected using peer review or merit-based selection procedures, funded by non-SBIR Federal funding sources.

(2) A Phase III award is, by its nature, an SBIR award, has SBIR status, and must be accorded SBIR data rights. If an SBIR awardee receives a funding agreement (whether competed, sole sourced or a subcontract) for work that derives from, extends, or completes

efforts made under prior SBIR funding agreements, then the funding agreement for the new work must have all SBIR Phase III status and data rights.

(3) The competition for SBIR Phase I and Phase II awards satisfies any competition requirement of the Armed Services Procurement Act, the Federal Property and Administrative Services Act, and the Competition in Contracting Act. Therefore, an agency that wishes to fund an SBIR Phase III project is not required to conduct another competition in order to satisfy those statutory provisions. As a result, in conducting actions relative to a Phase III SBIR award, it is sufficient to state for purposes of a Justification and Approval pursuant to FAR 6.302–5, that the project is a SBIR Phase III award that is derived from, extends, or completes efforts made under prior SBIR funding agreements and is authorized under 10 U.S.C. 2304(b)(2) or 41 U.S.C. 3303(b).

(4) Phase III work may be for products, production, services, R/R&D, or any such combination.

(5) There is no limit on the number, duration, type, or dollar value of Phase III awards made to a business concern. There is no limit on the time that may elapse between a Phase I or Phase II award and Phase III award, or between a Phase III award and any subsequent Phase III award. A Federal agency may enter into a Phase III SBIR agreement at any time with a Phase II awardee. Similarly, a Federal agency may enter into a Phase III SBIR agreement at any time with a Phase I awardee. A subcontract to a Federally-funded prime contract may be a Phase III award.

(6) The small business size limits for Phase I and Phase II awards do not apply to Phase III awards.

(7) To the greatest extent practicable, agencies or their Government-owned, contractor-operated facilities, Federally-funded research and development centers, or Government prime contractors that pursue R/R&D or production developed under the SBIR Program, shall issue Phase III awards relating to technology, including sole source awards, to the SBIR awardee that developed the technology. Agencies shall document how they provided this preference to the SBIR awardee that developed the technology. In fact, the Act requires SBA report all instances in which an agency pursues research, development, or production of a technology developed by an SBIR awardee, with a business concern or entity other than the one that developed the SBIR technology. (See section 4(c)(8) immediately below for agency notification to SBA prior to award of such a funding agreement and section 10(h)(4) regarding agency reporting of the issuance of such award.) SBA will report such instances, including those discovered independently by SBA, to Congress.

(8) Agencies, their Government-owned, contractor-operated facilities, or Federally-funded research and development centers, that intend to pursue R/R&D, production, services, or any combination thereof of a technology developed under an SBIR award, with an entity other than that SBIR awardee, must notify SBA in writing prior to such an award. This notification must include, at a minimum:

(i) The reasons why the follow-on funding agreement with the SBIR awardee is not practicable;

(ii) The identity of the entity with which the agency intends to make an award to perform research, development, or production; and

(iii) A description of the type of funding award under which the research, development, or production will be obtained. SBA may appeal an agency decision to pursue Phase III work with a business concern other than the SBIR awardee that developed the technology to the head of the contracting activity. If SBA decides to appeal the decision, it must file a notice of intent to appeal with the funding agreement officer no later than 5 business days after receiving the agency's notice of intent to make award. Upon receipt of SBA's notice of intent to appeal, the funding agreement officer must suspend further action on the acquisition until the head of the contracting activity issues a written decision on the appeal. The funding agreement officer may proceed with award if he or she determines in writing that the award must be made to protect the public interest. The funding agreement officer must include a statement of the facts justifying that determination and provide a copy of its determination to SBA. Within 30 days of receiving SBA's appeal, the head of the contracting activity must render a written decision setting forth the basis of his or her determination. During this period, the agency should consult with SBA and review any case-specific information SBA believes to be pertinent.

5. Program Solicitation Process

(a) At least annually, each agency must issue a program solicitation that sets forth a substantial number of R/R&D topics and subtopic areas consistent with stated agency needs or missions. Agencies may decide to issue joint solicitations. Both the list of topics and the description of the topics and subtopics must be sufficiently comprehensive to provide a wide range of opportunities for SBCs to participate in the agency R&D programs. Topics and subtopics must emphasize the need for proposals with advanced concepts to meet specific agency R/R&D needs. Each topic and subtopic must describe the needs in sufficient detail to assist in providing on-target responses, but cannot involve detailed specifications to prescribed solutions of the problems.

(b) The Act requires issuance of SBIR Phase I Program solicitations in accordance with a Master Schedule coordinated between SBA and the SBIR agency. The SBA office responsible for coordination is: Office of Technology, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416. Phone: (202) 205–6450. Fax: (202) 205–7754. Email: *technology@sba.gov.* Internet site: *www.SBIR.gov.*

(c) For maximum participation by interested SBCs, it is important that the planning, scheduling and coordination of agency program solicitation release dates be completed as early as practicable to coincide with the commencement of the fiscal year on October 1. Bunching of agency program solicitation release and closing dates may prohibit SBCs from preparation and timely submission of proposals for more than one SBIR project. SBA's coordination of agency schedules minimizes the bunching of proposed release and closing dates. SBIR agencies may elect to publish multiple program solicitations within a given fiscal year to facilitate in-house agency proposal review and evaluation scheduling.

(d) SBA posts an electronic Master Schedule of release dates of program solicitations with links to Internet Web sites of agency solicitations. For more information see section 10(g).

(e) *Simplified, Standardized, and Timely SBIR Program Solicitations*

(1) The Act requires ''simplified, standardized and timely SBIR solicitations'' and for SBIR agencies to use a ''uniform process'' minimizing the regulatory burden for SBCs. Therefore, the instructions in Appendix I to this Policy Directive purposely depart from normal Government solicitation format and requirements.

(2) Agencies must provide SBA's Office of Technology with an email version of each solicitation and any modifications no later than the 5 days after the date of release of the solicitation or modification to the public. Agencies that issue program solicitations in electronic format only must provide the Internet site at which the program solicitation may be

accessed no later than the date of posting at that site of the program solicitation.

(3) SBA does not intend that the SBIR Program solicitation replace or be used as a substitute for unsolicited proposals for R/R&D awards to SBCs. In addition, the SBIR Program solicitation procedures do not prohibit other agency R/R&D actions with SBCs that are carried on in accordance with applicable statutory or regulatory authorizations.

6. Eligibility and Application (Proposal) Requirements

(a) *Eligibility Requirements:*

(1) To receive SBIR funds, each awardee of a SBIR Phase I or Phase II award must qualify as an SBC at the time of award and at any other time set forth in SBA's regulations at 13 CFR 121.701–121.705. Each Phase I and Phase II awardee must submit a certification stating that it meets the size, ownership and other requirements of the SBIR Program at the time of award, and at any other time set forth in SBA's regulations at 13 CFR 121.701–705.

(2) NIH, Department of Energy and National Science Foundation may award not more than 25% of the agency's SBIR funds to SBCs that are owned in majority part by multiple venture capital operating companies, hedge funds, or private equity firms through competitive, merit-based procedures that are open to all eligible small business concerns. All other SBIR agencies may award not more than 15% of the agency's SBIR funds to such SBCs. At their discretion, if the agency has not exceeded these maximum statutory percentages, the agency may make awards to small businesses that are majority-owned by multiple VCOCs, hedge funds or private equity firms through competitive, merit-based procedures that are open to all eligible small business concerns under the STTR Program, using STTR funds. See STTR Policy Directive.

(i) Before permitting participation in the SBIR program by SBCs that are owned in majority part by multiple venture capital operating companies, hedge funds, or private equity firms:

(A) SBA's regulations at 13 CFR part 121 must set forth the eligibility criteria for SBIR applicants that are owned in majority part by multiple venture capital operating companies, hedge funds, or private equity firms.

(B) The SBIR agency must submit a written determination at least 30 calendar days before it begins making awards to SBCs that are owned in majority part by multiple venture capital operating companies, hedge funds, or private equity firms to SBA, the Senate Committee on Small Business and Entrepreneurship, the House Committee on Small Business and the House Committee on Science, Space, and Technology. The determination must be made by the head of the Federal agency or designee and explain how awards to SBCs that are owned in majority part by multiple venture capital operating companies, hedge funds, or private equity in the SBIR program will:

(I) Induce additional venture capital, hedge fund, or private equity firm funding of small business innovations;

(II) Substantially contribute to the mission of the Federal agency;

(III) Address a demonstrated need for public research; and

(IV) Otherwise fulfill the capital needs of small business concerns for additional financing for SBIR projects.

(ii) The SBC that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms must register with SBA in the Company Registry Database, at *www.SBIR.gov*, prior to the date it submits an application for an SBIR award.

(iii) The SBC that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms must submit a certification with its proposal stating, among other things, that it has registered with SBA.

(iv) Any agency that makes an award under this paragraph during a fiscal year shall collect and submit to SBA data relating to the number and dollar amount of Phase I awards, Phase II awards, and any other category of awards by the Federal agency under the SBIR program during that fiscal year. See section 10 of the directive for the specific reporting requirements.

(v) If an agency awards more than the percentage of the funds authorized under paragraph (a)(2), the agency shall transfer from its non-SBIR and non-STTR R&D funds to the agency's SBIR funds any amount that is in excess of the authorized amount. The agency must transfer the funds not later than 180 days after the date on which the Federal agency made the award that exceeded the authorized amount.

(3) If a Federal agency makes an award under a solicitation more than 9 months after the date on which the period for submitting applications under the solicitation ends, a covered small business concern is eligible to receive the award, without regard to whether it meets the eligibility requirements of the program for a SBC that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms, if the covered small business concern meets all other requirements for such an award. In addition, the agency must transfer from its non-SBIR and non-STTR R&D funds to the agency's SBIR funds any amount that is so awarded to a covered small business concern. The funds must be transferred not later than 90 days after the date on which the Federal agency makes the award.

(4) For Phase I, a minimum of two-thirds of the research or analytical effort must be performed by the awardee. For Phase II, a minimum of one-half of the research or analytical effort must be performed by the awardee. Occasionally, deviations from these requirements may occur, and must be approved in writing by the funding agreement officer after consultation with the agency SBIR Program Manager/Coordinator. An agency can measure this research or analytical effort using the total contract dollars or labor hours, and must explain to the small business in the solicitation how it will be measured.

(5) For both Phase I and Phase II, the primary employment of the principal investigator must be with the SBC at the time of award and during the conduct of the proposed project. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC. This precludes full-time employment with another organization. Occasionally, deviations from this requirement may occur, and must be approved in writing by the funding agreement officer after consultation with the agency SBIR Program Manager/Coordinator. Further, an SBC may replace the principal investigator on an SBIR Phase I or Phase II award, subject to approval in writing by the funding agreement officer. For purposes of the SBIR Program, personnel obtained through a Professional Employer Organization or other similar personnel leasing company may be considered employees of the awardee. This is consistent with SBA's size regulations, 13 CFR 121.106—Small Business Size Regulations.

(6) For both Phase I and Phase II, the R/R&D work must be performed in the United States. However, based on a rare and unique circumstance, agencies may approve a particular portion of the R/R&D work to be performed or obtained in a country outside of the United States, for example, if a supply or material or other item or project requirement is not available in the United States. The funding agreement

officer must approve each such specific condition in writing.

(b) *Proposal (Application) Requirements.*

(1) *Registration and Certifications for Proposal and Award.*

(i) Each Phase I and Phase II applicant that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms must register with SBA in the Company Registry Database at *www.SBIR.gov* and submit a certification with its SBIR application to the SBIR agency (see Appendix I for the required text of the certification).

(ii) Each applicant must register in SBA's Company Registry Database (see Appendix IV) and submit a .pdf document of the registration with its application if the agency is otherwise unable to obtain this information via Tech-Net.

(iii) Agencies may request the SBIR applicant to submit a certification at the time of submission of the application or offer, which requires the applicant to state that it intends to meet the size, ownership and other requirements of the SBIR Program at the time of award of the funding agreement, if selected for award. See Appendix I for the required text of the certification.

(2) *Commercialization Plan.* A succinct commercialization plan must be included with each proposal for an SBIR Phase II award moving toward commercialization. Elements of a commercialization plan will include the following, as applicable:

(i) *Company information.* Focused objectives/core competencies; specialization area(s); products with significant sales; and history of previous Federal and non-Federal funding, regulatory experience, and subsequent commercialization.

(ii) *Customer and Competition.* Clear description of key technology objectives, current competition, and advantages compared to competing products or services; description of hurdles to acceptance of the innovation.

(iii) *Market.* Milestones, target dates, analyses of market size, and estimated market share after first year sales and after 5 years; explanation of plan to obtain market share.

(iv) *Intellectual Property.* Patent status, technology lead, trade secrets or other demonstration of a plan to achieve sufficient protection to realize the commercialization stage and attain at least a temporal competitive advantage.

(v) *Financing.* Plans for securing necessary funding in Phase III.

(vi) *Assistance and mentoring.* Plans for securing needed technical or business assistance through mentoring, partnering, or through arrangements with state assistance programs, SBDCs, Federally-funded research laboratories, Manufacturing Extension Partnership centers, or other assistance providers.

(3) *Data Collection.* Each Phase I and II applicant will be required to provide information in *www.SBIR.gov* (see Appendix IV) as well as the other information required by Appendices V–VI to the agency or *www.SBIR.gov.* Each SBC applying for a Phase II award is required to update the appropriate information in the database for any of its prior Phase II awards (see Appendix VI).

7. SBIR Funding Process

Because the Act requires a ''simplified, standardized funding process,'' specific attention must be given to the following areas of SBIR Program administration:

(a) *Timely Receipt of Proposals.* Program solicitations must establish proposal submission dates for Phase I and may establish proposal submission dates for Phase II. However, agencies may also negotiate mutually acceptable Phase II proposal submission dates with individual Phase I awardees.

(b) *Review of SBIR Proposals.* SBA encourages SBIR agencies to use their routine review processes for SBIR proposals whether internal or external evaluation is used. A more limited review process may be used for Phase I due to the larger number of proposals anticipated. Where appropriate, ''peer'' reviews external to the agency are authorized by the Act. SBA cautions SBIR agencies that all review procedures must be designed to minimize any possible conflict of interest as it pertains to applicant proprietary data. The standardized SBIR solicitation advises potential applicants that proposals may be subject to an established external review process and that the applicant may include company designated proprietary information in its proposal.

(c) *Selection of Awardees.*

(1) *Time period for decision on proposals.*

(i) The National Institutes of Health (NIH) and the National Science Foundation (NSF) must issue a notice to an applicant for each proposal submitted stating whether it was recommended or not for award no more than one year after the closing date of the solicitation. NIH and NSF agencies should issue the award no more than 15 months after the closing date of the solicitation. Pursuant to paragraph (iii) below, NIH and NSF are encouraged to reduce these timeframes.

(ii) All other agencies must issue a notice to an applicant for each proposal submitted stating whether it was recommended or not for award no more than 90 calendar days after the closing date of the solicitation. Agencies should issue the award no more than 180 calendar days after the closing date of the solicitation.

(iii) Agencies are encouraged to develop programs or measures to reduce the time periods between the close of an SBIR Phase I solicitation/receipt of a Phase II application and notification to the applicant as well as the time to the issuance of the Phase I and Phase II awards. As appropriate, agencies should adopt accelerated proposal, evaluation, and selection procedures designed to address the gap in funding these competitive awards to meet or reduce the timeframes set forth above. With respect to Phase II awards, SBA recognizes that Phase II arrangements between the agency and applicant may require more detailed negotiation to establish terms acceptable to both parties; however, agencies must not sacrifice the R/R&D momentum created under Phase I by engaging in unnecessarily protracted Phase II proceedings.

(iv) *Request for Waiver.*

(A) If the agency determines that it requires additional time between the solicitation closing date and the notification of recommendation for award, it must submit a written request for an extension to SBA. The written request must specify the number of additional calendar days needed to issue the notice for a specific applicant and the reasons for the extension. If an agency believes it will not meet the timeframes for an entire solicitation, the request for an extension must state how many awards will not meet the statutory timeframes, as well as the number of additional calendar days needed to issue the notice and the reasons for the extension. The written request must be submitted to SBA at least 10 business days prior to when the agency must issue its notice to the applicant. Agencies must send their written request to: Office of Technology, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416. Phone: (202) 205–6450. Fax: (202) 205–7754. Email: *technology@sba.gov.*

(B) SBA will respond to the request for an extension within 5 business days, as practicable. SBA may authorize an agency to issue the notice up to 90 calendar days after the timeframes set forth in paragraphs (c)(1)(i) and (ii).

(C) Even if SBA grants an extension of time, the SBIR agency is required to develop programs or measures to reduce the time periods between the close of an

SBIR Phase I solicitation/receipt of a Phase II application and notification to the applicant as well as the time to the issuance of the Phase I and Phase II awards as set forth in paragraph (c)(1)(3) above.

(D) If an SBIR agency does not receive an extension of time, it may still proceed with the award to the small business.

(2) *Standardized solicitation.*

(i) The standardized SBIR Program solicitation must advise Phase I applicants that additional information may be requested by the awarding agency to evidence awardee responsibility for project completion and advise applicants of the proposal evaluation criteria for Phase I and Phase II.

(ii) The SBIR agency will provide information to each Phase I awardee considered for a Phase II award regarding Phase II proposal submissions, reviews, and selections.

(d) *Essentially Equivalent Work.* SBIR participants often submit duplicate or similar proposals to more than one soliciting agency when the work projects appear to involve similar topics or requirements, which are within the expertise and capability levels of the applicant. However, ''essentially equivalent work'' must not be funded in the SBIR or other Federal programs, unless an exception to this rule applies. Agencies must verify with the applicant that this is the case by requiring them to certify at the time of award and during the lifecycle of the award that essentially equivalent work has not been funded by another Federal agency.

(e) *Cost Sharing.* Cost sharing can serve the mutual interests of the SBIR agencies and certain SBIR awardees by assuring the efficient use of available resources. However, cost sharing on SBIR projects is not required, although it may be encouraged. Therefore, cost sharing cannot be an evaluation factor in the review of proposals. The standardized SBIR Program solicitation (Appendix I) will provide information to prospective SBIR applicants concerning cost sharing.

(f) *Payment Schedules and Cost Principles.*

(1) SBIR awardees may be paid under an applicable, authorized progress payment procedure or in accordance with a negotiated/definitized price and payment schedule. Advance payments are optional and may be made under appropriate law. In all cases, agencies must make payment to recipients under SBIR funding agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of the funding agreement requirements.

(2) All SBIR funding agreements must use, as appropriate, current cost principles and procedures authorized for use by the SBIR agencies. At the time of award, agencies must inform each SBIR awardee, to the extent possible, of the applicable Federal regulations and procedures that refer to the costs that, generally, are allowable under funding agreements.

(3) Agencies must, to the extent possible, attempt to shorten the amount of time between the notice of an award under the SBIR Program and the subsequent release of funding with respect to the award.

(g) *Funding Agreement Types and Fee or Profit.* Statutory requirements for uniformity and standardization require consistency in application of SBIR Program provisions among SBIR agencies. However, consistency must allow for flexibility by the various agencies in missions and needs as well as the wide variance in funds required to be devoted to SBIR Programs in the agencies. The following instructions meet all of these requirements:

(1) *Funding Agreement.* The type of funding agreement (contract, grant, or cooperative agreement) is determined by the awarding agency, but must be consistent with 31 U.S.C. 6301–6308. Contracting agencies may issue SBIR awards as fixed price contracts (including firm fixed price, fixed price incentive or fixed price level of effort contracts) or cost type contracts, consistent with the Federal Acquisition Regulations and agency supplemental acquisition regulations. In some cases, small businesses seek progress payments, which may be appropriate under fixed-price R&D contracts and are a form of contract financing for firm-fixed-price contracts. However, for certain agencies, in order to qualify for progress payments or an incentive type contract, the small business's accounting system would have to be audited, which can delay award, unless the contractor has an already approved accounting system. Therefore SBIR agencies should consider using partial payments methods or on a deliverable item basis or consider other available options to work with the SBIR awardee.

(2) *Fee or Profit.* Except as expressly excluded or limited by statute, awarding agencies must provide for a reasonable fee or profit on SBIR funding agreements, consistent with normal profit margins provided to profit-making firms for R/R&D work.

(h) *Periods of Performance and Extensions.*

(1) In keeping with the legislative intent to make a large number of relatively small awards, modification of funding agreements to extend periods of performance, to increase the scope of work, or to increase the dollar amount should be kept to a minimum, except for options in original Phase I or II awards.

(2) *Phase I.* Period of performance normally should not exceed 6 months. However, agencies may provide a longer performance period where appropriate for a particular project.

(3) *Phase II.* Period of performance under Phase II is a subject of negotiation between the awardee and the issuing agency. The duration of Phase II normally should not exceed 2 years. However, agencies may provide a longer performance period where appropriate for a particular project.

(i) *Dollar Value of Awards.*

(1) Generally, a Phase I award (including modifications) may not exceed $150,000 and a Phase II award (including modifications) may not exceed $1,000,000. Agencies may issue an award that exceeds these award guideline amounts by no more than 50%.

(2) SBA will adjust these amounts every year for inflation and will post these inflation adjustments at the end of the fiscal year or soon after on *www.SBIR.gov*. The adjusted guidelines are effective for all solicitations issued on or after the date of the adjustment, and may be used by agencies to amend the solicitation and other program literature. Agencies have the discretion to issue awards for less than the guidelines.

(3) There is no dollar limit associated with Phase III SBIR awards.

(4) Agencies may request a waiver to exceed the award guideline amounts set established in paragraph (i)(1) by more than 50% for a specific topic.

(5) Agencies must submit this request for a waiver to SBA prior to release of the solicitation, contract award, or modification to the award for the topic. The request for a waiver must explain and provide evidence that the limitations on award size will interfere with the ability of the agency to fulfill its research mission through the SBIR Program; that the agency will minimize, to the maximum extent practicable, the number of awards that exceed the guidelines by more than 50% for the topic; and that research costs for the topic area differ significantly from those in other areas. After review of the agency's justification, SBA may grant the waiver for the agency to exceed the award guidelines by more than 50% for a specific topic. SBA will issue a decision on the request within 10

business days. The waiver will be in effect for one fiscal year.

(6) Agencies must maintain information on all awards exceeding the guidelines set forth in paragraph (i)(1), including the amount of the award, a justification for exceeding the guidelines for each award, the identity and location of the awardee, whether the awardee has received any venture capital, hedge fund, or private equity firm investment, and whether the awardee is majority-owned by multiple VCOCs, hedge funds, or private equity firms.

(7) The award guidelines do not prevent an agency from funding SBIR projects from other (non-SBIR) agency funds. Non-SBIR funds used on SBIR efforts do not count toward the award guidelines set forth in (i)(1).

(j) *National Security Exemption.* The Act provides for exemptions related to the simplified standardized funding process ''* * * if national security or intelligence functions clearly would be jeopardized.'' This exemption should not be interpreted as a blanket exemption or prohibition of SBIR participation related to the acquisition of effort on national security or intelligence functions except as specifically defined under section 9(e)(2) of the Act, 15 U.S.C. § 638(e)(2). Agency technology managers directing R/R&D projects under the SBIR Program, where the project subject matter may be affected by this exemption, must first make a determination on which, if any, of the standardized proceedings clearly place national security and intelligence functions in jeopardy, and then proceed with an acceptable modified process to complete the SBIR action. SBA's SBIR Program monitoring activities, except where prohibited by security considerations, must include a review of nonconforming SBIR actions justified under this public law provision.

8. Terms of Agreement Under SBIR Awards

(a) *Proprietary Information Contained in Proposals.* The standardized SBIR Program solicitation will include provisions requiring the confidential treatment of any proprietary information to the extent permitted by law. Agencies will discourage SBCs from submitting information considered proprietary unless the information is deemed essential for proper evaluation of the proposal. The solicitation will require that all proprietary information be identified clearly and marked with a prescribed legend. Agencies may elect to require SBCs to limit proprietary information to that essential to the proposal and to have such information submitted on a separate page or pages keyed to the text. The Government, except for proposal review purposes, protects all proprietary information, regardless of type, submitted in a contract proposal or grant application for a funding agreement under the SBIR Program, from disclosure.

(b) *Rights in Data Developed Under SBIR Funding Agreement.* The Act provides for ''retention by an SBC of the rights to data generated by the concern in the performance of an SBIR award.''

(1) Each agency must refrain from disclosing SBIR technical data to outside the Government (except reviewers) and especially to competitors of the SBC, or from using the information to produce future technical procurement specifications that could harm the SBC that discovered and developed the innovation.

(2) SBIR agencies must protect from disclosure and non-governmental use all SBIR technical data developed from work performed under an SBIR funding agreement for a period of not less than four years from delivery of the last deliverable under that agreement (either Phase I, Phase II, or Federally-funded SBIR Phase III) unless, subject to paragraph (b)(3) of this section, the agency obtains permission to disclose such SBIR technical data from the awardee or SBIR applicant. Agencies are released from obligation to protect SBIR data upon expiration of the protection period except that any such data that is also protected and referenced under a subsequent SBIR award must remain protected through the protection period of that subsequent SBIR award. For example, if a Phase III award is issued within or after the Phase II data rights protection period and the Phase III award refers to and protects data developed and protected under the Phase II award, then that data must continue to be protected through the Phase III protection period. Agencies have discretion to adopt a protection period longer than four years. The Government retains a royalty-free license for Government use of any technical data delivered under an SBIR award, whether patented or not. This section does not apply to program evaluation.

(3) SBIR technical data rights apply to all SBIR awards, including subcontracts to such awards, that fall within the statutory definition of Phase I, II, or III of the SBIR Program, as described in section 4 of this Policy Directive. The scope and extent of the SBIR technical data rights applicable to Federally-funded Phase III awards is identical to the SBIR data rights applicable to Phases I and II SBIR awards. The data rights protection period lapses only:

(i) Upon expiration of the protection period applicable to the SBIR award; or

(ii) By agreement between the awardee and the agency.

(4) Agencies must insert the provisions of (b)(1), (2), and (3) immediately above as SBIR data rights clauses into all SBIR Phase I, Phase II, and Phase III awards. These data rights clauses are non-negotiable and must not be the subject of negotiations pertaining to an SBIR Phase III award, or diminished or removed during award administration. An agency must not, in any way, make issuance of an SBIR Phase III award conditional on data rights. If the SBIR awardee wishes to transfer its SBIR data rights to the awarding agency or to a third party, it must do so in writing under a separate agreement. A decision by the awardee to relinquish, transfer, or modify in any way its SBIR data rights must be made without pressure or coercion by the agency or any other party. Following issuance of an SBIR Phase III award, the awardee may enter into an agreement with the awarding agency to transfer or modify the data rights contained in that SBIR Phase III award. Such a bilateral data rights agreement must be entered into only after the SBIR Phase III award, which includes the appropriate SBIR data rights clause, has been signed. SBA will report to the Congress any attempt or action by an agency to condition an SBIR award on data rights, to exclude the appropriate data rights clause from the award, or to diminish such rights.

(c) *Title Transfer of Agency-Provided Property.* Under the Act, the Government may transfer title to property provided by the SBIR agency to the awardee or acquired by the awardee for the purpose of fulfilling the contract where such transfer would be more cost effective than recovery of the property.

(d) *Continued Use of Government Equipment.* The Act directs that an agency allow an SBIR awardee participating in the third phase of the SBIR Program continued use, as a directed bailment, of any property transferred by the agency to the Phase II awardee. The Phase II awardee may use the property for a period of not less than 2 years, beginning on the initial date of the concern's participation in the third phase of the SBIR Program.

(e) *Grant Authority.* The Act does not, in and of itself, convey grant authority. Each agency must secure grant authority in accordance with its normal procedures.

(f) *Conflicts of Interest.* SBA cautions SBIR agencies that awards made to SBCs owned by or employing current or

previous Federal Government employees may create conflicts of interest in violation of FAR Part 3 and the Ethics in Government Act of 1978, as amended. Each SBIR agency should refer to the standards of conduct review procedures currently in effect for its agency to ensure that such conflicts of interest do not arise.

(g) *American-Made Equipment and Products.* Congress intends that the awardee of a funding agreement under the SBIR Program should, when purchasing any equipment or a product with funds provided through the funding agreement, purchase only American-made equipment and products, to the extent possible, in keeping with the overall purposes of this program. Each SBIR agency must provide to each awardee a notice of this requirement.

(h) *Certifications After Award and During Funding Agreement Lifecycle.*

(1) A Phase I funding agreement must state that the awardee shall submit a new certification as to whether it is in compliance with specific SBIR Program requirements at the time of final payment or disbursement.

(2) A Phase II funding agreement must state that the awardee shall submit a new certification as to whether it is in compliance with specific SBIR Program requirements prior to receiving more than 50% of the total award amount and prior to final payment or disbursement.

(3) Agencies may also require additional certifications at other points in time during the life cycle of the funding agreement, such as at the time of each payment or disbursement.

(i) *Updating SBIR.gov.* Agencies must require each Phase II awardee to update the appropriate information on the award in the Commercialization Database upon completion of the last deliverable under the funding agreement. In addition, the awardee is requested to voluntarily update the appropriate information on that award in the database annually thereafter for a minimum period of 5 years.

9. Responsibilities of SBIR Agencies and Departments

(a) *General Responsibilities.* The Act requires each agency participating in the SBIR Program to:

(1) Unilaterally determine the categories of projects to be included in its SBIR Program, giving consideration to maintaining a portfolio balance between exploratory projects of high technological risk and those with greater likelihood of success. Further, to the extent permitted by the law, and in a manner consistent with the mission of that agency and the purpose of the SBIR program, each Federal agency must:

(i) Give priority in the SBIR program to manufacturing-related research and development in accordance with Executive Order 13329. In addition, agencies must develop an Action Plan for implementing Executive Order 13329, which identifies activities used to give priority in the SBIR program to manufacturing-related research and development. These activities should include the provision of information on the Executive Order on the agency's SBIR program Web site.

(ii) Give priority to small business concerns that participate in or conduct energy efficiency or renewable energy system research and development projects.

(iii) Give consideration to topics that further one or more critical technologies as identified by the National Critical Technologies panel (or its successor) in reports required under 42 U.S.C. 6683, or the Secretary of Defense in accordance with 10 U.S.C. 2522.

(2) Release SBIR solicitations in accordance with the SBA master schedule.

(3) Unilaterally receive and evaluate proposals resulting from program solicitations, select awardees, issue funding agreements, and inform each awardee under such agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement.

(4) Require a succinct commercialization plan with each proposal submitted for a Phase II award.

(5) Collect and maintain information from applicants and awardees and provide it to SBA to develop and maintain the database, as identified in § 11(e) of this policy Directive.

(6) Administer its own SBIR funding agreements or delegate such administration to another agency.

(7) Include provisions in each SBIR funding agreement setting forth the respective rights of the United States and the awardee with respect to intellectual property rights and with respect to any right to carry out follow-on research.

(8) Ensure that the rights in data developed under each Federally-funded SBIR Phase I, Phase II, and Phase III award are protected properly.

(9) Make payments to awardees of SBIR funding agreements on the basis of progress toward or completion of the funding agreement requirements and in all cases make payment to awardees under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements.

(10) Provide an annual report on the SBIR Program to SBA, as well as other information concerning the SBIR Program. See § 10 of this Policy Directive for further information on the agency's reporting requirements, including the frequency for specific reporting requirements.

(11) Include in its annual performance plan required by 31 U.S.C. 1115(a) and (b) a section on its SBIR Program, and submit such section to the Senate Committee on Small Business and Entrepreneurship and to the House Committees on Science, Space and Technology and Small Business.

(12) Establish the agency's benchmarks for progress towards commercialization. See § 4(a)(3) of the directive for further information.

(b) *Discretionary technical assistance to SBIR awardees.*

(1) Agencies may enter into agreements with vendors to provide technical assistance to SBIR awardees, which may include access to a network of scientists and engineers engaged in a wide range of technologies or access to technical and business literature available through on-line data bases. Each agency may select a vendor for a term not to exceed 5 years. The vendor must be selected using competitive and merit-based criteria.

(i) The purpose of this technical assistance is to assist SBIR awardees in:

(A) Making better technical decisions on SBIR projects;

(B) Solving technical problems that arise during SBIR projects;

(C) Minimizing technical risks associated with SBIR projects; and

(D) Commercializing the SBIR product or process.

(ii) An agency may not enter into a contract with the vendor if the contract amount provided for technical assistance is based upon the total number of Phase I or Phase II awards, but may enter into a contract with the vendor based upon the total amount of awards for which assistance is provided.

(2) Each agency may provide up to $5,000 of SBIR funds for the technical assistance described above in (c)(1) per year for each Phase I award and each Phase II award. The amount will be in addition to the award and will count as part of the agency's SBIR funding, unless the agency funds the technical assistance using non-SBIR funds. The agency may not use SBIR funds for technical assistance unless the vendor provides the services to the SBIR awardee.

(3) An SBIR applicant may acquire the technical assistance services set forth in (c)(1)(i) above itself and not through the vendor selected by the Federal agency.

The applicant must request this authority from the Federal agency and demonstrate in its SBIR application that the individual or entity selected can provide the specific technical services needed. If the awardee demonstrates this requirement sufficiently, the agency shall permit the awardee to acquire such technical assistance itself, in an amount up to $5,000, as an allowable cost of the SBIR award. The per year amount will be in addition to the award and will count as part of the agency's SBIR funding, unless the agency funds the technical assistance using non-SBIR funds.

(c) Agencies must publish the information relating to timelines for awards of Phase I and Phase II funding agreements and performance start dates of the funding agreements that are reported to SBA in the agency's Annual Report (See § 10(a) of the directive). SBA will also publish this information on *www.SBIR.gov*.

(d) *Interagency actions.*

(1) *Joint funding.* An SBIR project may be financed by more than one Federal agency. Joint funding is not required but can be an effective arrangement for some projects.

(2) *Phase II awards.* An SBIR Phase II award may be issued by a Federal agency other than the one that made the Phase I award. Prior to award, the head of the Federal agency for the Phase I and Phase II awards, or designee, must issue a written determination that the topics of the awards are the same. Both agencies must submit the report to SBA.

(3) *Participation by WOSBs and SDBs in the SBIR Program.* In order to meet statutory requirements for greater inclusion, SBA and the Federal participating agencies must conduct outreach efforts to find and place innovative WOSBs and SDBs in the SBIR Program. These SBCs will be required to compete for SBIR awards on the same basis as all other SBCs. However, SBIR agencies are encouraged to work independently and cooperatively with SBA to develop methods to encourage qualified WOSBs and SDBs to participate in the SBIR Program.

(e) *Limitation on use of funds.*

(1) Each SBIR agency must expend the required minimum percent of its extramural budget on awards to SBCs. Agencies may not make available for the purpose of meeting the minimum percent an amount of its extramural budget for basic research that exceeds the minimum percent. Funding agreements with SBCs for R/R&D that result from competitive or single source selections other than an SBIR Program must not be considered to meet any portion of the required minimum percent.

(2) An agency must not use any of its SBIR budget for the purpose of funding administrative costs of the program, including costs associated with program operations, employee salaries, and other associated expenses, unless the exception in paragraph (3) below or § 12(b)(4)(ii) applies.

(3) *Pilot to Allow for Funding of Administrative, Oversight, and Contract Processing Costs.* Beginning on October 1, 2012 and ending on September 30, 2015, and upon establishment by SBA of the agency-specific performance criteria, SBA shall allow an SBIR Federal agency to use no more than 3% of its SBIR budget for one or more specific activities, which may be prioritized by the federal SBIR/STTR Interagency Policy Committee. The purpose of this pilot program is to assist with the substantial expansion in commercialization activities, prevention of fraud/waste/abuse, expansion of reporting requirements by agencies and other agency activities required for the SBIR Program. Funding under this pilot is not intended to and must not replace current agency administrative funding in support of SBIR activities. Rather, funding under this pilot program is intended to supplement such funds.

(i) A Federal agency may use this money to fund the following specific activities:

(A) SBIR and STTR program administration, which includes:

(I) internal oversight and quality control, such as verification of reports and invoices and cost reviews, and waste/fraud/abuse prevention (including targeted reviews of SBIR or STTR awardees that an agency determines are at risk for waste/fraud/abuse);

(II) Carrying out any activities associated with the participation by small businesses that are majority-owned by multiple venture capital operating companies, hedge funds or private equity firms;

(III) Contract processing costs relating to the SBIR or STTR program of that agency, which includes supplementing the current workforce to assist solely with SBIR or STTR funding agreements;

(IV) Funding of additional personnel to work solely on the SBIR Program of that agency, which includes assistance with application reviews; and

(V) Funding for simplified and standardized program proposal, selection, contracting, compliance, and audit procedures for the SBIR program, including the reduction of paperwork and data collection.

(B) STTR or SBIR Program-related outreach and related technical assistance initiatives not in effect prior to commencement of this pilot, except significant expansion or improvement of these initiatives, including:

(I) Technical assistance site visits;

(II) Personnel interviews;

(III) National conferences;

(C) Commercialization initiatives not in effect prior to commencement of this pilot, except significant expansion or improvement of these initiatives.

(D) For DoD and the military departments, carrying out the Commercialization Readiness Program set forth in 12(b) of this directive, with emphasis on supporting new initiatives that address barriers in bringing SBIR technologies to the marketplace, including intellectual property issues, sales cycle access issues, accelerated technology development issues, and other issues.

(ii) Agencies must use this money to attempt to increase participation by SDBs and WOSBs in the SBIR Program, and small businesses in states with a historically low level of SBIR awards. The agency may submit a written request to SBA to waive this requirement. The request must explain why the waiver is necessary, demonstrate a sufficient need for the waiver, and explain that the outreach objectives of the agency are being met and that there has been increased participation by small businesses in states with a historically low level of SBIR awards.

(iii) SBA will establish performance criteria each fiscal year by which use of these funds will be evaluated for that fiscal year. The performance criteria will be metrics that measure the performance areas required by statute against the goals set by the agencies in their work plans. The performance criteria will be based upon the work plans submitted by each agency for a given fiscal year and will be agency-specific. SBA will work with the SBIR agencies in creating a simplified template for agencies to use when making their work plans.

(iv) Each agency must submit its work plan to SBA at least 30 calendar days prior to the start of each fiscal year for which the pilot program is in operation. Agency work plans must include the following: A prioritized list of initiatives to be supported; the estimated percentage of administrative funds to be allocated to each initiative or the estimated amounts to be spent on each initiative; milestones for implementing the initiatives; the expected results to be achieved; and the assessment metrics for each initiative. The work plan must

identify initiatives that are above and beyond current practice and which enhance the agency's SBIR program.

(v) SBA will evaluate the work plan and provide initial comments within 15 calendar days of receipt of the plan. SBA's objective in evaluating the work plan is to ensure that, overall, it provides for improvements to the SBIR Program of that particular agency. If SBA does not provide initial comments within 30 calendar days of receipt of the plan, the work plan is deemed to be approved. If SBA does submit initial comments within 30 calendar days, agencies must amend or supplement their work plan and resubmit to SBA. Once SBA establishes the agency-specific performance criteria to measure the benefits of the use of these funds under the work plan, the agency may begin using the SBIR funds for the purposes set forth in the work plan. Agencies can adjust their work plans and spending throughout the fiscal year as needed, but must notify SBA of material changes in the plan.

(vi) Agencies must coordinate any activities in the work plan that relate to fraud, waste, and abuse prevention, targeted reviews of awardees, and implementation of oversight control and quality control measures (including verification of reports and invoices and cost reviews) with the agency's Office of Inspector General (OIG). If the agency allocates more than $50,000,000 to its SBIR Program for a fiscal year, the agency may share this funding with its OIG when the OIG performs the activities.

(vii) Agencies shall report to the Administrator on use of funds under this authority as part of the SBIR/STTR Annual Report. See § 10 generally and § 10(i).

(4) An agency must not issue an SBIR funding agreement that includes a provision for subcontracting any portion of that agreement back to the issuing agency, to any other Federal Government agency, or to other units of the Federal Government, except as provided in paragraph (f)(5) below. SBA may issue a case-by-case waiver to this provision after review of an agency's written justification that includes the following information:

(i) An explanation of why the SBIR research project requires the use of the Federal facility or personnel, including data that verifies the absence of non-federal facilities or personnel capable of supporting the research effort.

(ii) Why the Agency will not and cannot fund the use of the federal facility or personnel for the SBIR project with non-SBIR money.

(iii) The concurrence of the SBC's chief business official to use the federal facility or personnel.

(5) An agency may issue an SBIR funding agreement to a small business concern that intends to enter into an agreement with a Federal laboratory to perform portions of the award or has entered into a cooperative research and development agreement (see 15 U.S.C. 3710a(d)) with a Federal laboratory, only if there is compliance with the following.

(i) The agency may not require the small business concern enter into an agreement with any Federal laboratory to perform any portion of an SBIR award, as a condition for an SBIR award.

(ii) The agency may not issue an SBIR award or approve an agreement between an SBIR awardee and a Federal laboratory if the small business concern will not meet the minimum performance of work requirements set forth in § 6(a)(4) of this directive.

(iii) The agency may not issue an SBIR award or approve an agreement between an SBIR awardee and a Federal laboratory that violates any SBIR requirement set forth in statute or the Policy Directive, including any SBIR data rights protections.

(iv) The agency and Federal laboratory may not require any SBIR awardee that has an agreement with the Federal laboratory to perform portions of the activities under the SBIR award to provide advance payment to the Federal laboratory in an amount greater than the amount necessary to pay for 30 days of such activities.

(6) No agency, at its own discretion, may unilaterally cease participation in the SBIR Program. R/R&D agency budgets may cause fluctuations and trends that must be reviewed in light of SBIR Program purposes. An agency may be considered by SBA for a phased withdrawal from participation in the SBIR Program over a period of time sufficient in duration to minimize any adverse impact on SBCs. However, the SBA decision concerning such a withdrawal will be made on a case-by-case basis and will depend on significant changes to extramural R/R&D 3-year forecasts as found in the annual Budget of the United States Government and National Science Foundation breakdowns of total R/R&D obligations as published in the Federal Funds for Research and Development. Any withdrawal of an SBIR agency from the SBIR Program will be accomplished in a standardized and orderly manner in compliance with these statutorily mandated procedures.

(7) Federal agencies not otherwise required to participate in the SBIR Program may participate on a voluntary basis. Federal agencies seeking to participate in the SBIR Program must first submit their written requests to SBA. Voluntary participation requires the written approval of SBA.

(f) *Preventing Fraud, Waste, and Abuse.*

(1) Agencies shall evaluate risks of fraud, waste, and abuse in each application, monitor and administer SBIR awards, and create and implement policies and procedures to prevent fraud, waste and abuse in the SBIR Program. To capitalize on OIG expertise in this area, agencies must consult with their OIG when creating such policies and procedures. Fraud includes any false representation about a material fact or any intentional deception designed to deprive the United States unlawfully of something of value or to secure from the United States a benefit, privilege, allowance, or consideration to which an individual or business is not entitled. Waste includes extravagant, careless, or needless expenditure of Government funds, or the consumption of Government property, that results from deficient practices, systems, controls, or decisions. Abuse includes any intentional or improper use of Government resources, such as misuse of rank, position, or authority or resources. Examples of fraud, waste, and abuse relating to the SBIR Program include, but are not limited to:

(i) Misrepresentations or material, factual omissions to obtain, or otherwise receive funding under, an SBIR award;

(ii) Misrepresentations of the use of funds expended, work done, results achieved, or compliance with program requirements under an SBIR award;

(iii) Misuse or conversion of SBIR award funds, including any use of award funds while not in full compliance with SBIR Program requirements, or failure to pay taxes due on misused or converted SBIR award funds;

(iv) Fabrication, falsification, or plagiarism in applying for, carrying out, or reporting results from an SBIR award;

(v) Failure to comply with applicable federal costs principles governing an award;

(vi) Extravagant, careless, or needless spending;

(vii) Self-dealing, such as making a sub-award to an entity in which the PI has a financial interest;

(viii) Acceptance by agency personnel of bribes or gifts in exchange for grant or contract awards or other conflicts of interest that prevents the Government from getting the best value; and

(ix) Lack of monitoring, or follow-up if questions arise, by agency personnel to ensure that awardee meets all required eligibility requirements, provides all required certifications, performs in accordance with the terms and conditions of the award, and performs all work proposed in the application.

(2) At a minimum, agencies must:

(i) Require certifications from the SBIR awardee at the time of award, as well as after award and during the funding agreement lifecycle (see § 8(h) and Appendix I for more information);

(ii) Include on their respective SBIR Web page and in each solicitation, information explaining how an individual can report fraud, waste and abuse as provided by the agency's OIG (*e.g.,* include the fraud hotline number or Web-based reporting method for the agency's OIG);

(iii) Designate at least one individual in the agency to, at a minimum, serve as the liaison for the SBIR Program, the OIG and the agency's Suspension and Debarment Official (SDO) and ensure that inquiries regarding fraud, waste and abuse are referred to the OIG and, if applicable, the SDO.

(iv) Include on their respective SBIR Web page information concerning successful prosecutions of fraud, waste and abuse in the SBIR or STTR programs.

(v) Establish a written policy requiring all personnel involved with the SBIR Program to notify the OIG if anyone suspects fraud, waste, and/or abuse and ensure the policy is communicated to all SBIR personnel.

(vi) Create or ensure there is an adequate system to enforce accountability (through suspension and debarment, fraud referrals or other efforts to deter wrongdoing and promote integrity) by developing separate standardized templates for a referral made to the OIG for fraud, waste and abuse or the SDO for other matters, and a process for tracking such referrals.

(vii) Ensure compliance with the eligibility requirements of the program and the terms of the SBIR funding agreement.

(viii) Work with the agency's OIG with regard to its efforts to establish fraud detection indicators, coordinate the sharing of information between Federal agencies, and improve education and training to SBIR Program officials, applicants and awardees;

(ix) Develop policies and procedures to avoid funding essentially equivalent work already funded by another agency, which could include: searching Tech-Net prior to award for the applicant (if a joint venture, search for each party to the joint venture), key individuals of the applicant, and similar abstracts; using plagiarism or other software; checking the SBC's certification prior to award and funding and documenting the funding agreement file that such certification evidenced the SBC has not already received funding for essentially equivalent work; reviewing other agency's policies and procedures for best practices; and reviewing other R&D programs for policies and procedures and best practices related to this issue; and

(x) Consider enhanced reporting requirements during the funding agreement.

(g) *Interagency Policy Committee.* The Director of the Office of Science and Technology Policy (OSTP) will establish an Interagency SBIR/STTR Policy Committee, which will include representatives from Federal agencies with an SBIR or an STTR program and SBA. The Interagency SBIR/STTR Policy Committee shall review the following issues (but may review additional issues) and make policy recommendations on ways to improve program effectiveness and efficiency:

(1) The SBIR.gov databases described in § 9(k) of the Small Business Act (15 U.S.C. 638(k));

(2) Federal agency flexibility in establishing Phase I and II award sizes, including appropriate criteria for exercising such flexibility;

(3) Commercialization assistance best practices of Federal agencies with significant potential to be employed by other agencies and the appropriate steps to achieve that leverage, as well as proposals for new initiatives to address funding gaps that business concerns face after Phase II but before commercialization.

(4) The need for a standard evaluation framework to enable systematic assessment of SBIR and STTR, including through improved tracking of awards and outcomes and development of performance measures for the SBIR Program and STTR program of each Federal agency.

(5) Outreach and technical assistance activities that increase the participation of small businesses underrepresented in the SBIR and STTR programs, including the identification and sharing of best practices and the leveraging of resources in support of such activities across agencies.

(h) *National Academy of Sciences Report.* The National Academy of Sciences (NAS) will conduct a study and issue a report on the SBIR and STTR programs.

(1) Prior to issuing the report, and to ensure that the concerns of small business are appropriately considered, NAS shall consult with and consider the views of SBA's Office of Investment and Innovation and the Office of Advocacy and other interested parties, including entities, organizations, and individuals actively engaged in enhancing or developing the technological capabilities of small business concerns.

(2) In addition, the head of each agency with a budget of more than $50,000,000 for its SBIR Program for fiscal year 1999 shall, in consultation with SBA, and not later than 6 months after December 31, 2011, cooperatively enter into an agreement with NAS in furtherance of the report. SBA and the agencies will work with the Interagency Policy Committee in determining the parameters of the study, including the specific areas of focus and priorities for the broad topics required by statute. The agreement will set forth these parameters, specific areas of focus and priorities.

(3) NAS shall transmit to SBA, heads of agencies entering into an agreement under this section, the Committee on Science, Space and Technology, the Committee on Small Business of the House of Representatives, and to the Committee on Small Business of the Senate a copy of the report, which includes the results and recommendations, not later than 4 years after December 31, 2011, and every subsequent four years.

10. Agency and SBIR Applicant/ Awardee Reporting Requirements

(a) *General.* The Small Business Act requires agencies to collect meaningful information from SBCs and ensure that reporting requirements are streamlined to minimize the burden on small businesses.

(1) SBA is required to collect data from agencies and report to the Congress information regarding applications by and awards to SBCs by each Federal agency participating in the SBIR program. SBIR agencies and SBA will report data using standardized templates that are provided, maintained, and updated by SBA.

(2) The Act requires a ''simplified, standardized and timely annual report'' from each Federal agency participating in the SBIR program (see § 3 for the definition of Federal agency), which is submitted to SBA. In addition, agencies are required to report certain items periodically throughout the year to SBA. Agencies may identify certain information, such as award data information, by the various components of each agency. SBA will collect reports electronically, to the extent possible. The reports will be uploaded to

databases attached to Tech-Net—located at *www.SBIR.gov*. If the databases attached to Tech-Net are unavailable, then the report must be emailed to *technology@sba.gov*.

(3) To meet these requirements, the SBIR program has the following key principles:

(i) Make updating data available electronically;

(ii) Centralize and share certain data through secure interfaces to which only authorized government personnel have access;

(iii) Have small business enter the data only once, if possible; and

(iv) Provide standardized procedures.

(b) *Summary of SBIR Databases.*

(1) The Act requires that SBA coordinate the implementation of electronic databases at the SBIR agencies, including the technical ability of the agencies to share the data. In addition, the Act requires the reporting of various data elements, which are clustered together in the following subsections:

(i) Solicitations Database (to include the Master Schedule);

(ii) Tech-Net, which includes the following databases:

(A) Company Registry Database;

(B) Application Information Database;

(C) Award Information Database;

(D) Commercialization Database;

(E) Annual Report Database; and

(F) Other Reporting Requirements Database.

(2) The subsections below describe the data reporting requirements, including reporting mechanisms, the frequency of data collection and reporting, and whether this information is shared publicly or is protected and only available to authorized personnel. The table below summarizes the data collection requirements for each database; however, there may be some divergences at the individual data field level. Refer to Appendices III–IX for the detailed reporting requirements at the data field level. SBA notes that not all of the information will be collected starting with fiscal year 2012. Rather, beginning in fiscal year 2012, SBA will begin a phased implementation of this data collection.

Database	Reporting mechanism	Collection/reporting frequency	Public/government
Solicitations	Agency XML or manual upload to *http://SBIR.gov*.	Within 5 business days of solicitation open date.	Public
Company Registry	SBC reports data to Tech-Net. Agency receives .pdf from company.	Register or reconfirm at time of application	Government only
Application Information	Agency provides XML or manual upload to Tech-Net.	Quarterly	Government only
Award Information	XML or manual upload to Tech-Net	Quarterly	Public
Commercialization	Agencies + companies report to Tech-Net	Agencies update in real time SBC updates prior to subsequent award application and voluntarily thereafter.	Government only
Annual Report	Agency XML or manual upload to Tech-Net	Annually	Public
Other Reports	As set forth in the directive	As set forth in the directive	Public

(3) SBIR awardees will have user names and passwords assigned in order to access their respective awards information in the system. Award and commercialization data maintained in the database can be changed only by the awardee, SBA, or the awarding SBIR/STTR Federal agency.

(c) *Master Schedule & the Solicitations Database.*

(1) SBA posts an electronic Master Schedule of release dates of program solicitations with links to Internet Web sites of agency solicitations on *www.SBIR.gov*.

(i) On or before August 1, each agency representative must notify SBA in writing or by email of its proposed program solicitation release and proposal due dates for the next fiscal year. SBA and the agency representatives will coordinate the resolution of any conflicting agency solicitation dates by the second week of August. In all cases, SBA will make final decisions. Agencies must notify SBA in writing of any subsequent changes in the solicitation release and close dates.

(ii) For those agencies that use both general topic and more specific subtopic designations in their SBIR solicitations, the topic data should accurately describe the research solicited.

(iii) Agencies must post on their Internet Web sites the following information regarding each program solicitation:

(A) List of topics upon which R/R&D proposals will be sought;

(B) Agency address, phone number, or email address from which SBIR Program solicitations can be requested or obtained, especially through electronic means;

(C) Names, addresses, and phone numbers of agency contact points where SBIR-related inquiries may be directed;

(D) Release date(s) of program solicitation(s);

(E) Closing date(s) for receipt of proposals; and

(F) Estimated number and average dollar amounts of Phase I awards to be made under the solicitation.

(2) SBA will manage a searchable public database that contains all solicitation and topic information from all SBIR agencies. Agencies are required to update the Solicitations Database, hosted on Tech-Net (available at *www.SBIR.gov*), within 5 business days of a solicitation's open date for applications and/or submissions for SBCs. Refer to Appendix III: Solicitations Database for detailed reporting requirements. The main data requirements include:

(i) Type of solicitation—SBIR/STTR;

(ii) Phase—I or II;

(iii) Topic description;

(iv) Sub-topic description;

(v) Web site for further information; and

(vi) Applicable contact information per topic or sub-topic, where applicable and allowed by law.

(d) *Company Registry Database.*

(1) SBA will maintain and manage a company registry to track ownership and affiliation requirements for all companies applying to the SBIR Program, including participants that are majority-owned by multiple VCOCs, private equity firms, or hedge funds.

(2) Each SBC applying for a Phase I or Phase II award must register on Tech-Net prior to submitting an application. The SBC will report and/or update ownership information to SBA prior to each SBIR application submission. The SBC will also be able to view all of the ownership and affiliation requirements of the program on the registry site.

(3) Data collected in the Company Registry Database will not be shared publicly. Refer to Appendix IV for details on specific fields shared publicly.

(4) The SBC will save its information from the registration in a .pdf document and will append this document to the application submitted to a given agency unless the information can be transmitted automatically to SBIR agencies.

(5) Refer to Appendix IV for detailed reporting requirements. The main data requirements include:

(i) Basic identifying information for the SBC;

(ii) The number of employees for the SBC;

(iii) Whether the SBC has venture capital, hedge fund or private equity firm investment and if so, include:

(A) The percentage of ownership of the awardee held by the VCOC, hedge fund or private equity firm;

(B) the registration by the SBC of whether or not it is majority-owned by VCOCs, hedge funds, or private equity firms. Please note that this may be auto-populated through the individual calculations of investments in the SBC already submitted.

(iv) Information on the affiliates of the SBC, including:

(A) The names of all affiliates of the SBC;

(B) The number of employees of the affiliates;

(e) *Application Information Database*.

(1) SBA will manage an Application Information Database on information on applications to the SBIR program across agencies.

(2) Each agency must upload application data to the Application Database at Tech-Net at least quarterly.

(3) The data in the applicant database is only viewable to authorized government officials and not shared publicly.

(4) Refer to Appendix V for detailed reporting requirements. The main data requirements for each Phase I and Phase II application include:

(i) Name, size, and location of the applicant, and the identifying number assigned;

(ii) An abstract and specific aims of the project;

(iii) Name, title, contact information, and position in the small business of each key individual that will carry out the project;

(iv) Percentage of effort each key individual identified will contribute to the project;

(v) Federal agency to which the application is made and contact information for the person responsible for reviewing applications and making awards under the program.

(5) The Applicant Information Database connects and cross-checks information with the Company Registry and government personnel can see connected data.

(f) *Award Information Database*.

(1) SBA will manage a database to collect information on awards made within the SBIR program across agencies.

(2) Each agency must update the Award Information Database quarterly, if not more frequently.

(3) Most of the data available on the Award Information Database is viewable and searchable by the public on Tech-Net.

(4) Refer to Appendix VI for detailed reporting requirements. The main data requirements for each Phase I and Phase II application include:

(i) Information similar to the Application Information Database—if not already collected;

(ii) The name, size, and location of, and the identifying number assigned;

(iii) An abstract and specific aims of the project;

(iv) The name, title, contact information, and position in the small business of each key individual that will carry out the project;

(v) The percentage of effort each key individual identified will contribute to the project;

(vi) The Federal agency making the award;

(vii) Award amount;

(viii) Principal investigator identifying information—including name, email address, and demographic information;

(x) More detailed information on location of company;

(xi) Whether the awardee:

(A) Has venture capital, hedge fund or private equity firm investment and if so, the amount of such investment received by SBC as of date of award and amount of additional capital awardee has invested in SBIR technology;

(B) is a WOSB or has a woman as a principal investigator;

(C) is an SDB or has a socially and economically disadvantaged individual as a principal investigator;

(D) is owned by a faculty member or a student of an institution of higher education (as defined in 20 U.S.C. § 1001); and

(E) has received the award as a result of the Commercialization Readiness Pilot Program for Civilian Agencies set forth in § 12(c) of the directive.

(xii) an identification of any business concern or subsidiary established for the commercial application of a product or service for which an SBIR or STTR award is made.

(5) The Award Information Database connects and cross-checks information with the Company Registry and Application Information Database, and government personnel can see connected data.

(g) *Commercialization Database.*

(1) The Commercialization Database will store information reported by awardees on the commercial activity resulting from their past SBIR awards.

(2) SBA and SBIR agencies will have two options to collect this information from SBCs. First, SBA may collect commercialization data directly from awardees into a central commercialization database. Alternatively, agencies may collect commercialization data from awardees, and then upload the data to the central commercialization database for real-time availability for SBA and other SBIR agencies. The central commercialization database may be maintained by SBA or another Federal agency, as long as there is an interagency agreement addressing the database and stating, at a minimum, that all data in the database will be available in real-time to authorized Government personnel.

(4) SBIR awardees are required to update this information on their prior Phase II awards in the Commercialization Database when submitting an application for an SBIR Phase II award and upon completion of the last deliverable for that award.

(5) Commercialization data at the company level will not be shared publicly. Aggregated data that maintains the confidentiality of companies may be reported in compliance with the statute.

(6) Refer to Appendix VII for detailed reporting requirements. The main data requirements include for every Phase II award:

(i) Any business concern or subsidiary established for the commercial application of a product or service for which an SBIR award is made;

(ii) Total revenue resulting from the sale of new products or services, or licensing agreements resulting from the research conducted under each Phase II award;

(iii) Additional investment received from any source, other than Phase I or Phase II awards, to further the research and development conducted under each Phase II award; and

(iv) Any narrative information that a Phase II awardee voluntarily submits to further describe the commercialization efforts of its awards and related research.

(7) The SBC may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award. Companies are requested to update their records in this database on a voluntary

basis for at least 5 years following the completion of award.

(8) Awardees will update their information and add project commercialization and sales data using their user names and passwords. SBA and SBIR agencies will coordinate data collection to ensure that small businesses will not need to report the same data more than once.

(9) Note that the Award Information and Commercialization Databases will contain the data necessary for agencies to determine whether an applicant meets the agency's benchmarks for progress towards commercialization.

(h) *Annual Report.*

(1) Agencies must submit their report to SBA on an annual basis and will report for the period ending September 30 of each fiscal year. The report is due to SBA by March 15 of each year. For example, the report for FY 2012 (October 1, 2011–September 30, 2012) must be submitted to SBA by March 15, 2013.

(2) SBA will provide a template for the Annual Report via Tech-Net to agencies to populate with the information below. SBA reserves the right to add further detail to the annual report data and performance metrics via the template beyond the information provided below and the appropriate appendix.

(3) After agencies submit the annual report to SBA, SBA will also calculate the required data, if the supporting data for that calculation has already been submitted to SBA (*e.g.,* total SBIR dollars obligated, the percentage of extramural budget allocated to SBIR, number of awards exceeding the statutory thresholds). SBA will work with the agencies to resolve any data inconsistencies.

(4) The report must include the following:

(i) Agency total fiscal year, extramural R/R&D total obligations as reported to the National Science Foundation pursuant to the annual Budget of the United States Government.

(ii) SBIR Program total fiscal year dollars derived by applying the statutory per centum to the agency's extramural R/R&D total obligations.

(iii) SBIR Program fiscal year dollars obligated through SBIR Program funding agreements for Phase I and Phase II.

(iv) Number of topics and subtopics contained in each program solicitation.

(v) Number of proposals received by the agency for each topic and subtopic in each program solicitation.

(vi) For all applicants and awardees in the applicable fiscal year—where applicable, the name and address, solicitation topic and subtopic, solicitation number, project title, total dollar amount of funding agreement, and applicable demographic information. The agency is not required to re-submit applicant and award information in the annual report that it has already reported to SBA through Tech-Net as required under Appendices IV, V, and VI.

(vii) Justification for the award of any funding agreement exceeding the award guidelines set forth in § 7(h) of this directive, the amount of each award exceeding the guidelines, the identity and location of the awardee, whether the awardee has received any venture capital, hedge fund, or private equity firm investment, and whether the awardee is majority-owned by a venture capital operating company, hedge fund or private equity firm.

(viii) Justification for awards made under a topic or subtopic where the agency received only one proposal. Agencies must also provide the awardee's name and address, the topic or subtopic, and the dollar amount of award. Awardee information must be collected quarterly—in any case, but updated in the agency's annual reports.

(ix) An accounting of Phase I awards made to SBCs that have received more than 15 Phase II awards from all agencies in the preceding 5 fiscal years. Each agency must report: name of awardee; Phase I funding agreement number and date of award; Phase I topic or subtopic title; amount and date of previous Phase II funding; and commercialization status for each prior Phase II award.

(x) All instances where the SBIR Phase II awardee did not receive an SBIR Phase I award.

(xi) All instances in which an agency pursued R/R&D, services, production, or any combination of a technology developed by an SBIR awardee and determined that it was not practicable to enter into a follow-on funding agreement with non-SBIR funds with that concern. See § 9(a)(12) for minimum reporting requirements.

(xii) The number and dollar value of each SBIR and non-SBIR award (includes grants, contracts and cooperative agreements as well as any award issued under the Commercialization Program) over $10,000 and compare the number and amount of SBIR awards with awards to other than SBCs.

(xiii) Information relating to the pilot to allow for funding of administrative, oversight, and contract processing costs, including the money spent on each activity and any other information required in the approved work plan to measure the benefits of using these funds for the specific activities—especially, as it pertains to the goals outlined in the work plan. See § 9(e)(3) concerning the Pilot to Allow for Funding of Administrative, Oversight, and Contract Processing Costs.

(xiv) An analysis of the various activities considered for inclusion in the Commercialization Readiness Pilot Program for Civilian Agencies set forth in § 12(c) of the directive and a statement of the reasons why each activity considered was included or not included.

(xv) A description and the extent to which the agency is increasing outreach and awards to SDBs and WOSBs.

(xvi) General information about the implementation of and compliance with the allocation of funds for awardees that are majority-owned by multiple VCOCs, hedge funds or private equity firms.

(xvii) A detailed description of any appeals filed on Phase III awards pursuant to § 4(c)(8) of the directive and notices of noncompliance with the policy directive filed by SBA.

(xviii) Information relating to each Phase III award made by that agency either as a prime or subcontract, including the name of the business receiving the Phase III award, the dollar amount, and the awarding agency or prime contractor.

(xix) An accounting of funds, initiatives, and outcomes under the commercialization programs set forth in § 12(b) & (c) of this directive.

(xx) By October 13, 2013, and then subsequently in each annual report, information relating to the agency's enhancement of manufacturing activities, if the agency awards more than $50,000,000 under the SBIR and STTR Programs combined in a fiscal year. The report must include:

(A) A description of efforts undertaken by the agency to enhance U.S. manufacturing activities;

(B) A comprehensive description of the actions undertaken each year by the agency in carrying out the SBIR or STTR Programs to support Executive Order 13329 (relating to manufacturing);

(C) An assessment of the effectiveness of the actions taken at enhancing the R&D of U.S. manufacturing technologies and processes;

(D) A description of efforts by vendors selected to provide discretionary technical assistance to help SBIR and STTR business concerns manufacture in the U.S.; and

(E) Recommendations from the agency's SBIR and STTR program managers of additional actions to increase manufacturing activities in the U.S.

(5) Before the end of each fiscal year, each agency must submit a report to SBA on those SBCs that submitted an application and were found to not meet the agency's benchmarks with respect to progress towards commercialization. This report must include the name and employer identification number of the SBC, the closing date of the solicitation to which it proposed, and the agency that issued the solicitation.

(6) The annual report also includes the performance metrics information set forth in the next section, Performance Metrics and Standards.

(i) *Performance Areas, Metrics and Goals.*

(1) As part of the agency's work plans, which are submitted pursuant to § 9(f) of the directive, SBA will set performance criteria. The performance criteria will measure each agency's accomplishments in meeting certain performance areas against the agency's goals. The Small Business Act establishes broad performance areas for the program, including commercialization, streamlining, outreach, etc. The metrics used to measure the agency's accomplishments in these performance areas will be set with input from the SBIR agency. Agencies must report their progress on the performance criteria at the end of the fiscal year as part of their annual report.

(2) The metrics and performance areas will evolve over time and can be found at *www.SBIR.gov.* Examples of performance areas and metrics can be found at Appendix IX.

(j) *Other Reporting Requirements.*

(1) SBA will set forth a list of reports that agencies are required by statute to submit, in a table format, which will be available at *www.SBIR.gov.*

(2) The system will include a list of any individual or small business concern that has received an SBIR award that has been convicted of a fraud-related crime involving SBIR funds or found civilly liable for a fraud-related violation involving SBIR funds.

(3) Agencies must submit to SBA's Administrator, not later than 4 months after the date of enactment of its annual Appropriations Act, a report describing the methodology used for calculating the amount of its extramural budget. The report must also include an itemization of each research program excluded from the calculation of its extramural budget and a brief explanation of why it is excluded.

(4) Agencies must provide notice to SBA of any case or controversy before any Federal judicial or administrative tribunal concerning the SBIR Program of the Federal agency. This does not include agency level protests of awards unless and until the protest is before a Federal court or administrative body. The agency must provide notice to SBA within 15 business days of the agency's written notification of the case or controversy.

(5) Agencies must provide notice of all instances in which an agency pursued research, development, production, or any such combination of a technology developed by an SBC using an award made under the SBIR Program of that agency, where the agency determined that it was not practicable to enter into a follow-on non-SBIR Program funding agreement with that concern. The agency must provide notice to SBA within 15 business days of the agency's award. The report must include, at a minimum:

(i) The reasons why the follow-on funding agreement with the concern was not practicable;

(ii) The identity of the entity with which the agency contracted to perform the research, development, or production; and

(iii) A description of the type of funding agreement under which the research, development, or production was obtained.

(6) Agencies must provide information supporting the agency's achievement of the Interagency Policy Committee's policy recommendations on ways to improve program effectiveness and efficiency. This includes qualitative and quantitative data as appropriate, which would measure the agency's progress. The agency must provide this information to SBA at the end of each fiscal year.

(7) Agencies must provide an annual report to SBA, Senate Committee on Small Business and Entrepreneurship, House Committee on Small Business, and the House Committee on Science, Space, and Technology on SBIR and STTR programs and the benefits of these programs to the United States. Prior to preparing the report, the agency shall develop metrics to evaluate the effectiveness and benefit to the United States of the SBIR and STTR programs. The metrics must be science-based and statistically driven, reflect the mission of the agency, and include factors relating to the economic impact of the programs. The report must describe in detail the agency's annual evaluation of the programs using these metrics. The final report must be posted online so it can be made available to the public.

(8) By December 31, 2012, agencies must provide a report to the SBA, Senate Committee on Small Business and Entrepreneurship, House Committee on Small Business, and the House Committee on Science, Space, and Technology describing actions taken during the prior year to increase coordination between the SBIR Program and the Experimental Program to Stimulate Competitive Research or the Institutional Development Award Program, if the agency participates in those programs.

(9) By December 31, 2014, agencies must provide a report to the SBA, Senate Committee on Small Business and Entrepreneurship, House Committee on Small Business, and the House Committee on Science, Space, and Technology analyzing whether actions taken to increase coordination between the SBIR Program and the Experimental Program to Stimulate Competitive Research or the Institutional Development Award Program have been successful in attracting entrepreneurs into the SBIR Program and increasing the participation of States with respect to which there has been a historically low level of SBIR awards, if the agency participates in those programs.

(10) NIH, DoD and the Department of Education must provide the written determination to SBA anytime it issues a Phase II award to a small business concern that did not receive a Phase I award for that R/R&D. The determination must be submitted prior to award.

(11) SBA will compile data and report to Congress on the Federal and State Technology (FAST) Partnership Program, described in § 12 of this Policy Directive. If required by the FAST grant, the grantees will report a comprehensive list of the companies that received assistance under FAST and if those companies received SBIR or STTR awards and any information regarding mentors and Mentoring Networks, as required in the Federal and State Technology (FAST) Partnership Program.

(k) *Further Clarification on Availability of SBC Information*

(1) Unless stated otherwise, the information contained in the Company Registry Database, the Application Information Database, and the Commercialization Database are solely available to authorized government officials, with the approval of SBA. This includes Congress, GAO, agencies participating in the SBIR and the STTR Programs, Office of Management and Budget, OSTP, Office of Federal Procurement Policy, and other authorized persons who are subject to a nondisclosure agreement with the Federal Government covering the use of the databases. These databases are used for the purposes of evaluating and

determining eligibility for the SBIR Program, in accordance with Policy Directives issued by SBA. Pursuant to 15 U.S.C. § 638(k)(4), certain information provided to those databases are privileged and confidential and not subject to disclosure pursuant to 5 U.S.C. 552 (Government Organization and Employees); nor must it be considered to be publication for purposes of 35 U.S.C. 102 (a) or (b).

(2) Most of the information in the Award Information and Annual Reports Databases will be available to the public. Any information that will identify the confidential business information of a given small business concern will not be disclosed to the public. Those databases are available at Tech-Net and offer a vast array of user-friendly capabilities that are accessible by the public at no charge. The Award Information Database allows for the online submission of SBIR/STTR awards data from all SBIR agencies. It also allows any end-user to perform keyword searches and create formatted reports of SBIR/STTR awards information, and for potential research partners to view research and development efforts that are ongoing in the SBIR and the STTR Programs, increasing the investment opportunities of the SBIR/STTR SBCs in the high tech arena.

(l) *Waivers.*

(1) Agencies must request an extension for additional time between the solicitation closing date and notification of recommendation for award. SBA will respond to the request for an extension within 5 business days, as practicable. See § 7(c)(1) of the directive for further information.

(2) Agencies must request a waiver to exceed the award guidelines for Phase I and Phase II awards by more than 50% for a specific topic. See § 7(i)(4) of the directive for further information.

(3) Agencies must request a waiver to not use its SBIR funds, as part of the pilot allowing for the use of such funds for certain SBIR-related costs, to increase participation by SDBs and WOSBs in the SBIR Program, and small businesses in states with a historically low level of SBIR awards. See § 9(f)(3)(ii) of the directive for further information.

(4) Agencies must request a waiver to issue a funding agreement that includes a provision for subcontracting a portion of that agreement back to the issuing agency if there is no exception to this requirement in the directive. See § 9(f)(4) of the directive for further information.

11. Responsibilities of SBA

(a) *Policy.*

(1) SBA will establish policy and procedures for the program by publishing and updating the SBIR Policy Directive and promulgating regulations. Policy clarification of any part or provision of the directive or regulations may be provided by SBA.

(2) It is essential that SBIR agencies do not promulgate any policy, rule, regulation, or interpretation that is inconsistent with the Act, this Policy Directive, or SBA's regulations relating to the SBIR Program. SBA's monitoring activity will include review of policies, rules, regulations, interpretations, and procedures generated to facilitate intra- and interagency SBIR Program implementation.

(3) Waivers providing limited exceptions to certain policies can be found at § 10 of the directive.

(b) *Outreach.* SBA conducts outreach to achieve a number of objectives including:

(1) Educating the public about the SBIR Program via conferences, seminars, and presentations;

(2) Highlighting the successes achieved in the program by publishing (via press releases and *www.SBIR.gov*) success stories, as well as hosting awards programs;

(3) Maintaining SBIR.gov, which is an online public information resource that provides comprehensive information regarding the SBIR Program. This information includes: A listing of solicitation information on currently available SBIR opportunities, award information on all Phase I and Phase II awards, summary annual award information for the whole program, and contact information for SBA and agency program managers.

(c) *Collection and publication of program-wide data.* SBA collects and maintains program-wide data within the Tech-Net data system. This data includes information on all Phase I and II awards from across all SBIR agencies, as well as Fiscal Year Annual Report data. See § 10 of the directive for further information about reporting and data collection requirements.

(d) *Monitoring implementation of the program and annually reporting to Congress.*

SBA is responsible for providing oversight and monitoring the implementation of the SBIR Program at the agency level. This monitoring includes:

(1) *SBIR Funding Allocations.* The magnitude and source of each SBIR agency's annual allocation reserved for SBIR awards are critical to the success of the SBIR Program. The Act defines the SBIR effort (R/R&D), the source of the funds for financing the SBIR Program (extramural budget), and the percentage of such funds to be reserved for the SBIR Program. The Act requires that SBA monitor these annual allocations.

(2) *SBIR Program Solicitation and Award Status.* The accomplishment of scheduled SBIR events, such as SBIR Program solicitation releases and the issuance of funding agreements is critical to meeting statutory mandates and to operating an effective, useful program. SBA monitors these and other operational features of the SBIR Program and publishes information relating to notice of and application for awards under the SBIR Program for each SBIR agency at SBIR.Gov or Tech-Net. SBA does not plan to monitor administration of the awards except in instances where SBA assistance is requested and is related to a specific SBIR project or funding agreement.

(3) *Follow-on Funding Commitments.* SBA will monitor whether follow-on non-Federal funding commitments obtained by Phase II awardees for Phase III were considered in the evaluation of Phase II proposals as required by the Act.

(4) *Fraud, Waste, and Abuse (FWA).* SBA will ensure that each SBIR agency has taken steps to maintain a FWA prevention system to minimize its impact on the program.

(5) *Performance Areas, Metrics, and Goals.* SBA is responsible for defining performance areas consistent with statute (*e.g.,* reducing timelines for award, simplification) against which agencies will set goals. SBA will work with the agencies to set metrics, in order to measure an agency's accomplishments of its goals against the defined performance areas. The purpose of these metrics and goals is to assist SBA in evaluating and reporting on the progress achieved by the agencies in improving the SBIR Program. For further information on Performance Areas, Metrics and Goals see § 10(i).

(e) *Additional efforts to improve the performance of the program.* SBA, in its continuing effort to improve the program, will make recommendations for improvement within the framework of the Program Managers' meetings. This may include recommending a ''best practice'' currently being utilized by an agency or business, or open discussion and feedback on a potential ''best practice'' for agency adoption. This may also involve program-wide initiatives.

(f) *Other.*

(1) *Federal and State Technology Partnership (FAST) Program.* SBA

coordinates the FAST program. SBA develops the solicitation, reviews proposals, and oversees grant awards. FAST provides awardees with funding to assist in outreach, proposal preparation, and other technical assistance to developing innovation oriented SBCs.

(2) *Critical Technologies.* SBA will annually obtain available information on the current critical technologies from the National Critical Technologies panel (or its successor) and the Secretary of Defense and provide such information to the SBIR agencies. SBA will request this information in June of each year. The data received will be submitted to each of the SBIR agencies and will also be published in the September issue of the SBIR Pre-Solicitation Announcement.

12. Supporting Programs and Initiatives

(a) *Federal and State Technology Partnership Program.* The purpose of the FAST Program is to strengthen the technological competitiveness of SBCs in the United States. Congress found that programs that foster economic development among small high-technology firms vary widely among the States. Thus, the purpose of the FAST Program is to improve the participation of small technology firms in the innovation and commercialization of new technology, thereby ensuring that the United States remains on the cutting-edge of research and development in the highly competitive arena of science and technology. SBA administers the FAST Program. Additional and detailed information regarding this program is available at *www.SBIR.gov.*

(b) *Commercialization Readiness Program—DoD*

(1) *General.* The Secretary of Defense and the Secretary of each military department is authorized to create and administer a ''Commercialization Readiness Program'' to accelerate the transition of technologies, products, and services developed under the SBIR Program to Phase III, including the acquisition process. The authority to create this Commercialization Readiness Program does not eliminate or replace any other SBIR or STTR program that enhances the insertion or transition of SBIR or STTR technologies. This includes any program in effect as of December 31, 2011.

(2) *Identification of research programs for accelerated transition to acquisition process.* The Secretary of each military department must identify research programs of the SBIR Program that have the potential for rapid transitioning to Phase III and into the acquisition process and certify in writing that the successful transition of the program to Phase III and into the acquisition process is expected to meet high priority military requirements of such military department.

(3) *Limitation.* The Secretary of Defense shall identify research programs of the SBIR Program that have the potential for rapid transitioning to Phase III and into the acquisition process after receiving this certification from each military department.

(4) *Funding.*

(i) Beginning with FY 2013 and ending in FY 2015, the Secretary of Defense and each Secretary of a military department is authorized to use its SBIR funds for administration of this program in accordance with the procedures and policies set forth in 9(f)(3) of this directive.

(ii) Beginning with FY 2016, the Secretary of Defense and Secretary of each military department is only authorized to use not more than an amount equal to 1% of its SBIR funds available to DoD or the military departments for payment of expenses incurred to administer the Commercialization Program. In accordance with the procedures and policies set forth in § 9(e)(3) of this directive, these funds will be taken from the 3% administrative set-aside if the pilot program is extended. Such funds—

(A) Shall not be subject to the limitations on the use of funds in 9(f)(2) of this directive; and

(B) Shall not be used to make Phase III awards.

(5) *Contracts Valued at less than $1,000,000,000.* For any contract awarded by DoD valued at less than $1,000,000,000, the Secretary of Defense may:

(i) Establish goals for the transition of Phase III technologies in subcontracting plans; and

(ii) Require a prime contractor on such a contract to report the number and dollar amount of the contracts entered into by the prime contractor for Phase III SBIR projects.

(6) The Secretary of Defense shall:

(i) Set a goal to increase the number of SBIR Phase II contracts that lead to technology transition into programs of record of fielded systems;

(ii) Use incentives in effect as of December 31, 2011 or create new incentives to encourage agency program managers and prime contractors to meet the goal set forth in paragraph (6)(i) above; and

(iii) Submit the following to SBA, as part of the annual report:

(A) The number and percentage of Phase II SBIR contracts awarded by DoD that led to technology transition into programs of record or fielded systems;

(B) Information on the status of each project that received funding through the Commercialization Program and the efforts to transition these projects into programs of record or fielded systems; and

(C) A description of each incentive that has been used by DoD and the effectiveness of the incentive with respect to meeting DoD's goal to increase the number of SBIR Phase II contracts that lead to technology transition into programs of record of fielded systems.

(c) *Commercialization Readiness Pilot Program for Civilian Agencies.*

(1) *General.* The Commercialization Readiness Pilot Program permits the head of any Federal agency participating in the SBIR Program (except DoD) to allocate not more than 10% of its funds allocated to the SBIR Program—

(i) For follow-on awards to small businesses for technology development, testing, evaluation, and commercialization assistance for SBIR or STTR Phase II technologies; or

(ii) For awards to small businesses to support the progress of research, research and development, and commercialization conducted under the SBIR or STTR programs to Phase III.

(2) *Application to SBA.* Before establishing this pilot program, the agency must submit a written application to SBA not later than 90 days before the first day of the fiscal year in which the pilot program is to be established. The written application must set forth a compelling reason that additional investment in SBIR or STTR technologies is necessary, including unusually high regulatory, systems integration, or other costs relating to development or manufacturing of identifiable, highly promising small business technologies or a class of such technologies expected to substantially advance the mission of the agency.

(3) *SBA's Determination.* SBA must make its determination regarding an application submitted under paragraph (2) above not later than 30 days before the first day of the fiscal year for which the application is submitted. SBA must also publish its determination in the **Federal Register** and make a copy of the determination and any related materials available to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives.

(4) *Maximum Amount of Award.* The SBIR agency may not make an award to a small business concern under this

pilot program in excess of 3 times the dollar amounts generally established for Phase II awards under section 7(i)(1) of this directive.

(5) *Registration.* Any small business concern that receives an award under this pilot program shall register with SBA in the Company Registry Database.

(6) *Award Criteria or Consideration.* When making an award under this pilot program, the agency is required to consider whether the technology to be supported by the award is likely to be manufactured in the United States.

(7) *Termination of Authority.* The authority to establish a pilot program under this section expires on September 30, 2017, unless otherwise extended.

(d) *Technology Development Program.* The Act permits an agency that has established a Technology Development Program to review for funding under that program, in each fiscal year:

(1) Any proposal to provide outreach and assistance to 1 or more SBCs interested in participating in the SBIR Program, including any proposal to make a grant or loan to a company to pay a portion or all of the cost of developing an SBIR proposal, from an entity, organization, or individual located in—

(i) A State that is eligible to participate in that technology development program; or

(ii) An Additionally Eligible State.

(2) Any meritorious proposal for an SBIR Phase I award that is not funded through the SBIR Program for that fiscal year due to funding constraints, from an SBC located in a state identified in (i) or (ii) immediately above.

Appendix I: Instructions for SBIR Program Solicitation Preparation

a. *General.* Section 9(j) of the Small Business Act (15 U.S.C. 638(j)) requires ''* * * simplified, standardized and timely SBIR solicitations'' and for SBIR agencies to utilize a ''uniform process'' minimizing the regulatory burden of participation. Therefore, the following instructions purposely depart from normal Government solicitation formats and requirements. SBIR solicitations must be prepared and issued as program solicitations in accordance with the following instructions.

b. *Limitation in Size of Solicitation.* In the interest of meeting the requirement for simplified and standardized solicitations, while also recognizing that the Internet has become the main vehicle for distribution, each agency should structure its entire SBIR solicitation to produce the least number of pages (electronic and printed), consistent with the procurement/assistance standing operating procedures and statutory requirements of the participating Federal agencies.

c. *Format.* SBIR Program solicitations must be prepared in a simple, standardized, easy-to-read, and easy-to-understand format. It must include a cover sheet, a table of contents, and the following sections in the order listed.

1. Program Description
2. Certifications
3. Proposal Preparation Instructions and Requirements
4. Method of Selection and Evaluation Criteria
5. Considerations
6. Submission of Proposals
7. Scientific and Technical Information Sources
8. Submission Forms and Certifications
9. Research Topics

d. *Cover Sheet.* The cover sheet of an SBIR Program solicitation must clearly identify the solicitation as a SBIR solicitation, identify the agency releasing the solicitation, specify date(s) on which contract proposals or grant applications (proposals) are due under the solicitation, and state the solicitation number or year.

Instructions for Preparation of SBIR Program Solicitation

Sections 1 through 9

1. Program Description

(a) Summarize in narrative form the invitation to submit proposals and the objectives of the SBIR Program.

(b) Describe in narrative form the agency's SBIR Program including a description of the three phases. Note in your description whether the solicitation is for Phase I or Phase II proposals. Also note in each solicitation for Phase I, that all awardees may apply for a Phase II award and provide guidance on the procedure for doing so.

(c) Describe program eligibility:

(d) List the name, address and telephone number of agency contacts for general information on the SBIR Program solicitation.

(e) Whenever terms are used that are unique to the SBIR Program, a specific SBIR solicitation or a portion of a solicitation, define them or refer them to a source for the definition. At a minimum, the definitions of ''funding agreement,'' ''R/R&D,'' ''SBC,'' ''SBIR technical data,'' and ''SBIR technical data rights'' must be included.

(f) Include information explaining how an individual can report fraud, waste and abuse (*e.g.* include the fraud hotline for the agency's Office of Inspector General);

2. Certifications

(a) This section must include certifying forms required by legislation, regulation or standing operating procedures, to be submitted by the applicant to the contracting or granting agency. This would include certifying forms such as those for the protection of human and animal subjects.

(b) This section must include any certifications required concerning size, ownership and other SBIR Program requirements.

(i) The agency must require any SBC that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms to submit the following certification with its SBIR application:

BILLING CODE 8025–01–P

Certification for Applicants that are Majority-Owned by Multiple Venture Capital Operating Companies, Hedge Fund or Private Equity Firms

Any small businesses that is majority-owned by multiple venture operating companies (VCOCs), hedge funds or private equity firms and are submitting an application for and SBIR funding agreement must complete this certification prior to submitting an application. This includes checking all of the boxes and having an authorized officer of the applicant sign and date the certification each time it is requested.

Please read carefully the following certification statements. The Federal government relies on the information to determine whether the business is eligible for a Small Business Innovation Research (SBIR) Program award and meets the specific program requirements during the life of the funding agreement. The definitions for the terms used in this certification are set forth in the Small Business Act, SBA regulations (13 C.F.R. Part 121), the SBIR Policy Directive and also any statutory and regulatory provisions referenced in those authorities.

If the funding agreement officer believes that the business may not meet certain eligibility requirements at the time of award, they are required to file a size protest with the U.S. Small Business Administration (SBA), who will determine eligibility. At that time, SBA will request further clarification and supporting documentation in order to assist in the verification of any of the information provided as part of a protest. If the funding agreement officer believes, after award, that the business is not meeting certain funding agreement requirements, the agency may request further clarification and supporting documentation in order to assist in the verification of any of the information provided.

Even if correct information has been included in other materials submitted to the Federal government, any action taken with respect to this certification does not affect the Government's right to pursue criminal, civil or administrative remedies for incorrect or incomplete information given in the certification. Each person signing this certification may be prosecuted if they have provided false information.

The undersigned has reviewed, verified and certifies that (all boxes must be checked):

(1) The applicant is NOT more than 50% owned by a single VCOC, hedge fund or private equity firm.
☐Yes ☐No

(2) The applicant is more than 50% owned by multiple domestic business concerns that are VCOCs, hedge funds, or private equity firms.
☐Yes ☐No

(3) I have registered with SBA at www.SBIR.gov as a business that is majority-owned by multiple VCOCs, hedge funds or private equity firms.
☐Yes ☐No

☐I understand that the information submitted may be given to Federal, State and local agencies for determining violations of law and other purposes.

☐All the statements and information provided in this form and any documents submitted are true, accurate and complete. If assistance was obtained in completing this form and the supporting documentation, I have personally reviewed the information and it is true and accurate. I understand that, in general, these statements are made for the purpose of determining eligibility for an SBIR funding agreement and continuing eligibility.

☐ I understand that the certifications in this document are continuing in nature. Each SBIR funding agreement for which the small business submits an offer or application or receives an award constitutes a restatement and reaffirmation of these certifications.

☐I understand that I may not misrepresent status as small business to: 1) obtain a contract under the Small Business Act; or 2) obtain any benefit under a provision of Federal law that references the SBIR Program.

☐ I am an officer of the business concern authorized to represent it and sign this certification on its behalf. By signing this certification, I am representing on my own behalf, and on behalf of the SBIR applicant or awardee, that the information provided in this certification, the application, and all other information submitted in connection with this application, is true and correct as of the date of submission. I acknowledge that any intentional or negligent misrepresentation of the information contained in this certification may result in criminal, civil or administrative sanctions, including but not limited to: (1) fines, restitution and/or imprisonment under 18 U.S.C. §1001; (2) treble damages and civil penalties under the False Claims Act (31 U.S.C. §3729 *et seq.*); (3) double damages and civil penalties under the Program Fraud Civil Remedies Act (31 U.S.C. §3801 *et seq.*); (4) civil recovery of award funds, (5) suspension and/or debarment from all Federal procurement and nonprocurement transactions (FAR Subpart 9.4 or 2 C.F.R. part 180); and (6) other administrative penalties including termination of SBIR/STTR awards.

Signature	***Date__/__/__***
Print Name (First, Middle, Last)	
Title	
Business Name	

(ii) The agency may request the SBIR applicant to submit a certification at the time of submission of the application or offer. The certification may require the applicant to state that it intends to meet the size, ownership and other requirements of the

SBIR Program at the time of award of the funding agreement, if selected for award.

(iii) The agency must request the SBIR applicant to submit a certification at the time of award and at any other time set forth in SBA's regulations at 13 CFR 121.701–121.705. The certification will require the applicant to state that it meets the size, ownership and other requirements of the SBIR Program at the time of award of the funding agreement.

(iv) The agency must request the SBIR awardee to submit certifications during funding agreement life cycle. A Phase I funding agreement must state that the awardee shall submit a new certification as to whether it qualifies as a SBC and that it is in compliance with specific SBIR Program requirements at the time of final payment or disbursement. A Phase II funding agreement must state that the awardee shall submit a new certification as to whether it qualifies as a SBC and that it is in compliance with specific SBIR Program requirements prior to receiving more than 50% of the total award amount and prior to final payment or disbursement.

(v) Agencies may require additional certifications at other points in time during the life cycle of the funding agreement, such as at the time of each payment or disbursement.

(c) The agency must use the following certification at the time of award and upon notification by SBA, must check *www.SBIR.gov* for updated certifications prepared by SBA:

SBIR Funding Agreement Certification

All small businesses that are selected for award of an SBIR funding agreement must complete this certification at the time of award and any other time set forth in the funding agreement that is prior to performance of work under this award. This includes checking all of the boxes and having an authorized officer of the awardee sign and date the certification each time it is requested.

Please read carefully the following certification statements. The Federal government relies on the information to determine whether the business is eligible for a Small Business Innovation Research (SBIR) Program award. A similar certification will be used to ensure continued compliance with specific program requirements during the life of the funding agreement. The definitions for the terms used in this certification are set forth in the Small Business Act, SBA regulations (13 C.F.R. Part 121), the SBIR Policy Directive and also any statutory and regulatory provisions referenced in those authorities.

If the funding agreement officer believes that the business may not meet certain eligibility requirements at the time of award, they are required to file a size protest with the U.S. Small Business Administration (SBA), who will determine eligibility. At that time, SBA will request further clarification and supporting documentation in order to assist in the verification of any of the information provided as part of a protest. If the funding agreement officer believes, after award, that the business is not meeting certain funding agreement requirements, the agency may request further clarification and supporting documentation in order to assist in the verification of any of the information provided.

Even if correct information has been included in other materials submitted to the Federal government, any action taken with respect to this certification does not affect the Government's right to pursue criminal, civil or administrative remedies for incorrect or incomplete information given in the certification. Each person signing this certification may be prosecuted if they have provided false information.

The undersigned has reviewed, verified and certifies that (all boxes must be checked):

) The business concern meets the ownership and control requirements set forth in 13 C.F.R. §121.702.
☐Yes ☐No

(2) If a corporation, all corporate documents (articles of incorporation and any amendments, articles of conversion, by-laws and amendments, shareholder meeting minutes showing director elections, shareholder meeting minutes showing officer elections, organizational meeting minutes, all issued stock certificates, stock ledger, buy-sell agreements, stock transfer agreements, voting agreements, and documents relating to stock options, including the right to convert non-voting stock or debentures into voting stock) evidence that it meets the ownership and control requirements set forth in 13 C.F.R. §121.702.
☐Yes ☐No ☐N/A Explain why N/A:_____

(3) If a partnership, the partnership agreement evidences that it meets the ownership and control requirements set forth in 13 C.F.R. §121.702.
☐Yes ☐No ☐N/A Explain why N/A:_____

(4) If a limited liability company, the articles of organization and any amendments, and operating agreement and amendments, evidence that it meets the ownership and control requirements set forth in 13 C.F.R. §121.702.
☐Yes ☐No ☐N/A Explain why N/A:_____

(5) The birth certificates, naturalization papers, or passports show that any individuals it relies upon to meet the eligibility requirements are U.S. citizens or permanent resident aliens in the United States.
☐Yes ☐No ☐N/A Explain why N/A:_____

(6) It has no more than 500 employees, including the employees of its affiliates.
☐Yes ☐No

(7) SBA has not issued a size determination currently in effect finding that this business concern exceeds the 500 employee size standard.
☐Yes ☐No

(8) During the performance of the award, the principal investigator will spend more than one half of his/her time as an employee of the awardee or has requested and received a written deviation from this requirement from the funding agreement officer.
☐Yes ☐No ☐Deviation approved in writing by funding agreement officer: _____%

(9) All, essentially equivalent work, or a portion of the work proposed under this project (check the applicable line):
☐Has not been submitted for funding by another Federal agency.
☐Has been submitted for funding by another Federal agency but has not been funded under any other Federal grant, contract, subcontract or other transaction.
☐A portion has been funded by another grant, contract, or subcontract as described in detail in the proposal and approved in writing by the funding agreement officer.

(10) During the performance of award, it will perform the applicable percentage of work unless a deviation from this requirement is approved in writing by the funding agreement officer (check the applicable line and fill in if needed):
☐SBIR Phase I: at least two-thirds (66 2/3%) of the research.
☐SBIR Phase II: at least half (50%) of the research.
☐Deviation approved in writing by the funding agreement officer: _%
(11) During performance of award, the research/research and development will be performed in the United States unless a deviation is approved in writing by the funding agreement officer.
☐Yes ☐No ☐Waiver has been granted

(12) During performance of award, the research/research and development will be performed at my facilities with my employees, except as otherwise indicated in the SBIR application and approved in the funding agreement.
☐Yes ☐No

(13) It has registered itself on SBA's database as majority-owned by venture capital operating companies, hedge funds or private equity firms.
☐Yes ☐No ☐N/A Explain why N/A:_____

(14) It is a Covered Small Business Concern (a small business concern that: (a) was not majority-owned by multiple venture capital operating companies (VCOCs), hedge funds, or private equity firms on the date on which it submitted an application in response to an SBIR solicitation; and (b) on the date of the SBIR award, which is made more than 9 months after the closing date of the solicitation, is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms).
☐Yes ☐No

☐It will notify the Federal agency immediately if all or a portion of the work proposed is subsequently funded by another Federal agency.

☐I understand that the information submitted may be given to Federal, State and local agencies for determining violations of law and other purposes.

☐ I am an officer of the business concern authorized to represent it and sign this certification on its behalf. By signing this certification, I am representing on my own behalf, and on behalf of the business concern that the information provided in this certification, the application, and all other information submitted in connection with this application, is true and correct as of the date of submission. I acknowledge that any intentional or negligent misrepresentation of the information contained in this certification may result in criminal, civil or administrative sanctions, including but not limited to: (1) fines, restitution and/or imprisonment under 18 U.S.C. §1001; (2) treble damages and civil penalties under the False Claims Act (31 U.S.C. §3729 *et seq.*); (3) double damages and civil penalties under the Program Fraud Civil Remedies Act (31 U.S.C. §3801 *et seq.*); (4) civil recovery of award funds, (5) suspension and/or debarment from all Federal procurement and nonprocurement transactions (FAR Subpart 9.4 or 2 C.F.R. part 180); and (6) other administrative penalties including termination of SBIR/STTR awards.

Signature	***Date__/__/__***
Print Name (First, Middle, Last)	
Title	
Business Name	

(d) The agency must use the following certification during the lifecycle of the funding agreement in accordance with subsection 8(h) of the directive and paragraph 2(b)(iv) of this Appendix and upon notification by SBA, must check *www.SBIR.gov* for updated certifications prepared by SBA:

SBIR Funding Agreement Certification –Life Cycle Certification

All SBIR Phase I and Phase II awardees must complete this certification at all times set forth in the funding agreement (see §8(h) of the SBIR Policy Directive). This includes checking all of the boxes and having an authorized officer of the awardee sign and date the certification each time it is requested.

Please read carefully the following certification statements. The Federal government relies on the information to ensure compliance with specific program requirements during the life of the funding agreement. The definitions for the terms used in this certification are set forth in the Small Business Act, the SBIR Policy Directive, and also any statutory and regulatory provisions referenced in those authorities.

If the funding agreement officer believes that the business is not meeting certain funding agreement requirements, the agency may request further clarification and supporting documentation in order to assist in the verification of any of the information provided.

Even if correct information has been included in other materials submitted to the Federal government, any action taken with respect to this certification does not affect the Government's right to pursue criminal, civil or administrative remedies for incorrect or incomplete information given in the certification. Each person signing this certification may be prosecuted if they have provided false information.

The undersigned has reviewed, verified and certifies that (all boxes must be checked):

(1) The principal investigator spent more than one half of his/her time as an employee of the awardee or the awardee has requested and received a written deviation from this requirement from the funding agreement officer.
☐Yes ☐No ☐Deviation approved in writing by funding agreement officer: _____%

(2) All, essentially equivalent work, or a portion of the work performed under this project (check the applicable line):
☐Has not been submitted for funding by another Federal agency.
☐**Has** been submitted for funding by another Federal agency but has not been funded under any other Federal grant, contract, subcontract or other transaction.
☐A portion has been funded by another grant, contract, or subcontract as described in detail in the proposal and approved in writing by the funding agreement officer.

(3) Upon completion of the award it will have performed the applicable percentage of work, unless a deviation from this requirement is approved in writing by the funding agreement officer (check the applicable line and fill in if needed):
☐SBIR Phase I: at least two-thirds (66 2/3%) of the research.
☐SBIR Phase II: at least half (50%) of the research.
☐Deviation approved in writing by the funding agreement officer: _%

(4) The work is completed and it has performed the applicable percentage of work, unless a deviation from this requirement is approved in writing by the funding agreement officer (check the applicable line and fill in if needed):
☐SBIR Phase I: at least two-thirds (66 2/3%) of the research.
☐SBIR Phase II: at least half (50%) of the research.
☐Deviation approved in writing by the funding agreement officer: _%
☐N/A because work is not completed

(5) The research/research and development is performed in the United States unless a deviation is approved in writing by the funding agreement officer.
☐Yes ☐No ☐Waiver has been granted

(6) The research/research and development is performed at my facilities with my employees, except as otherwise indicated in the SBIR application and approved in the funding agreement.
☐Yes ☐No

☐It will notify the Federal agency immediately if all or a portion of the work proposed is subsequently funded by another Federal agency.

☐I understand that the information submitted may be given to Federal, State and local agencies for determining violations of law and other purposes.

☐ I am an officer of the business concern authorized to represent it and sign this certification on its behalf. By signing this certification, I am representing on my own behalf, and on behalf of the business concern, that the information provided in this certification, the application, and all other information submitted in connection with the award, is true and correct as of the date of submission. I acknowledge that any intentional or negligent misrepresentation of the information contained in this certification may result in criminal, civil or administrative sanctions, including but not limited to: (1) fines, restitution and/or imprisonment under 18 U.S.C. §1001; (2) treble damages and civil penalties under the False Claims Act (31 U.S.C. §3729 *et seq.*); (3) double damages and civil penalties under the Program Fraud Civil Remedies Act (31 U.S.C. §3801 *et seq.*); (4) civil recovery of award funds, (5) suspension and/or debarment from all Federal procurement and nonprocurement transactions (FAR Subpart 9.4 or 2 C.F.R. part 180); and (6) other administrative penalties including termination of SBIR/STTR awards.

Signature	***Date__/__/__***
Print Name (First, Middle, Last)	
Title	
Business Name	

3. Proposal Preparation Instructions and Requirements

The purpose of this section is to inform the applicant on what to include in the proposal and to set forth limits on what may be included. It should also provide guidance to assist applicants, particularly those that may not have previous Government experience, in improving the quality and acceptance of proposals.

(a) *Limitations on Length of Proposal. Include at least the following information:*

(1) SBIR Phase I proposals must not exceed a total of 25 pages, including cover page, budget, and all enclosures or attachments, unless stated otherwise in the agency solicitation. Pages should be of standard size (8½″ × 11″; 21.6 cm × 27.9 cm) and should conform to the standard formatting instructions. Margins should be 2.5 cm and type at least 10 point font.

(2) A notice that no additional attachments, appendices, or references beyond the 25-page limitation shall be considered in proposal evaluation (unless specifically solicited by an agency) and that proposals in excess of the page limitation shall not be considered for review or award.

(b) *Proposal Cover Sheet.* Every applicant is required to provide a copy of its registration information printed from the Company Registry unless the information can be transmitted automatically to SBIR agencies. Every applicant must also include at least the following information on the first page of proposals. Items 8 and 9 are for statistical purposes only.

(1) Agency and solicitation number or year.

(2) Topic Number or Letter.

(3) Subtopic Number or Letter.

(4) Topic Area.

(5) Project Title.

(6) Name and Complete Address of Firm.

(7) Disclosure permission (by statement or checkbox), such as follows, must be included at the discretion of the funding agency:

''Will you permit the Government to disclose your name, address, and telephone number of the corporate official of your concern, if your proposal does not result in an award, to appropriate local and State-level economic development organizations that may be interested in contacting you for further information? Yes ____ No ____ ''

(8) Signature of a company official of the proposing SBC and that individual's typed name, title, address, telephone number, and date of signature.

(9) Signature of Principal Investigator or Project Manager within the proposing SBC and that individual's typed name, title, address, telephone number, and date of signature.

(10) Legend for proprietary information as described in the ''Considerations'' section of this program solicitation if appropriate. It may also be noted by asterisks in the margins on proposal pages.

(c) *Data Collection Requirement*

(1) Each Phase I and Phase II applicant is required to provide information for SBA's database (*www.SBIR.gov*). The following are examples of the data to be entered by applicants into the database:

(i) Any business concern or subsidiary established for the commercial application of a product or service for which an SBIR award is made.

(ii) Revenue from the sale of new products or services resulting from the research conducted under each Phase II award;

(iii) Additional investment from any source, other than Phase I or Phase II awards, to further the research and development conducted under each Phase II award.

(iv) Update the information in the database for any prior Phase II award received by the SBC. The SBC may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award.

(2) Each Phase II awardee is required to update the appropriate information on the award in the database upon completion of the last deliverable under the funding agreement and is requested to voluntarily update the information in the database annually thereafter for a minimum period of 5 years.

(d) *Abstract or Summary.* Applicants will be required to include a one-page project summary of the proposed R/R&D including at least the following:

(1) Name and address of SBC.

(2) Name and title of principal investigator or project manager.

(3) Agency name, solicitation number, solicitation topic, and subtopic.

(4) Title of project.

(5) Technical abstract limited to two hundred words.

(6) Summary of the anticipated results and implications of the approach (both Phases I and II) and the potential commercial applications of the research.

(e) *Technical Content.* SBIR Program solicitations must require, as a minimum, the following to be included in proposals submitted thereunder:

(1) *Identification and Significance of the Problem or Opportunity.* A clear statement of the specific technical problem or opportunity addressed.

(2) *Phase I Technical Objectives.* State the specific objectives of the Phase I research and development effort, including the technical questions it will try to answer to determine the feasibility of the proposed approach.

(3) *Phase I Work Plan.* Include a detailed description of the Phase I R/R&D plan. The plan should indicate what will be done, where it will be done, and how the R/R&D will be carried out. Phase I R/R&D should address the objectives and the questions cited in (e)(2) immediately above. The methods planned to achieve each objective or task should be discussed in detail.

(4) *Related R/R&D.* Describe significant R/R&D that is directly related to the proposal including any conducted by the project manager/principal investigator or by the proposing SBC. Describe how it relates to the proposed effort, and any planned coordination with outside sources. The applicant must persuade reviewers of his or her awareness of key, recent R/R&D conducted by others in the specific topic area.

(5) *Key Individuals and Bibliography of Directly Related Work.* Identify key individuals involved in Phase I including their directly-related education, experience, and bibliographic information. Where vitae are extensive, summaries that focus on the most relevant experience or publications are desired and may be necessary to meet proposal size limitation.

(6) *Relationship with Future R/R&D.*

(i) State the anticipated results of the proposed approach if the project is successful (Phase I and II).

(ii) Discuss the significance of the Phase I effort in providing a foundation for the Phase II R/R&D effort.

(7) *Facilities.* A detailed description, availability and location of instrumentation and physical facilities proposed for Phase I should be provided.

(8) *Consultants.* Involvement of consultants in the planning and research stages of the project is permitted. If such involvement is intended, it should be described in detail.

(9) *Potential Post Applications.* Briefly describe:

(i) Whether and by what means the proposed project appears to have potential commercial application.

(ii) Whether and by what means the proposed project appears to have potential use by the Federal Government.

(10) *Similar Proposals or Awards.* WARNING—While it is permissible with proposal notification to submit identical proposals or proposals containing a significant amount of essentially equivalent work for consideration under numerous Federal program solicitations, it is unlawful to enter into funding agreements requiring essentially equivalent work. If there is any question concerning this, it must be disclosed to the soliciting agency or agencies before award. If an applicant elects to submit identical proposals or proposals containing a significant amount of essentially equivalent work under other Federal program solicitations, a statement must be included in each such proposal indicating:

(i) The name and address of the agencies to which proposals were submitted or from which awards were received.

(ii) Date of proposal submission or date of award.

(iii) Title, number, and date of solicitations under which proposals were submitted or awards received.

(iv) The specific applicable research topics for each proposal submitted or award received.

(v) Titles of research projects.

(vi) Name and title of principal investigator or project manager for each proposal submitted or award received.

(11) *Prior SBIR Phase II Awards.* If the SBC has received more than 15 Phase II awards in the prior 5 fiscal years, the SBC must submit in its Phase I proposal: name of the awarding agency; date of award; funding agreement number; amount of award; topic or subtopic title; follow-on agreement amount; source and date of commitment; and current commercialization status for each Phase II award. (This required proposal information will not be counted toward the proposal pages limitation.)

(f) *Cost Breakdown/Proposed Budget.* The solicitation will require the submission of simplified cost or budget data.

4. Method of Selection and Evaluation Criteria

(a) *Standard Statement.* Essentially, the following statement must be included in all SBIR Program solicitations:

''All Phase I and II proposals will be evaluated and judged on a competitive basis. Proposals will be initially screened to determine responsiveness. Proposals passing this initial screening will be technically evaluated by engineers or scientists to determine the most promising technical and scientific approaches. Each proposal will be judged on its own merit. The Agency is under no obligation to fund any proposal or any specific number of proposals in a given topic. It also may elect to fund several or none of the proposed approaches to the same topic or subtopic.''

(b) *Evaluation Criteria.*

(1) The SBIR agency must develop a standardized method in its evaluation process that will consider, at a minimum, the following factors:

(i) The technical approach and the anticipated agency and commercial benefits that may be derived from the research.

(ii) The adequacy of the proposed effort and its relationship to the fulfillment of requirements of the research topic or subtopics.

(iii) The soundness and technical merit of the proposed approach and its incremental progress toward topic or subtopic solution.

(iv) Qualifications of the proposed principal/key investigators, supporting staff, and consultants.

(v) Evaluations of proposals require, among other things, consideration of a proposal's commercial potential as evidenced by:

(A) The SBC's record of commercializing SBIR or other research,

(B) The existence of second phase funding commitments from private sector or non-SBIR funding sources,

(C) The existence of third phase follow-on commitments for the subject of the research, and,

(D) The presence of other indicators of the commercial potential of the idea.

(2) The factors in (b)(1) above and other appropriate evaluation criteria, if any, must be specified in the ''Method of Selection'' section of SBIR Program solicitations.

(c) *Peer Review.* The program solicitation must indicate if the SBIR agency contemplates that as a part of the SBIR proposal evaluation, it will use external peer review.

(d) *Release of Proposal Review Information.* After final award decisions have been announced, the technical evaluations of the applicant's proposal may be provided to the applicant. The identity of the reviewer must not be disclosed.

5. Considerations

This section must include, as a minimum, the following information:

(a) *Awards.* Indicate the estimated number and type of awards anticipated under the particular SBIR Program solicitation in question, including:

(i) Approximate number of Phase I awards expected to be made.

(ii) Type of funding agreement, that is, contract, grant, or cooperative agreement.

(iii) Whether fee or profit will be allowed.

(iv) Cost basis of funding agreement, for example, fixed-price, cost reimbursement, or cost-plus-fixed fee.

(v) Information on the approximate average dollar value of awards for Phase I and Phase II.

(b) *Reports.* Describe the frequency and nature of reports that will be required under Phase I funding agreements. Interim reports should be brief letter reports.

(c) *Payment Schedule.* Specify the method and frequency of progress and final payment under Phase I and II agreements.

(d) *Innovations, Inventions and Patents.*

(i) *Proprietary Information.* Essentially, the following statement must be included in all SBIR solicitations: ''Information contained in unsuccessful proposals will remain the property of the applicant. The Government may, however, retain copies of all proposals. Public release of information in any proposal submitted will be subject to existing statutory and regulatory requirements. If proprietary information is provided by an applicant in a proposal, which constitutes a trade secret, proprietary commercial or financial information, confidential personal information or data affecting the national security, it will be treated in confidence, to the extent permitted by law. This information must be clearly marked by the applicant with the term ''confidential proprietary information'' and the following legend must appear on the title page of the proposal: ''These data shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of this proposal. If a funding agreement is awarded to this applicant as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the funding agreement and pursuant to applicable law. This restriction does not limit the Government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction are contained on pages__of this proposal.'' Any other legend may be unacceptable to the Government and may constitute grounds for removing the proposal from further consideration, without assuming any liability for inadvertent disclosure. The Government will limit dissemination of such information to within official channels.''

(ii) *Alternative To Minimize Proprietary Information.* Agencies may elect to instruct applicants to:

(A) Limit proprietary information to only that absolutely essential to their proposal.

(B) Provide proprietary information on a separate page with a numbering system to key it to the appropriate place in the proposal.

(iii) *Rights in Data Developed Under SBIR Funding Agreements.* Agencies should insert essentially the following statement in their SBIR Program solicitations to notify SBCs of the necessity to mark SBIR technical data before delivering it to the Agency: ''To preserve the SBIR data rights of the awardee, the legend (or statements) used in the SBIR Data Rights clause included in the SBIR award must be affixed to any submissions of technical data developed under that SBIR award. If no Data Rights clause is included in the SBIR award, the following legend, at a minimum, should be affixed to any data submissions under that award. These SBIR data are furnished with SBIR rights under Funding Agreement No. __ (and subcontract No. __ if appropriate), Awardee Name __, Address, Expiration Period of SBIR Data Rights __. The Government may not use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend for (choose four (4) or five (5) years). After expiration of the (4-or 5-year period), the Government has a royalty-free license to use, and to authorize others to use on its behalf, these data for Government purposes, and is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties, except that any such data that is also protected and referenced under a subsequent SBIR award shall remain protected through the protection period of that subsequent SBIR award. Reproductions of these data or software must include this legend.''

(iv) *Copyrights.* Include an appropriate statement concerning copyrights and publications; for example: ''With prior written permission of the contracting officer, the awardee normally may copyright and publish (consistent with appropriate national security considerations, if any) material developed with (agency name) support. (Agency name) receives a royalty-free license for the Federal Government and requires that each publication contain an appropriate acknowledgement and disclaimer statement.''

(v) *Patents.* Include an appropriate statement concerning patents. For example: ''Small business concerns normally may retain the principal worldwide patent rights to any invention developed with Government support. In such circumstances, the Government receives a royalty-free license for Federal Government use, reserves the right to require the patent holder to license others in certain circumstances, and may require that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically. To the extent authorized by 35 U.S.C. 205, the Government will not make public any information disclosing a Government-supported invention for a minimum 4-year period (that may be extended by subsequent SBIR funding agreements) to allow the awardee a reasonable time to pursue a patent.''

(vi) *Invention Reporting.* Include requirements for reporting inventions. Include appropriate information concerning the reporting of inventions, for example: ''SBIR awardees must report inventions to the awarding agency within 2 months of the inventor's report to the awardee. The reporting of inventions may be accomplished by submitting paper documentation, including fax.''

Note: Some agencies provide electronic reporting of inventions through the NIH iEdison Invention Reporting System (iEdison System). Use of the iEdison System satisfies all invention reporting requirements

mandated by 37 CFR part 401, with particular emphasis on the Standard Patent Rights Clauses, 37 CFR 401.14. Access to the system is through a secure interactive Internet site, *http://www.iedison.gov,* to ensure that all information submitted is protected. All agencies are encouraged to use the Edison System. In addition to fulfilling reporting requirements, the Edison System notifies the user of future time sensitive deadlines with enough lead-time to avoid the possibility of loss of patent rights due to administrative oversight.

(e) *Cost-Sharing.* Include a statement essentially as follows: ''Cost-sharing is permitted for proposals under this program solicitation; however, cost-sharing is not required. Cost-sharing will not be an evaluation factor in consideration of your Phase I proposal.''

(f) *Profit or Fee.* Include a statement on the payment of profit or fee on awards made under the SBIR Program solicitation.

(g) *Joint Ventures or Limited Partnerships.* Include essentially the following language: ''Joint ventures and limited partnerships are eligible provided the entity created qualifies as a small business concern as defined in this program solicitation.''

(h) *Research and Analytical Work.* Include essentially the following statement:

(1) ''For Phase I a minimum of two-thirds of the research and/or analytical effort must be performed by the proposing small business concern unless otherwise approved in writing by the funding agreement officer after consultation with the agency SBIR Program Manager/Coordinator.

(2) For Phase II a minimum of one-half of the research and/or analytical effort must be performed by the proposing small business concern unless otherwise approved in writing by the funding agreement officer after consultation with the agency SBIR Program Manager/Coordinator.''

(i) *Awardee Commitments.* To meet the legislative requirement that SBIR solicitations be simplified, standardized and uniform, clauses expected to be in or required to be included in SBIR funding agreements must not be included in full or by reference in SBIR Program solicitations. Rather, applicants must be advised that they will be required to make certain legal commitments at the time of execution of funding agreements resulting from SBIR Program solicitations. Essentially, the following statement must be included in the ''Considerations'' section of SBIR Program solicitations:

''Upon award of a funding agreement, the awardee will be required to make certain legal commitments through acceptance of numerous clauses in Phase I funding agreements. The outline that follows is illustrative of the types of clauses to which the contractor would be committed. This list is not a complete list of clauses to be included in Phase I funding agreements, and is not the specific wording of such clauses. Copies of complete terms and conditions are available upon request.''

(j) *Summary Statements.* The following are illustrative of the type of summary statements to be included immediately following the statement in subparagraph (i). These statements are examples only and may vary depending upon the type of funding agreement used.

(1) *Standards of Work.* Work performed under the funding agreement must conform to high professional standards.

(2) *Inspection.* Work performed under the funding agreement is subject to Government inspection and evaluation at all times.

(3) *Examination of Records.* The Comptroller General (or a duly authorized representative) must have the right to examine any pertinent records of the awardee involving transactions related to this funding agreement.

(4) *Default.* The Government may terminate the funding agreement if the contractor fails to perform the work contracted.

(5) *Termination for Convenience.* The funding agreement may be terminated at any time by the Government if it deems termination to be in its best interest, in which case the awardee will be compensated for work performed and for reasonable termination costs.

(6) *Disputes.* Any dispute concerning the funding agreement that cannot be resolved by agreement must be decided by the contracting officer with right of appeal.

(7) *Contract Work Hours.* The awardee may not require an employee to work more than 8 hours a day or 40 hours a week unless the employee is compensated accordingly (for example, overtime pay).

(8) *Equal Opportunity.* The awardee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(9) *Affirmative Action for Veterans.* The awardee will not discriminate against any employee or application for employment because he or she is a disabled veteran or veteran of the Vietnam era.

(10) *Affirmative Action for Handicapped.* The awardee will not discriminate against any employee or applicant for employment because he or she is physically or mentally handicapped.

(11) *Officials Not To Benefit.* No Government official must benefit personally from the SBIR funding agreement.

(12) *Covenant Against Contingent Fees.* No person or agency has been employed to solicit or secure the funding agreement upon an understanding for compensation except bona fide employees or commercial agencies maintained by the awardee for the purpose of securing business.

(13) *Gratuities.* The funding agreement may be terminated by the Government if any gratuities have been offered to any representative of the Government to secure the award.

(14) *Patent Infringement.* The awardee must report each notice or claim of patent infringement based on the performance of the funding agreement.

(15) *American Made Equipment and Products.* When purchasing equipment or a product under the SBIR funding agreement, purchase only American-made items whenever possible.

(k) *Additional Information.* Information pertinent to an understanding of the administration requirements of SBIR proposals and funding agreements not included elsewhere must be included in this section. As a minimum, statements essentially as follows must be included under ''Additional Information'' in SBIR Program solicitations:

(1) This program solicitation is intended for informational purposes and reflects current planning. If there is any inconsistency between the information contained herein and the terms of any resulting SBIR funding agreement, the terms of the funding agreement are controlling.

(2) Before award of an SBIR funding agreement, the Government may request the applicant to submit certain organizational, management, personnel, and financial information to assure responsibility of the applicant.

(3) The Government is not responsible for any monies expended by the applicant before award of any funding agreement.

(4) This program solicitation is not an offer by the Government and does not obligate the Government to make any specific number of awards. Also, awards under the SBIR Program are contingent upon the availability of funds.

(5) The SBIR Program is not a substitute for existing unsolicited proposal mechanisms. Unsolicited proposals must not be accepted under the SBIR Program in either Phase I or Phase II.

(6) If an award is made pursuant to a proposal submitted under this SBIR Program solicitation, a representative of the contractor or grantee or party to a cooperative agreement will be required to certify that the concern has not previously been, nor is currently being, paid for essentially equivalent work by any Federal agency.

6. Submission of Proposals

(a) This section must clearly specify the closing date on which all proposals are due to be received.

(b) This section must specify the number of copies of the proposal that are to be submitted.

(c) This section must clearly set forth the complete mailing and/or delivery address(es) where proposals are to be submitted.

(d) This section may include other instructions such as the following:

(1) *Bindings.* Please do not use special bindings or covers. Staple the pages in the upper left corner of the cover sheet of each proposal.

(2) *Packaging.* All copies of a proposal should be sent in the same package.

7. Scientific and Technical Information Sources

Wherever descriptions of research topics or subtopics include reference to publications, information on where such publications will normally be available must be included in a separate section of the solicitation entitled ''Scientific and Technical Information Sources.''

8. *Research Topics.* Describe sufficiently the R/R&D topics and subtopics for which proposals are being solicited to inform the applicant of technical details of what is desired. Allow flexibility in order to obtain the greatest degree of creativity and

innovation consistent with the overall objectives of the SBIR Program.

9. *Submission Forms.* Multiple copies of proposal preparation forms necessary to the contracting and granting process may be required. This section may include Proposal Summary, Proposal Cover, Budget, Checklist, and other forms the sole purpose of which is to meet the mandate of law or regulation and simplify the submission of proposals.

APPENDIX II—CODES FOR TECH-NET DATABASE

Program Codes

Program	Meaning
SBIR	Small Business Innovation Research.
STTR	Small Business Technology Transfer.
BOTH	Both SBIR and STTR.

Agency Codes

Agency	Meaning
DHS	Department of Homeland Security.
DOC	Department of Commerce.
DOD	Department of Defense.
DOE	Department of Energy.
DOT	Department of Transportation.
ED	Department of Education.
EPA	Environmental Protection Agency.
HHS	Department of Health and Human Services.
NASA	National Aeronautics and Space Administration.
NSF	National Science Foundation.
USDA	U.S. Department of Agriculture.

Branch Codes

DHS Branch Codes

ST	Science and Technology Directorate.
DNDO	Domestic Nuclear Detection Office.

DOC Branch Codes

Branch	Meaning
NOAA	National Oceanic and Atmospheric Administration.

APPENDIX II—CODES FOR TECH-NET DATABASE—Continued

NIST	National Institute of Standards and Technology.

DoD Branch Codes

Branch	Meaning
AF	Department of the Air Force.
ARMY	Department of the Army.
CBD	Chemical and Biological Defense Program.
DARP	Defense Advanced Research Projects Agency.
DHP	Defense Health Program.
DLA	Defense Logistics Agency.
DMEA	Defense Microelectronics Activity.
DTRA	Defense Threat Reduction Agency.
MDA	Missile Defense Agency.
NAVY	Department of the Navy.
NGA	National Geospatial-Intelligence Agency.
OSD	Office of the Secretary of Defense.
SOCO	Special Operations Command.

DOE Branch Codes

Branch	Meaning
ARPA	Advanced Research Projects Agency—Energy.
DOE HQ	Department of Energy Headquarters.

HHS Branch Codes

Branch	Meaning
ACF	Administration for Marriage and Families.
CDC	Center for Disease Control.
FDA	Food and Drug Administration.
NIH	National Institutes of Health.

Research Institution Type Codes

Type Code	Meaning
1	Nonprofit College or University.
2	Domestic Nonprofit Research Organization.
3	Federally Funded R&D Center (FFRDC).

APPENDIX II—CODES FOR TECH-NET DATABASE—Continued

Research Institution School Categories

School Category	Meaning
ANSI	Alaskan Native Serving Institution.
HBCU	Historically Black College or University.
HSI	Hispanic Serving Institution.
TCU	Tribal College or University.
NHSI	Native Hawaiian Serving Institution.

Sales Codes

Sales Code	Meaning
SF	Sales to Federal or Prime Contractor.
SO	Sales to Other.
SP	Sales to Private Industry.
LIC	Licensing Revenue.

Additional Funding Codes

Additional Funding Code	Meaning
FT	FastTrack.
P2E	Phase II Enhancement.
P1B	Phase IB.
P2A	Phase IIA.
P2B	Phase IIB.
P2CC	Phase IICC.
P2REU	Phase II REU.
P2RET	Phase II RET.
P2RAHSS	Phase II RAHSS.
P2TECP	Phase II TECP.
P2I/UCRC	Phase II I/UCRC Membership Grants.
P2ERC	Phase II ERC Supplement.
P2CostMatch	Phase II Cost Match.
Phase II Commercialization Option.	Phase II Commercialization Option.

Investment Code	Meaning
IA	Investment from Angel Investors.
IF	Investment from Federal or Prime Contractor.
IO	Investment from Other.
IS	Investment from the Small Business Concern itself.

APPENDIX III—SOLICITATIONS DATABASE

Solicitation field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)	Type
Solicitation Level					
solicitation program	Agencies report on Tech-Net.	Automatic or manual input	within 5 days of solicitation release date.	Y	varchar(4).

APPENDIX III—SOLICITATIONS DATABASE—Continued

Solicitation field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)	Type
solicitation year	Agencies report on TechNet.	Automatic or manual input	within 5 days of solicitation release date.	Y	int(11).
solicitation number	Agencies report on TechNet.	Automatic or manual input	within 5 days of solicitation release date.	Y	varchar(25).
solicitation release	Agencies report on TechNet.	Automatic or manual input	within 5 days of solicitation release date.	Y	varchar(20).
solicitation open date	Agencies report on TechNet.	Automatic or manual input	within 5 days of solicitation release date.	Y	varchar(20).
solicitation close date	Agencies report on TechNet.	Automatic or manual input	within 5 days of solicitation release date.	Y	varchar(20).
solicitation title	Agencies report on TechNet.	Automatic or manual input	within 5 days of solicitation release date.	Y	longtext.
solicitation body	Agencies report on TechNet.	Automatic or manual input	within 5 days of solicitation release date.	Y	longtext.
solicitation phase	Agencies report on TechNet.	Automatic or manual input	within 5 days of solicitation release date.	Y	int(11).
solicitation occurrence number.	Agencies report on TechNet.	Automatic or manual input	within 5 days of solicitation release date.	Y	int(11).
solicitation url	Agencies report on TechNet.	Automatic or manual input	within 5 days of solicitation release date.	Y	varchar(2048).
solicitation url title	Agencies report on TechNet.	Automatic or manual input	within 5 days of solicitation release date.	Y	varchar(255).
solicitation url attributes	Agencies report on TechNet.	Automatic or manual input	within 5 days of solicitation release date.	Y	mediumtext.
Topic Level					
topic title	Agencies report on TechNet.	Automatic or manual input	within 5 days of solicitation release date.	Y	longtext.
topic number	Agencies report on TechNet.	Automatic or manual input	within 5 days of solicitation release date.	Y	varchar(30).
associated solicitation	Agencies report on TechNet.	Automatic or manual input	within 5 days of solicitation release date.	Y	

APPENDIX IV—COMPANY REGISTRY DATABASE

Company registry field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)
Agency Tracking #	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
SBA Firm ID	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
Company URL	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
HQ Address 1	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
HQ Address 2	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
HQ City	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
HQ Zip Code	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
HQ Zip Code +4	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
HQ State	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
Company Name	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
Number of Employees	*XML or manual upload to TechNet.*	*Agency collects data, provides to SBA. Also updated as a part of commercialization information.*	*Register or reconfirm at time of application.*	*N*
Flag for External Funding	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
Investment Ownership Percentage.	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*

APPENDIX IV—COMPANY REGISTRY DATABASE—Continued

Company registry field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)
Majority-Owned by External Funding Firms.	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
Affiliate Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Register or reconfirm at time of application.*	*N*
Affiliate Address 1	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Register or reconfirm at time of application.*	*N*
Affiliate Address 2	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Register or reconfirm at time of application.*	*N*
Affiliate City	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Register or reconfirm at time of application.*	*N*
Affiliate Zip Code	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Register or reconfirm at time of application.*	*N*
Affiliate Zip Code + 4	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Register or reconfirm at time of application.*	*N*
Affiliate Number of Employees	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Register or reconfirm at time of application.*	*N*
Additional Funding Type	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Register or reconfirm at time of application.*	*N*
Additional Funding Amount	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Register or reconfirm at time of application.*	*N*
Investment Type [VC, Hedge, PE].	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
Investment Firm Name	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
Investment Not US–Based	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
Investment Amount	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*

APPENDIX V—APPLICATION INFORMATION DATABASE

Application info field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)	Type
Company Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*int(10) unsigned.*
Program [SBIR/STTR]	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*varchar(4).*
Agency Tracking #	*XML or manual upload to Tech-Net.*	*Agency creates this number for tracking—not submitted by SBC.*	*Quarterly*	*N*	*varchar(50).*
SBA Firm ID	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*int(10) unsigned.*
Agency	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*int(10) unsigned.*
Solicitation Number	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*int(10) unsigned.*
Solicitation Topic Number	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*varchar(20).*
Contact First Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*varchar(25).*
Contact Middle Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*varchar(1).*
Contact Last Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*varchar(35).*
Contact Title	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*varchar(40).*
Contact Phone	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*varchar(255).*
Contact Email	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*varchar(255).*
Phase Number	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*int(11).*
Solicitation Close Date	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*varchar(20).*
Solicitation Year	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*int(11).*

APPENDIX V—APPLICATION INFORMATION DATABASE—Continued

Application info field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)	Type
Company URL	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*varchar(255).*
Solicitation Topic	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*int(10) unsigned.*
Address 1	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Address 2	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
City	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Zip Code	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Zip Code +4	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
State	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
HubZone Certified	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
SDB	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Women-Owned	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Women PI	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Socially and Economically Disadvantaged PI.	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Student/Faculty Owned	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
FAST Assistance	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Allow EDO's to Have Contact Info.	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Agency Contact First Name.	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Agency Contact Middle Name.	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Agency Contact Last Name.	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Agency Contact Title	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Agency Contact Phone #	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Agency Contact Email	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Key Individual Percentage of Effort.	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Project Aims	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Abstract	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Key Individual Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Key Individual Position/ Title.	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Key Individual Email	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Key Individual Phone	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	

APPENDIX VI—AWARD INFORMATION DATABASE

Award field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)	Type
**Award data is inclusive of "Applicant" data fields*					
Phase	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Monthly*	*Y*	*int(11).*

APPENDIX VI—AWARD INFORMATION DATABASE—Continued

Award field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)	Type
Phase II # [if 1st or 2nd]	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	
Contract #/Grant #	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(255).*
Amount	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*decimal(20,2).*
Year	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*int(11).*
First Date of PoP	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(20).*
Notification of Selection Date.	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(20).*
Award Title	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*longtext.*
Last Day of PoP	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(20).*
Associated Applicant/Proposal #.	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*int(10) unsigned.*
PI First Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(25).*
PI Middle Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(1).*
PI Last Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(35).*
PI Title	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(40).*
PI Phone	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(255).*
PI Email	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(255).*
ITAR Controlled	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(1).*
Manufacturing	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*longtext.*
Renewable Energy	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(1).*
Comments [Free Text Field for Notes].	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*longtext.*
CAGE #	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(5).*
DUNS #	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(9).*
EIN	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*varchar(10).*
Award Amount Justification, if Limit Exceeded.	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Convicted or Civilly Liable Flag Liable Flag.	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*At time of application*	*N*	
CL First Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*At time of application*	*N*	
CL Middle Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*At time of application*	*N*	
CL Last Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*At time of application*	*N*	
CL Company Associated	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*At time of application*	*N*	

APPENDIX VII—COMMERCIALIZATION DATABASE

Commercialization field name	Reporting mechanism	Agency interaction	Collection frequency	Public data *(Y/N)*	Type
		Firm Level Commercialization			
Company Name	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(10) unsigned.*

APPENDIX VII—COMMERCIALIZATION DATABASE—Continued

Commercialization field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)	Type
Agency Tracking #	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(10) unsigned.*
SBA Firm ID	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(10) unsigned.*
IPO	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*YES/NO.*
IPO Value	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
IPO Amount	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*decimal(20,2).*
IPO Year	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Merger/Acquired	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*YES/NO.*
M&A Value	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*decimal(20,2).*
M&A Year	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Narrative	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*longtext.*
Comm Contact First Name	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*varchar(25).*
Comm Contact Middle Name.	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*varchar(1).*
Comm Contact Last Name	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*varchar(35).*
Comm Contact Title	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*varchar(50).*
Comm Contact Phone	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*varchar(255).*
Comm Contact Email	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*varchar(255).*
	Agencies + companies report to Tech-Net.	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(10) unsigned.*
Sales Amount	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*decimal(20,2).*
Investment Amount	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*decimal(20,2).*
Patent #'s	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Number of Patents	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*decimal(10,2).*
Investment Types	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	
Sales Type	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	

APPENDIX VII—COMMERCIALIZATION DATABASE—Continued

Commercialization field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)	Type
Award Level Commercialization					
Product Launched	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Names of Company Established for Product/Commercialization.	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Sales Amount	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(10) unsigned.*
Investment Amount	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Patent #'s	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*longtext.*
Number of Patents	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Investment Types	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Sales Type	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Phase III Value	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(10) unsigned.*
Phase III Launched/Implemented [CRP].	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Phase III Narrative [CRP]	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*

APPENDIX VIII—ANNUAL REPORT DATABASE

Annual report field name	Reporting mechanism	Collection frequency	Public data	Type
agency code	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(11).*
Program	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*char(4).*
Year	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*char(4).*
reporting unit	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(255).*
submitted by	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(100).*
phone number	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(255).*
Agency Extramural Budget	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(100).*
Agency SBIR Budget	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(100).*
Number of Solicitations Released	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
Number of Research Topics in Solicitations	*XML or manual upload to Tech-Net*	*Annually*	*Y.*	
Number of Phase I Proposals Received	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
Total Phase I Awards	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
Number of Phase I Proposals Received from HubZone Applicants.	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
Number of Phase I Proposals Received from Minority/Disadvantaged.	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
Number of Phase I Proposals Received from Women Applicants.	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
Total Phase I Dollars Awarded ($)	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(25).*
Minority/Disadvantaged Phase I Awards	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
Minority/Disadvantaged Phase I Dollars Awarded ($).	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(25).*
HUBZone Phase I Awards	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
HUBZone Phase I Dollars Awarded ($)	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
phase1 hubzone dollars obligated	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(25).*
phase1 manufacturing awards	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
phase1 manufacturing dollars obligated	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(25).*
Number of Phase II Proposals Received	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*

APPENDIX VIII—ANNUAL REPORT DATABASE—Continued

Annual report field name	Reporting mechanism	Collection frequency	Public data	Type
Number of Phase II Proposals Received from HubZone Applicants.	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
Number of Phase II Proposals Received from Minority/Disadvantaged.	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
Number of Phase II Proposals Received from Women Applicants.	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
Total Phase II Awards	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
Total Phase II Dollars Awarded ($)	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(25).*
Minority/Disadvantaged Phase II Awards	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
Minority/Disadvantaged Phase II Dollars Awarded ($).	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(25).*
HUBZone Phase II Awards	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
HUBZone Phase II Dollars Awarded ($)	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
phase2 hubzone dollars obligated	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(25).*
phase2 manufacturing awards	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
phase2 manufacturing dollars obligated	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(25).*
new phase2 with dollars obligated	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
new phase2 dollars obligated	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(25).*
old phase2 with dollars obligated	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
old phase2 dollars obligated	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(25).*
number amount modified	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(6).*
amount modified	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(25).*
agency obligations	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(50).*
phase1 success rate	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(3).*
phase2 success rate	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(3).*
overall success rate	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(3).*
The percentage of new Phase I awards where difference between Solicitation Close Date and Proposal Award Date is less than 180 days (Proposal Award Date—Solicitation Close Date).	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(3).*
The average of the number of days between Solicitation Close Date and Proposal Award Date for all the new Phase I awards (Proposal Award Date—Solicitation Close Date).	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(50).*
The average of the number of days between the Contract End Date for the related Phase I award and the Proposal Award Date for all the new Phase II awards (P2 Proposal Award Date—P1 Contract End Date).	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(50).*
The average number of days between Proposal Selection Date and Proposal Award Date for all the new Phase II awards (Proposal Award Date—Proposal Selection Date).	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(50).*
The percentage of new Phase II awards where the number of days between Proposal Selection Date and Proposal Award Date was less than 60 (Proposal Award Date—Proposal Selection Date).	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*varchar(3).*
sbcname changed	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*text.*
one proposal per solicitation	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*text.*
more than 15 awards	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*text.*
justification	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*text.*
submitted	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*timestamp.*
confirmed_by_uid	*XML or manual upload to Tech-Net*	*Annually*	*Y*	*int(10) unsigned.*
	XML or manual upload to Tech-Net	*Annually*	*Y*	
Annual Report calculations based on above fields				
Dollars Obligated	*XML or manual upload to Tech-Net*	*Annually*	*Y*	
Percent of SBIR to Extramural Budget	*XML or manual upload to Tech-Net*	*Annually*	*Y*	
Deficit/Surplus	*XML or manual upload to Tech-Net*	*Annually*	*Y*	
Exceeding award size threshold of 150%	*XML or manual upload to Tech-Net*	*Annually*	*Y*	
Award cross btwn SBIR and STTR programs	*XML or manual upload to Tech-Net*	*Annually*	*Y*	
	XML or manual upload to Tech-Net	*Annually*	*Y*	
Additions to Annual Report				
tracking compliance grievance	*XML or manual upload to Tech-Net*	*Annually*	*Y*	
grievance tracking for data rights	*XML or manual upload to Tech-Net*	*Annually*	*Y*	

APPENDIX VIII—ANNUAL REPORT DATABASE—Continued

Annual report field name	Reporting mechanism	Collection frequency	Public data	Type
track deficit/surplus of budgets, esp. VC, etc. backed.	*XML or manual upload to Tech-Net*	*Annually*	*Y*	
Track data at component level	*XML or manual upload to Tech-Net*	*Annually*	*Y*	

Appendix IX—Performance Areas, Metrics and Goals

(a) Examples of performance areas include:

(1) Company and agency-level commercialization of awards (see commercialization section for detail);

(2) Repeat-award winners;

(3) Outreach to first time SBIR/STTR applicants, WOSBs, SDBs—including percentage of new applicants from those demographics that have applied to the agency, and other goals and metrics established by the agency and the interagency policy committee;

(4) Shortening review and award timelines for small businesses (collected annually in annual report).

(b) Examples of metrics relating to timelines for awards of Phase I funding agreements and performance start dates of the funding agreements, include:

(1) The percentage of Phase I awards where the duration between the closing date of the solicitation and the first date of the period of performance on the funding agreement is less than 180 calendar days.

(2) The average duration of time between a Phase I solicitation closing date and the first day of the period of performance on the funding agreement.

(3) The percentage of Phase I awards where the duration between the closing date of the solicitation and the notification of recommendation of award is not more than one year for NIH or NSF and not more than 90 calendar days for all other agencies.

(4) The average duration of time between a Phase I solicitation closing date and the notification of recommendation for award.

(c) Examples of metrics relating to timelines for awards of Phase II funding agreements and performance start dates of the funding agreements, include:

(1) The percentage of Phase II awards where the duration between the closing date of the solicitation, or the applicable date for receiving the Phase II application, and the first date of the period of performance on the funding agreement is the less than 180 calendar days.

(2) The average duration of time between a Phase II solicitation close dating and the first day of the period of performance on the funding agreement.

(3) The percentage of Phase II awards where the duration between the closing date of the solicitation, or the applicable date for receiving the Phase II application, and the notification of recommendation of award is not more than one year for NIH or NSF and not more than 90 calendar days for all other agencies.

(4) The average duration of time between a Phase II solicitation closing date, or the applicable date for receiving the Phase II application,—and the notification of recommendation for award.

(5) The average duration of time between the end of the period of performance on a Phase I funding agreement and the closing date for a Phase II solicitation for the same work.

(6) The number of awardees for whom the Phase I process exceeded 6 months, starting from the closing date of the SBIR solicitation to award of the funding agreement.

(7) Metrics with respect to each SBIR agency's adherence to Policy Directive and implementation.

(8) Metrics with respect to agencies' measures to reduce fraud, waste and abuse within the SBIR Program and coordination with the SBIR agency's OIG.

Appendix X—National Academy of Sciences Study

(a) The purpose of the study is to:

(1) Continue the most recent study relating to the following issues:

(i) A review of the value to the Federal research agencies of the research projects being conducted under the SBIR Program, and of the quality of research being conducted by small businesses participating under the program, including a comparison of the value of projects conducted under the SBIR Program to those funded by other Federal research and development expenditures;

(ii) To the extent practicable, an evaluation of the economic benefits achieved by the SBIR Program, including the economic rate of return, and a comparison of the economic benefits, including the economic rate of return, achieved by the SBIR Program with the economic benefits, including the economic rate of return, of other Federal research and development expenditures;

(iii) An evaluation of the noneconomic benefits achieved by the SBIR Program over the life of the program;

(iv) An analysis of whether Federal agencies, in fulfilling their procurement needs, are making sufficient effort to use small businesses that have completed a second phase award under the SBIR Program; and

(2) Conduct a comprehensive study of how the STTR program has stimulated technological innovation and technology transfer, including—

(i) A review of the collaborations created between small businesses and research institutions, including an evaluation of the effectiveness of the program in stimulating new collaborations and any obstacles that may prevent or inhibit the creation of such collaborations;

(ii) An evaluation of the effectiveness of the program at transferring technology and capabilities developed through Federal funding;

(iii) To the extent practicable, an evaluation of the economic benefits achieved by the STTR program, including the economic rate of return;

(iv) An analysis of how Federal agencies are using small businesses that have completed Phase II under the STTR program to fulfill their procurement needs;

(v) An analysis of whether additional funds could be employed effectively by the STTR program; and

(vi) An assessment of the systems and minimum performance standards relating to commercialization success established under section 9(qq) of the Small Business Act;

(3) Make recommendations with respect to—

(i) Measures of outcomes for strategic plans submitted under 5 U.S.C. 306 and performance plans submitted under 31 U.S.C. 1115, of each Federal agency participating in the SBIR Program;

(ii) How to increase the use by the Federal Government in its programs and procurements of technology-oriented small businesses;

(iii) Improvements to the SBIR Program, if any are considered appropriate; and

(iv) How the STTR program can further stimulate technological innovation and technology transfer.

(4) Estimate the number of jobs created by the SBIR or STTR program of the agency, to the extent practicable.

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BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Chapter I

RIN 3245–AF45

Small Business Technology Transfer Program Policy Directive

AGENCY: Small Business Administration.

ACTION: Final policy directive with request for comments.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its Small Business Technology Transfer (STTR) Policy Directive. The purpose of these amendments is to implement those provisions of the National Defense Authorization Act for Fiscal Year 2012 affecting the program.

DATES: You must submit your comments on or before October 5, 2012.

ADDRESSES: You may submit comments, identified by RIN: 3245–AF45, by any of the following methods:

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

• Mail, Hand Delivery/Courier: Edsel Brown, Assistant Director, Office of Technology, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

SBA will post all comments to this policy directive on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to Edsel Brown, or send an email to *STTRComments@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Edsel Brown, Assistant Director, Office of Technology, at (202) 401–6365.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Small Business Act (Act) requires that the U.S. Small Business Administration (SBA) issue a policy directive setting forth guidance to the Federal agencies participating in the STTR program. The STTR Policy Directive outlines how agencies must generally conduct their STTR programs. Each agency, however, can tailor their STTR Program to meet the needs of the individual agency, as long as the general principles of the program set forth in the Act and directive are followed.

With this notice, SBA is issuing an amended policy directive, which implements the recent changes made to the STTR Program as part of the SBIR/STTR Reauthorization Act of 2011 (Reauthorization Act). In fact, the Reauthorization Act requires that SBA issue amendments to the STTR Policy Directive and publish the amendments in the **Federal Register** by the end of June 2012.

Although the STTR Policy Directive is intended for use by the STTR participating agencies, SBA believes that public input on the directive from all parties involved in the program would be invaluable. Therefore, SBA is soliciting public comments on this final directive, and may amend the directive in response to these comments at a later time.

The Reauthorization Act made several key changes to the STTR Program relating to eligibility, the STTR award process, STTR Program administration, and fraud, waste and abuse and SBA has addressed these issues in the directive. Although SBA has explained in detail the changes in the preamble, SBA believes it would be beneficial to all if it set forth an abbreviated outline of some of the key provisions and amendments to the Policy Directive in an Executive Summary.

A. Eligibility

With respect to eligibility for an STTR award, the directive:

• Addresses the new requirements permitting small business concerns that are majority-owned by multiple venture capital operating companies (VCOCs), hedge funds or private equity firms to participate in the program;

• Permits an SBIR Phase I awardee to receive an STTR Phase II award; and

• States that a small business may receive two, sequential Phase II awards.

For example, SBA amended the directive to address the two new statutory exceptions to the general rule that only STTR Phase I awardees may receive an STTR Phase II award. According to the Reauthorization Act, a Federal agency may now issue an STTR Phase II award to an SBIR Phase I awardee in order to further develop the work performed under the SBIR Phase I award.

B. STTR Award Process

With respect to the STTR award process, the Policy Directive incorporates the new statutory requirements, including the following:

• Increasing the minimum percentage of an agency's extramural R/R&D budget that must be awarded to small businesses under the program;

• Establishing agency measures to evaluate an STTR Phase I applicant's success with prior Phase I and Phase II awards;

• Ensuring agencies make award decisions within the statutorily required time frames; and

• Increasing the dollar thresholds for Phase I and Phase II awards.

For example, SBA has amended the Policy Directive to clarify that the STTR Program is extended until September 30, 2017 and to address the increase in the minimum percentages of an agency's extramural budget for R/R&D that must be awarded to SBCs under the STTR program. As required by statute, the minimum percentages increase by 0.05% every two fiscal years through fiscal year 2017.

Further, SBA amended the directive to set forth the criteria by which agencies must establish standards, or benchmarks, to measure the success of certain Phase I awardees in receiving Phase II awards and to measure the success of certain Phase I awardees in receiving Phase III awards. The purpose of these standards, or benchmarks, is to ensure that repeat Phase I awardees are attempting to and have some success in receiving Phase II awards and commercializing their research. As a result, these benchmarks will only apply to those Phase I applicants that have received a certain number of prior Phase I awards.

In addition, the Reauthorization Act requires agencies to make STTR award decisions within a certain amount of time after the close of the solicitation. The purpose of this statutory amendment is to reduce the gap in time between submission of application and time of award, which is an important issue for many small businesses.

Further, the STTR Policy Directive sets forth the new maximum thresholds for Phase I and Phase II awards at $150,000 and $1,000,000, respectively. SBA will adjust these amounts every year for inflation and will post the adjusted numbers on www.SBIR.gov.

C. STTR Program Administration

With respect to each agency's administration of the STTR Program, the Policy Directive incorporates the following new requirements:

• Addressing statutory changes for technical assistance provided to STTR awardees;

• Creating and setting forth the policies for the new pilot program that permits agencies to use SBIR money for administration of the STTR program; and

• Setting forth the new reporting and data collection requirements.

The Act had previously permitted agencies to contract with vendors to provide technical assistance to STTR awardees (*e.g.* assist STTR awardees in making better technical decisions on STTR projects and commercializing the STTR product or process). The Reauthorization Act amended this current requirement, and SBA has amended the directive, to permit agencies to contract with a vendor for a period of up to 5 years, permit an agency to provide technical assistance to an STTR awardee in an amount up to $5,000 per year (previously the limit had been $4,000 per award), and permit the small business to elect to acquire the technical assistance services itself.

In addition, the Reauthorization Act creates a pilot program that permits agencies to use SBIR funds for certain administrative purposes for the STTR Program. SBA has amended the STTR

Policy Directive to set forth when and how agencies may begin using this pilot program authority and to explain that agencies may use no more than 3% of their SBIR funds for one or more of the specified activities.

SBA has also amended the Policy Directive to address the reporting requirements for both the STTR participating agencies and STTR applicants, many of which are newly required by various parts of the Reauthorization Act. Both applicants and agencies will be able to provide the statutorily required information into one or more of seven specific databases, collectively referred to as Tech-Net, which will be available at www.SBIR.gov. The seven databases are the: (1) Solicitations; (2) Company Registry; (3) Application Information; (4) Award Information; (5) Commercialization; (6) Annual Report; and (7) Other Reports Databases.

The directive explains that the Solicitations Database will collect all solicitations and topic information from the participating STTR agencies. The Company Registry will house company information on all STTR applicants and information on SBC applicants that are majority-owned by multiple VCOCs, hedge funds or private equity firms. The Application Information Database will contain information concerning each STTR application, which will be uploaded by an STTR agency. The Award Information Database will store information about each STTR awardee and must also be uploaded by the STTR agency. The Commercialization Database will store commercialization information for SBCs that have received STTR awards. The Annual Report Database will include all of the information required by the Small Business Act, including the new requirements set forth in the Reauthorization Act regarding the Annual Report that SBA submits to Congress. SBA receives the information for the annual report from the various STTR agencies and departments. The Other Reports Database will include information that is required by statute to be submitted, but does not fit into any of the other databases.

D. Fraud, Waste and Abuse

Finally, this Policy Directive incorporates several amendments relating to fraud, waste and abuse, such as:

- Requiring small businesses to certify they are meeting the program's requirements during the life cycle of the funding agreement; and
- Establishing specific measures to ensure agencies are preventing fraud, waste and abuse in the program.

As in the past, each small business that receives STTR funding must certify that it is in compliance with the laws relating to the program. However, SBA has amended the directive to state that these STTR awardees must also submit certifications that they meet the program's requirement at certain points during the life cycle of the award and provides agencies with the discretion to request additional certifications throughout the life cycle of the award.

In addition to lifecycle certifications, the Policy Directive includes other measures to prevent fraud, waste and abuse in the STTR Program. For example, agencies must include on their Web site and in each solicitation any telephone hotline number or web-based method for how to report fraud, waste and abuse; designate at least one individual to serve as the liaison between the STTR Program, Office of Inspector General (OIG) and the agency's Suspension and Debarment Official (SDO); include on the agency's Web site successful prosecutions of fraud, waste and abuse in the STTR Program; and create or ensure there is a system to enforce accountability (*e.g.,* creating templates for referrals to the OIG or SDO), among other things.

Additional detail about all of these amendments to the directive is set forth below.

II. Background

In 1992, Congress enacted the Small Business Research and Development Enhancement Act of 1992 (SBRDEA), Public Law 102–564 (codified at 15 U.S.C. 638), which established the Small Business Technology Transfer Program (STTR Program). The statutory purpose of the STTR Program is to stimulate a partnership of ideas and technologies between innovative small business concerns (SBCs) and Research Institutions through Federally-funded research or research and development (R/R&D). By providing awards to SBCs for cooperative R/R&D efforts with Research Institutions, the STTR Program assists the small business and research communities by commercializing innovative technologies.

SBRDEA requires the U.S. Small Business Administration (SBA) to ''issue a policy directive for the general conduct of the STTR programs within the Federal Government.'' 15 U.S.C. 638(p)(1). The purpose of the Policy Directive is to provide guidance to the Federal agencies participating in the program.

On December 31, 2011, the President signed into law the National Defense Authorization Act for Fiscal Year 2012 (Defense Reauthorization Act), Public Law 112–81, 125–Stat. 1298. Section 5001, Division E of the Defense Authorization Act contains the SBIR/STTR Reauthorization Act of 2011 (Reauthorization Act), which amends the Small Business Act and makes several amendments to the STTR Program. The Reauthorization Act requires that SBA issue amendments to the STTR Policy Directive and publish the amendments in the **Federal Register** by June 27, 2012.

As a result of the abbreviated time frame set forth in the Reauthorization Act by which SBA is required to issue the amended Policy Directive, the Agency was unable to conduct public outreach prior to drafting and issuing the directive. Therefore, SBA is soliciting public comments on this final directive, and may amend the directive in response to these comments at a later time. SBA also plans to conduct public outreach sessions following publication, such as town hall meetings and webinars, to gather additional input on these statutory provisions and SBA's implementation. SBA will release more information about these public sessions later, which will be available at *www.SBIR.gov.* The SBA notes that it consulted with the STTR participating agencies when drafting these amendments.

III. Amendments

SBA has amended the STTR Policy Directive to address the various sections of the Reauthorization Act. SBA's amendments are set forth in an analysis below, based on the specific section of the directive. SBA welcomes comments on all issues arising from this notice.

SBA notes that it intends to update its Policy Directive on a regular basis and over the next year it plans to restructure and reorganize the directive as well as address certain policy issues (*e.g.,* those concerning data rights). However, at this time it is amending the directive primarily to implement the new provisions contained in the Reauthorization Act.

A. Section 1—Purpose

Section 5144 of the Reauthorization Act requires SBA to issue regulations or guidelines to simplify the application and award process. The Reauthorization Act requires SBA to issue such guidelines or regulations after an opportunity for notice and public comment. The regulations or guidelines must take into consideration the unique needs of each Federal agency, yet ensure

that program proposal, selection, contracting, compliance, and audit procedures are simplified and standardized across participating agencies. This includes reducing the paperwork and regulatory compliance burden on small business concerns applying to and participating in the STTR Program.

SBA has amended the directive to fulfill this statutory requirement to simplify and standardize the proposal, selection, contracting, compliance, and audit procedures for the STTR program to the extent practicable while allowing the STTR agencies flexibility in the operation of their individual STTR Programs. Wherever possible, SBA has attempted to reduce the paperwork and regulatory compliance burden on SBCs applying to and participating in the STTR Program while still meeting the statutory reporting and data collection requirements. For example, as discussed later in this notice, SBA has created a program data management system for collecting and storing application information that will be utilized by all STTR agencies, thus eliminating the need for STTR applicants to submit the same data to multiple agencies.

SBA requests comments on other ways it can simplify and standardize these requirements. Specifically, SBA requests comments on ways improve the application process, including simplifying and streamlining that process.

B. Section 2—Summary of Statutory Provisions

SBA has implemented section 5101 of the Reauthorization Act by amending section 2 to clarify that the STTR Program is extended until September 30, 2017, unless otherwise provided in law. In addition, in order to implement section 5102 of the Reauthorization Act, SBA has amended section 2 of the directive to address the increase in the minimum percentages of an agency's extramural budget for R/R&D that must be awarded to SBCs under the STTR program. As required by statute, the minimum percentages will increase by .05% every two fiscal years through fiscal year 2017. The directive clarifies that agencies may exceed these minimum percentages and make additional awards to SBCs under this program.

C. Section 3—Definitions

SBA has amended the definition of ''commercialization'' as required by section 5125 of the Reauthorization Act. Further, SBA has amended the definition for the term ''small business concern'' by simply referencing its size regulations at 13 CFR 121.701–705. Those size regulations define the ownership and size requirements for the SBIR and STTR Programs. SBA has recently issued a rule proposing to amend those regulations and the definition of ''small business concern'' for purposes of the SBIR and STTR Programs as a result of certain provisions of the Reauthorization Act (see 77 FR 30227 (May 22, 2012)). SBA believes the proposed rule will not become final until late 2012. In order to ensure that any changes made to the definition of ''small business concern,'' which become effective in the regulation in late 2012, are incorporated into the Policy Directive, it is best to simply reference the regulation in the Policy Directive at this time. When SBA issues the final regulations defining ''small business concern,'' SBA intends to amend the Policy Directive to explicitly incorporate the new definition rather than only reference the regulation.

D. Section 4—Competitively Phased Structure of the Program

SBA amended the introductory paragraph to this section of the Policy Directive to explain that agencies must issue STTR awards pursuant to competitive and merit-based selection procedures. This amendment implements section 5162 of the Reauthorization Act.

SBA also amended this paragraph to explain that agencies may not use investment of venture capital, hedge funds or private equity firms as a criterion for a Phase I, Phase II or Phase III award. This amendment is required by section 5107(a) of the Reauthorization Act.

1. Section 4(a)—Phase I Awards

SBA has amended this section of the directive, which addresses Phase I awards, to incorporate the provisions of section 5165 of the Reauthorization Act concerning agency measures of progress towards commercialization. Specifically, section 5165 requires that agencies establish standards, or benchmarks, to measure the success of Phase I awardees in receiving Phase II awards. These standards are referred to as the ''Phase I–Phase II'' Transition Rate benchmarks in the Policy Directive. Section 5165 also requires agencies to establish benchmarks to measure the success of Phase I awardees in receiving Phase III awards. These standards are referred to as the ''Commercialization Rate'' benchmarks in the Policy Directive.

STTR agencies must establish the Phase I–Phase II benchmark rate and have received SBA approval for the rate by October 1, 2012. Agencies must establish the Commercialization Rate and have received SBA approval for the rate by October 1, 2013. Any subsequent changes in the benchmarks must be approved by SBA.

Once established, agencies will only apply these benchmarks to those Phase I applicants that have received more than 20 Phase I awards or more than 15 Phase II awards over the prior 5 fiscal years (excluding the most recently completed two fiscal years). However, at the agency's option, it may apply the benchmark to a Phase I applicant that has received more than 20 Phase I awards over the prior 10 or 15 fiscal years (excluding the most recently completed fiscal year) or has received more than 15 Phase II awards over the prior 10 or 15 fiscal years (excluding the most recently completed two fiscal years).

With the Phase I–Phase II Transition Rate, each agency must establish the minimum number of Phase II awards a small business must have received for a given number of Phase I awards over the preceding 5, 10, or 15 fiscal years (excluding the most recently completed fiscal year). For example, an agency may state that its Phase I–Phase II Transition Rate requires an STTR Phase I applicant to have received at least one Phase II award for every five Phase I awards received in the prior 10 fiscal years. Another agency could state that its Phase I–Phase II Transition Rate requires an STTR Phase I applicant to have received at least one Phase II award for every ten Phase I awards received in the prior 5 fiscal years. Agencies will set the benchmark as appropriate for the specific agency's STTR Program, taking into consideration the fact that Phase I is intended to explore high-risk, early-stage research and therefore many Phase I awards will not result in a Phase II award.

With the Commercialization Rate, each agency must establish the level of Phase III commercialization results a small business must have received from work performed under prior Phase II awards over the preceding 5, 10, or 15 fiscal years (excluding the most recently completed two fiscal years). Agencies have discretion to define this benchmark in a number of ways, including: in financial terms (*e.g.,* dollar value of revenues and additional investment per dollar value of Phase II awards); in terms of the share of Phase II awards that have resulted in the introduction of a product to the market relative to the number of Phase II awards received; or by other means (*e.g.,*

a commercialization score or index). SBA is aware that some agencies currently have a commercialization benchmark they are using. The directive provides the agencies with the discretion to continue to use those benchmarks or establish new Commercialization Rates relevant to that agency.

We note that the Reauthorization Act refers to ''the success of small business concerns with respect to the receipt of Phase III SBIR or STTR awards'' when determining the Commercialization Rate benchmark. However, the SBA understands that the intent of this provision is to measure success at commercializing STTR technology not only in the Federal procurement market in the form of Phase III awards, but also in the private market place through sales or other means. Therefore, SBA has drafted the Policy Directive in a manner consistent with this understanding.

SBA will maintain a system that records all Phase I and Phase II awards and calculates these benchmark rates. The small business will be able to provide these rates to the STTR agency with its application. The Reauthorization Act requires that each agency determine whether an STTR Phase I applicant meets *both* of these benchmarks. If the applicant does not meet both of the benchmarks, then by statute it is not eligible for the Phase I award and it is not eligible for any other STTR Phase I awards from that agency for a period of one year from the date it submitted the application to the agency and was determined ineligible for failure to meet the benchmark. That applicant, however, may be eligible for a Phase I award from a different agency if it meets that particular agency's benchmarks. If the applicant does meet the particular agency's benchmark rates, the agency will still evaluate the applicant's commercial potential for the specific R&D in that application and base this evaluation on agency-specific criteria.

The purpose of this statutory provision is to ensure that STTR awardees are attempting to commercialize their R&D. SBA understands that not all Phase I awardees will receive Phase II awards due to many factors, such as the exploratory nature of Phase I awards, insufficient funding for Phase II awards, and changes in requirements for the agency. SBA has taken all of this into consideration when drafting these benchmark provisions, while also allowing agencies flexibility in setting the benchmarks.

2. Section 4(b)—Phase II Awards

SBA has amended this section of the directive, which addresses Phase II awards, to set forth two new statutory exceptions to the general rule that only STTR Phase I awardees may receive an STTR Phase II award. According to section 5104 of the Reauthorization Act, a Federal agency may now issue an STTR Phase II award to an SBIR Phase I awardee in order to further develop the work performed under the SBIR Phase I award.

SBA has also amended this section of the directive to state that agencies may not use an invitation, pre-screening, or pre-selection process for determining eligibility for a Phase II award. Agencies must set forth a notice in each solicitation stating that all Phase I awardees are eligible to apply for a Phase II award and must provide specific guidance on how to apply. This amendment is required by section 5105 of the Reauthorization Act.

Finally, SBA amended this section to address section 5111 of the Reauthorization Act, concerning multiple Phase II awards. Specifically, agencies may now issue one additional, sequential Phase II award to continue the work of an initial Phase II award. Therefore, a small business may receive no more than two STTR Phase II awards for the same R&D project, and the awards must be made sequentially.

3. Section 4(c)—Phase III Award

SBA amended this section to address the specific statutory directive at section 5108 of the Reauthorization Act that agencies, to the greatest extent practicable, shall issue Phase III awards to the STTR awardee that developed the technology. Agencies may issue sole source Phase III awards to the STTR Phase I or Phase II awardee to meet this statutory requirement. At times, agencies have failed to use this authority, bypassed the small business that created the technology, and pursued the Phase III work with another business. Congress has expressed, again, and now in stronger terms, a clear intent for the agencies to issue Phase III awards to the STTR awardees that created the technology so that these small businesses can commercialize it.

SBA requests comments, however, on whether it should define ''to the greatest extent practicable'' with respect to when agencies shall issue these Phase III awards, and if so, how it should define the phrase. For example, if the agency elects not to issue a Phase III sole source award to the STTR Phase II awardee for follow-on Phase III work, then SBA requests comments on what other ways, if any, the agency could meet this statutory requirement (*e.g.,* whether STTR preference is an option within the context of a full and open competition).

E. Section 6—Eligibility and Application (Proposal) Requirements

1. Section 6(a)—Eligibility Requirements

SBA amended this section of the directive to address the new statutory requirements concerning small businesses that are majority-owned by venture capital operating companies (VCOCs), hedge funds or private equity firms. Specifically, section 5107 of the Reauthorization Act states that businesses that are owned in majority part by VCOCs, private equity firms or hedge funds may be eligible to participate in the SBIR Program, under certain conditions.

First, SBA must amend its size regulations at 13 CFR part 121, to address ownership, control, and affiliation for these businesses. SBA has issued a proposed rule addressing this issue, with a request for comments. While Section 5107 of the Reauthorization Act addresses only the SBIR program, SBA has proposed changing the ownership, control, and affiliation rules effecting SBCs that participate in both the SBIR and STTR programs. This was done to maintain conformity between the programs. The new ownership, control, and affiliation rules will not be in effect until a final rule is issued.

Second, if the agency elects to use this authority, it must submit a written determination letter to SBA, the Senate Committee on Small Business and Entrepreneurship, the House Committee on Small Business and the House Committee on Science, Space, and Technology. The agency must explain how awards to small business that are majority-owned by multiple VCOCs, hedge funds or private equity firms will induce similar and additional funding of small business innovations, contribute to the mission of the agency, demonstrate a need for public research, and otherwise fulfill the capital needs of small businesses for SBIR (or STTR) projects.

Third, small businesses that are majority-owned by multiple VCOCs, hedge funds or private equity firms must register with the SBA prior to submitting an STTR application. Once SBA issues a final rule amending 13 CFR part 121 concerning ownership and control of STTR applicants, the ownership and control rules will be in effect, and the registration will be available at *www.SBIR.gov.*

Finally, agencies electing to use this authority may only issue a certain percentage of their STTR awards to small businesses that are majority-owned by multiple VCOCs, hedge funds or private equity firms. The National Institute of Health (NIH), Department of Energy (DOE), and the National Science Foundation (NSF) may award not more than 25% of their SBIR funds to such small businesses. All other SBIR agencies may award not more than 15% of their SBIR funds to these small businesses. If the agency has not exceeded these maximum statutory percentages, the participating agencies may make awards to small businesses that are majority-owned by multiple VCOCs, hedge funds or private equity firms under the STTR Program. If an agency exceeds this maximum statutory percentage of awards, it must transfer this excess amount from its non-SBIR and non-STTR funds to the SBIR funds.

SBA considered amending the requirement concerning the principal investigator's primary employment. Specifically, SBA considered further defining primary employment to mean that the principal investigator must perform at least 51% of his/her work (as opposed to the current requirement that they perform a minimum of one half), based on a 40-hour workweek, in the employ of either the research institution or small business. SBA seeks comments on whether this further clarification is needed.

2. Section 6(b)—Proposal Requirements

SBA amended this section to address the certification requirements at the time an SBC submits its proposal and at the time it receives an STTR award. Section 5143 of the Reauthorization Act requires each STTR awardee to certify that it is in compliance with the laws relating to the program. SBA's Administrator is required to develop, in consultation with the Council of Inspectors General on Integrity and Efficiency, the procedures and requirements for this certification after providing notice of and an opportunity for public comment on such procedures and requirements. SBA requested public input on its certification requirements in the ownership and control proposed rule. SBA will consider further input received on this final directive.

In the directive, SBA explains that all applicants that are majority-owned by multiple VCOCs, hedge funds or private equity firms must submit a certification and register at *www.SBIR.gov* (once SBA issues a final regulation amending 13 CFR part 121). The specifics relating to the certification and registration database are discussed later in Section 10.

Further, all STTR awardees must submit a certification at the time of award stating that it meets the size, ownership and other requirements of the STTR Program. The directive explains that agencies may request similar certifications prior to award, such as at the time of submission of the application. The specifics relating to the certification is discussed later in this notice.

In addition to the certification requirements, section 5132–5135 of the Reauthorization Act requires that STTR applicants and awardees provide to agencies certain information concerning their ownership, investors, and principal investigators, among other things. In an effort to streamline and simplify this data collection, SBA requires that the small business provide this information to the databases available at *www.SBIR.gov,* rather than to each individual agency with each STTR application or award. The specifics relating to this certification and data collection are discussed below in Section 10.

F. Section 7—STTR Funding Process

1. Section 7(c)—Selection of Awardees

Section 5126 of the Reauthorization Act requires agencies to make award decisions within a certain amount of time after the close of the solicitation. The purpose of this statutory amendment is to reduce the gap in time between submission of application and time of award, which is an important issue for many small businesses. For example, if an agency takes a long time to make an award, it may be difficult for the small business to retain its key personnel, such as the principal investigator.

The Reauthorization Act requires, and the directive explains, that NIH and NSF must issue a notice to each applicant as to whether it has been selected for an award within one year from the closing date of the solicitation. The directive states that NIH and NSF should then issue the actual award within 15 months of the closing date of the solicitation. All other agencies must issue a notice to each applicant as to whether it has been selected for an award within 90 calendar days from the closing date of the solicitation. The directive states that the agencies should then issue the actual award within 180 calendar days of the closing date of the solicitation.

If an agency will not be able to issue the notice within the statutorily required time, it must request an extension of time from SBA. The written request must specify the number of additional days needed to make the award decision and must be submitted to the SBA at least 10 business days prior to when the agency is required to issue the award decision to the applicants. SBA explains in the Policy Directive that even if it grants an extension of time, the STTR agency still has the responsibility to work toward issuing quicker awards and meeting the statutory timeframes.

2. Section 7(i)—Dollar Value of Awards

SBA amended this section of the directive to implement section 5103 of the Reauthorization Act, which sets the maximum thresholds for Phase I and Phase II awards at $150,000 and $1,000,000, respectively. SBA will adjust these amounts every year for inflation and will post the adjusted numbers on *www.SBIR.gov.*

Section 5103 of the Reauthorization Act also states that agencies may exceed these thresholds by no more than 50%, unless the agency requests and is granted a waiver from SBA. SBA has amended the directive to set forth this new statutory requirement. In addition, as stated in the directive, when submitting a request for a waiver to exceed the award guidelines, the waiver must be for a specific topic, and not for the agency as a whole. SBA notes that the Reauthorization Act only permits a waiver by topic. Further, the directive explains that when seeking the waiver, the agency must provide evidence showing that the limitations on the award size will interfere with its mission and that the research costs for the topic area differ significantly from other areas, among other things.

G. Section 8—Terms of Agreement Under STTR Awards

As discussed above, section 5143 of the Reauthorization Act requires each applicant that applies for and each small business that receives STTR funding to certify that it is in compliance with the laws relating to the program. Section 5143 specifically states that such certifications may cover the life cycle of the funding agreement.

As a result, SBA has amended this section of the directive to state that for Phase I awards, agencies must require that awardees submit a certification as to whether they are in compliance with specific STTR Program requirements at the time of final payment or disbursement. For Phase II awards, agencies must require that awardees submit a certification as to whether they are in compliance with specific STTR Program requirements prior to receiving

more than 50% of the total award amount and prior to final payment or disbursement. The directive provides the agencies with the discretion to request additional certifications throughout the life cycle of the award since SBA is aware that some agencies request certification at the time of each payment.

SBA notes that these certifications are in addition to, and different in content from the certification required at the time of award. SBA requests comments on the certification requirements, including whether additional certifications should be required to prevent fraud, waste and abuse.

H. Section 9—Responsibilities of STTR Participating Agencies and Departments

1. Section 9(c)—Discretionary Technical Assistance

The Small Business Act currently permits agencies to contract with vendors who provide technical assistance to STTR awardees. Section 5121 of the Reauthorization Act amended this current requirement to permit agencies to contract with vendors for a period of up to 5 years. In addition, the Reauthorization Act states that the contract with the vendor cannot be based upon the total number of Phase I or Phase II awards. The contract, however, may be based on the total amount of awards for which actual technical assistance was provided. The directive addresses these new requirements.

The Reauthorization Act permits an agency to provide technical assistance to an STTR awardee in an amount up to $5,000 per year (previously the limit had been $4,000 per award). This amount is in addition to the award amount.

The Reauthorization Act also permits the small business to elect to acquire the technical assistance services itself. Some believe that allowing a small business to obtain such services itself may create conflicts or potential abuses. To negate these concerns, SBA has required that the applicant must request to do so in its STTR application, and must demonstrate that the individual or entity selected can provide the specific technical services needed. If the awardee demonstrates this requirement sufficiently, the Reauthorization Act states that the agency must permit the awardee to acquire the needed technical assistance itself, as an allowable cost. SBA has incorporated these new statutory authorities into the directive. SBA welcomes comments on this amendment and other ways it can limit potential abuses of the technical assistance allowance.

2. Section 9(d)—Interagency Actions

SBA amended the directive to address section 5104 of the Reauthorization Act, which requires that when one agency issues an STTR Phase II award to an STTR Phase I awardee of another agency, both agencies must issue a written determination that the topics of the awards are the same. The agencies must submit this report to SBA.

3. Section 9(e)—Limitation on Use of Funds

Section 5141 of the Reauthorization Act creates a pilot program that permits agencies to use SBIR funds for certain administrative purposes. Prior to this amendment, agencies were not permitted to use SBIR funds for any purpose other than awards and technical assistance to small businesses.

SBA has amended the SBIR Policy Directive to state that beginning on October 1, 2012, and ending on September 30, 2015, and upon establishment by SBA of the agency-specific performance criteria, SBA shall allow agencies to use no more than 3% of their SBIR funds for one or more specific activities. Specifically, the funding is to be used to assist with the substantial expansion in commercialization reporting; fraud, waste and abuse prevention; expanded reporting requirements; and other new activities required by the STTR Program. The administrative funds are not to be used to replace the agency's current administrative funding for the STTR Program (*e.g.,* pay for current personnel) but to supplement the agency's current administrative funding (*e.g.* pay for new personnel to assist solely with STTR funding agreements) and cover the costs of new program initiatives.

The Reauthorization Act requires agencies to use some of these funds to increase participation by socially and economically disadvantaged small businesses (SDBs) and women-owned small businesses (WOSBs) in the STTR Program, and small businesses in states with a historically low level of participation in the program. The agency may request a waiver of this statutory requirement by submitting a written statement explaining why there is a sufficient need for the waiver, and that the outreach objectives of the agency are already being met. The directive addresses this requirement.

The Reauthorization Act states that agencies may not use the SBIR funds for any of these administrative purposes until SBA establishes performance criteria to measure the benefits of using the funds and to ultimately determine whether the pilot program should be continued, discontinued, or made permanent. The Policy Directive explains that in order to help SBA establish the agency-specific performance criteria, each agency must submit an annual work plan to SBA at least 30 calendar days prior to the start of a fiscal year. The work plan must set forth a prioritized list of initiatives to be supported in alignment with reporting requirements, the estimated amounts to be spent on each initiative, milestones for implementing the initiatives, the expected results to be achieved, and the assessment metrics for each initiative. The work plan must explain how these initiatives are above and beyond the agency's current practices and how they will enhance the program.

After review of the work plan, SBA will establish the performance metrics for that fiscal year by which use of these funds will be evaluated for that fiscal year. SBA will create a simplified template for agencies to use when creating their work plans. Agencies will submit work plans to SBA each fiscal year the pilot program is in operation.

The Policy Directive also explains that any activities relating to fraud, waste and abuse prevention in the work plan must be coordinated with the agency's Office of Inspector General (OIG). If the agency allocates more than $50,000,000 to its SBIR Program for a fiscal year, some of these administrative funds may be used to cover the costs incurred by the OIG when the OIG performs fraud, waste and abuse activities for the agency's STTR Program.

SBA also amended this section of the Policy Directive to address the new statutory requirement set forth in section 5109 of the Reauthorization Act that permits agencies to subcontract a portion of an STTR funding agreement to a Federal laboratory. Although agencies may permit small businesses to subcontract a portion of the work to the Federal laboratory without requesting a waiver from SBA, the agency cannot require a small business to subcontract a portion of the award to the laboratory.

4. Section 9(f)—Preventing Fraud, Waste, and Abuse

Section 5143 of the Reauthorization Act requires SBA to amend the Policy Directive to include measures to prevent fraud, waste and abuse in the STTR Program. SBA has amended the directive to define and provide examples of fraud, waste and abuse as it relates to the STTR Program. In addition, SBA has amended the

directive to state that each STTR agency must take certain measures to reduce fraud, waste and abuse in the program.

For example, at the recommendation of the Council for Inspectors General on Integrity and Efficiency, the SBA has included the requirement for certification by the small business during the life cycle of the funding agreement. As discussed above, this means that in addition to requiring a certification at the time of award, agencies must request certifications by the small business concern during certain points in time of a Phase I and Phase II funding agreement to ensure that the awardee is in compliance with the program's requirements.

The directive explains that agencies must also take other measures to reduce fraud, waste and abuse, such as: (1) Including on their Web site and in each solicitation any telephone hotline number or web-based method for reporting fraud, waste, and abuse; (2) designating at least one individual to serve as the liaison between the STTR Program, OIG and the agency's Suspension and Debarment Official (SDO); (3) including on the agency's Web site successful prosecutions of fraud, waste and abuse in the STTR Program (relating to any STTR agency); and (4) creating or ensuring there is a system to enforce accountability (*e.g.,* creating templates for referrals to the OIG or SDO), among other things. In addition, the directive requires the agencies to work with their specific OIG, who will help establish fraud detection indicators. For example, one agency, acting in concert with its OIG, uses a commercial software that searches for redundancy or plagiarism in the applications submitted. This is one form of a fraud detection indicator.

SBA welcomes comments on other ways agencies may reduce fraud, waste and abuse in the program.

5. Section 9(g)—Interagency Policy Committee

Section 5124 of the Reauthorization Act instructs the Office of Science and Technology Policy (OSTP) to create the Interagency Policy Committee, comprised of OSTP, the SBIR and STTR participating agencies and SBA. The purpose of this committee is to review issues relating to the STTR program, such as commercialization assistance, and make recommendations on ways to improve the program. SBA has amended the directive to address this new committee.

6. Section 9(h)—National Academy of Science Report

Section 5137 of the Reauthorization Act requires the National Academy of Sciences (NAS) to conduct a comprehensive study of how the STTR program has stimulated technological innovation. NAS must consult with and consider the views of SBA, as well as other interested parties, when drafting the report. In addition, the statute requires certain agencies, in consultation with SBA, to enter into an agreement with NAS in furtherance of the report. SBA has amended the Policy Directive to address this new requirement, since NAS will be issuing the report not later than 4 years after December 31, 2011 and then every subsequent four years. Details about the study are set forth in Appendix X.

I. Section 10—Agency and STTR Applicant/Awardee Reporting Requirements

SBA has amended this section of the Policy Directive to address the reporting requirements for both the STTR participating agencies and STTR applicants, many of which are newly imposed by various parts of the Reauthorization Act. In an effort to streamline and standardize the various reporting requirements, SBA will be gathering this information at one *source—www.SBIR.gov.* Both applicants and agencies will be able to provide the statutorily required information into one or more specific databases, collectively referred to as Tech-Net. These requirements will be phased in over a period of time according to a plan that is complementary to but not part of the Policy Directive.

SBA published a notice in the **Federal Register**, 77 FR 16313, on March 20, 2012, explaining this data collection and seeking comments. One of the comments expressed concern that SBA was unnecessarily seeking information from small businesses. This is not the case. The Reauthorization Act sets forth a number of data requests SBA and the STTR agencies are required to collect from small businesses. This data collection is intended to ensure that only those small businesses that meet the requirements of the program receive an STTR award and to enable assessment of the program.

SBA has sought to reduce any burdens this data collection may have on small businesses. Because SBA will be collecting the data at one location, small business and agencies will only have to input certain information once, and then update as necessary. For example, when a small business inputs information for the Company Registry, some of the information will populate some fields in other databases, such as the Commercialization Database. Likewise, if an agency provides awardee information in the Awardee database, some of information will populate the Annual Report Database.

The seven databases addressed in the directive are the: (1) Solicitations; (2) Company Registry; (3) Application Information; (4) Award Information; (5) Commercialization; (6) Annual Report; and (7) Other Reports Databases. SBA currently has some of these databases ready for operation with the needed data fields and anticipates a phased implementation for the remaining databases and data fields.

The directive explains that the Solicitations Database will collect all solicitations and topic information from the participating STTR agencies. It will serve as the primary source for small businesses searching for STTR solicitations. Agencies must therefore update this database within 5 business days after a solicitation's open date. SBA will have a Master Schedule showing all agency solicitation open and close dates.

The Company Registry will house company information on all STTR applicants. It will contain information on SBC applicants that are majority-owned by multiple VCOCs, hedge funds or private equity firms, which by statute are required to register in an SBA database prior to submitting an SBIR or STTR application. This database will also house the registration information for those SBCs that receive an award as a result of the Civilian Agency Commercialization Readiness Pilot Program. All potential STTR applicants will be required to register in the Company Registry prior to submitting an STTR application.

SBA believes it is important to maintain such a Company Registry for several reasons. First, in order to prevent fraud, waste and abuse it would be best to house the data in one place so that the company must register itself and use that same registration (same name and identifying number) for each application. In addition, at the time the company registers, SBA intends to have online information relating to eligibility to ensure that the business understands the requirements of the program. Second, certain information on applicants is required by statute and therefore it would be best to have the applicant enter the data once (and update as needed), instead of each time it submits an application to an agency. Third, this registration is no different than others used in Federal contracting,

such as the Central Contractor Registration (CCR). There are numerous small businesses that are registered in CCR and it does not appear to be a burden or difficult for small businesses to register their information into a central database in order to receive a contracting benefit afforded small businesses.

The directive also explains that the Application Information Database will contain information concerning each STTR application, which will be uploaded by an agency at least quarterly. Some of the information inputted by the STTR applicant into the Company Registry will filter to this database. Other information, such as the contact information for the Federal employee reviewing the applications and making awards, will need to be inputted by the agency. This database will also contain information required by section 5135 of the Reauthorization Act, including information relating to the names of key individuals that will carry out the project and the percentage of effort the individual will contribute to the project.

The Award Information Database will store information about each STTR awardee and must be updated by the agency quarterly. Award data is generally reviewable and searchable by the public. Some of the information collected from the Company Registry and Application Information Database will filter to this database.

The Commercialization Database will store commercialization information for SBCs that have received STTR awards. This includes information relating to revenue from the sale of new products or services resulting from the R&D conducted under a Phase II award and any business or subsidiary established for the commercial application of a product or services for which an STTR award is made, among other things. The information contained in this database will be used by SBCs and agencies to determine whether the SBC meets the agency's commercialization benchmarks, discussed above, and for program evaluation purposes. SBCs may provide the information to the SBA's database directly or to the agency, which will collect it and upload it to SBA's database.

The Annual Report Database will include all of the information required by the Small Business Act, including the new requirements set forth in the Reauthorization Act regarding the Annual Report that SBA submits to Congress. SBA receives the information for the annual report from the various STTR agencies and departments. To reduce the burden on the agencies and departments, data from the other databases will filter to the Annual Report Database. Agencies must provide the other information for the annual report to SBA by March 15th each year.

Some of the information that agencies will be required to provide by March 15 includes new information required by the Reauthorization Act, such as an analysis of the various activities considered for inclusion in the Commercialization Program for civilian agencies set forth in section 12(c) of the directive and a description of the extent to which the agency is increasing outreach and awards to SDBs and WOSBs.

The Other Reports Database will include information that is required by statute to be submitted, but does not fit into any of the other databases. For example, section 5110 of the Reauthorization Act requires agencies to provide SBA notice of any case or controversy before any Federal judicial or administrative tribunal concerning the STTR Program of the Federal agency. A case or controversy between a Federal or administrative tribunal would not include agency level protests of awards unless and until the protest is before a Federal court or administrative body. It would include litigation that is before a Federal or State court, or administrative tribunal such as the Government Accountability Office. Further, section 5161 of the Reauthorization Act requires that agencies provide an annual report to the SBA, the Senate Committee on Small Business and Entrepreneurship, the House Committee on Small Business, and the House Committee on Science, Space, and Technology on the SBIR and STTR Programs and the benefits of these programs to the United States. The statute requires the final report be posted online so it can be made available to the public. This section lists this and other new reporting requirements, set forth in the Reauthorization Act, for the STTR agencies.

Finally, SBA has a new section in the directive that identifies all of the waivers that may be requested and submitted by an agency to SBA, and which are discussed in various other parts of the directive. The following waivers may be granted by SBA: (1) An extension for additional time between the solicitation closing date and notification of recommendation for award; (2) permission to exceed the award guidelines for Phase I and Phase II awards by more than 50% for a specific topic; and (3) permission to issue a funding agreement that includes a provision for subcontracting a portion of that agreement back to the issuing agency if there is no exception to this requirement in the directive.

J. Section 11—Responsibilities of SBA

SBA has amended this section of the directive to incorporate some new responsibilities of SBA and to include many responsibilities and activities SBA has undertaken over the last several years with respect to the program. These areas of responsibility include: (1) Policy, outreach, collection and publication of data; (2) monitoring implementation of the program and reporting to Congress; and (3) additional efforts to improve performance.

First and most obvious, is that SBA is responsible for establishing the policies and procedures for the program by publishing and updating the STTR Policy Directive and promulgating regulations. As discussed above, SBA is also responsible for issuing waivers.

SBA also conducts outreach to achieve a number of objectives including educating the public and the agencies about the STTR Program, highlighting successful SBC achievements, and maintaining *www.SBIR.gov*. Similarly, SBA must collect and maintain program-wide data within the Tech-Net data system (available at *www.SBIR.gov*). This data includes information on all Phase I and II awards from across all STTR participating agencies, as well as Fiscal Year Annual Report data.

SBA also provides oversight and monitors the implementation of the STTR Program. This includes monitoring agency STTR funding allocations and program solicitation and awards as well as ensuring each participating agency has taken steps to maintain a fraud, waste and abuse prevention system to minimize adverse impact on the program.

SBA is also responsible for defining areas of performance consistent with statute (*e.g.,* timelines for award, simplification of STTR application process) and defining metrics against that performance. SBA will therefore measure performance against goals set by the STTR agencies. The purpose of these performance metrics and goals is to evaluate and report on the progress achieved by the agencies in improving the STTR Program. SBA discusses in detail the performance metrics and goals in section 10(i) of the directive.

In addition to the above, SBA continuously seeks to improve the performance of the program and will make recommendations and modifications for such improvement. This may include sharing and

recommending agency ''best practices'' and other program-wide initiatives.

All of these SBA responsibilities are set forth in section 11 of the directive.

K. Section 12—Supporting Programs and Initiatives

This section of the policy directive sets forth various programs, including a new pilot program that seeks to enhance the commercialization efforts of small businesses. These programs also include the Federal and State Technology Partnership (FAST) Program, the DoD Commercialization Program, the Civilian Agency Commercialization Readiness Pilot Program, and the Phase 0 Proof of Concept Partnership Pilot Program.

Section 5122 of the Reauthorization amended the DoD Commercialization Program by converting it from a pilot program into a permanent program. The purpose of this program is for DoD to accelerate the transition of technologies, products and services developed under the STTR Program to Phase III. The Reauthorization amended the program by creating an incentive requirement for any contract with a value of at least $100 million. For those contracts, DoD may establish goals for the transition of STTR technologies into the prime contractor's subcontracting plan and require the prime to report the number and value of subcontracts entered into for Phase III work with a prior STTR awardee.

Section 5141 of the Reauthorization Act also amended the DoD Commercialization Program by stating that for FY 2013 through FY 2015, the Secretary of Defense and each Secretary of a military department may use no more than 3% of its SBIR funds for administration of this Commercialization Program. This means that the only SBIR funds that can be used for the administration of the DoD Commercialization Program must come from the Pilot to Allow for Funding of Administrative, Oversight, and Contract Processing Costs, discussed above. When that pilot program expires, which is the end of FY 2015, the statute provides that DoD may use not more than 1% of its SBIR funds available to DoD or the military departments to administer the Commercialization Program. Section 12 of the directive addresses this DoD program.

Section 12 of the directive also sets forth the new Civilian Agency Commercialization Readiness Pilot Program. This new program is authorized by section 5123 of the Reauthorization Act and terminates on September 30, 2017, unless otherwise extended.

This Commercialization Readiness Pilot Program is different from the DoD Commercialization Program. Under this program, a civilian agency participating in the STTR Program may allocate not more than 10% of its STTR funds: (1) for follow-on awards to small businesses for technology development, testing, evaluation, and commercialization assistance for SBIR or STTR Phase II technologies; or (2) for awards to small businesses to support the progress of research, research and development, and commercialization conducted under the SBIR or STTR programs to Phase III.

Before establishing this pilot program, an STTR agency must submit a written application to SBA not later than 90 days before the first day of the fiscal year in which the pilot program is to be established. The written application must set forth a compelling reason that additional investment in SBIR or STTR technologies is necessary, including unusually high regulatory, systems integration, or other costs relating to development or manufacturing of identifiable, highly promising small business technologies or a class of such technologies expected to substantially advance the mission of the agency. SBA must make its determination regarding an application submitted not later than 30 days before the first day of the fiscal year for which the application is submitted and will publish its determination in the **Federal Register**. Under this pilot program, STTR agencies may make an award to a SBC up to three times the dollar amount generally established for Phase II awards under section 7(i)(1) of this directive. When making an award under this pilot program, the agency is required to consider whether the technology to be supported by the award is likely to be manufactured in the United States.

Section 5127 of the Reauthorization Act established the Phase 0 Proof of Concept Partnership Pilot Program, which terminates on September 30, 2017, unless otherwise extended. Section 5127 of the Reauthorization Act authorizes the Director of the National Institutes of Health (NIH) to use $5,000,000 of the funds allocated for the STTR Program, set forth in section 2(b) of this directive, to establish this pilot program to accelerate the creation of small businesses and the commercialization of research innovations from qualifying institutions. The Director of NIH may make grant awards of up to $1,000,000 per year, for up to 3 years, to qualifying institutions. Awards shall be made based on a competitive, merit-based process. Section 5127 provides criteria that the Director of NIH must consider in determining whether an applicant is a qualified institution. The qualifying institutions must use these funds to establish a Proof of Concept Partnership with NIH to administer grant awards to individual researchers. These grants should provide individual researchers with the initial investment and the resources to support the proof of concept work and commercialization mentoring necessary to translate promising research projects and technologies into a viable company. Section 5127 provides guidelines that the administrator of a Proof of Concept Partnership must follow in making grant awards to individual researchers. The administrator of a Proof of Concept Partnership must also make educational resources and guidance available to researchers attempting to commercialize innovations.

Section 5127 of the Reauthorization Act also limits the use of the pilot program's funds. Specifically, section 5127 requires that the funds must not be used for basic research or to fund the acquisition of research equipment or supplies unrelated to commercialization activities. This section of the Reauthorization Act also specifically states that the pilot program's funds can be used to evaluate the commercial potential of existing discoveries, including proof of concept research or prototype development; and activities that contribute to determining a project's commercialization path, to include technical validations, market research, clarifying intellectual property rights, and investigating commercial and business opportunities.

L. Appendix—Instructions for STTR Program Solicitation Preparation

SBA amended this section of the Policy Directive to address the certification requirements set forth in section 5143 of the Reauthorization Act. Specifically, section 5143 recommends that SBCs receiving an STTR award certify their eligibility for the program and award.

SBA has created three new certifications to be used by agencies. The first certification is for STTR applicants that are majority-owned by multiple VCOCs, hedge funds or private equity firms. The certification, to be submitted to the agency by the SBC with its application, states that the SBC has registered with the Company Registry Database and meets the statutory requirements for eligibility of such small businesses.

The second certification is required for all SBCs that receive an STTR award, although agencies may request that SBCs provide a certification at the time

of application, as well. This certification addresses the ownership and control requirements for the program set forth in SBA's regulations and the performance of work requirements for the small business and principal investigator. The certification also addresses whether all or a portion of the work under the project has been submitted to another agency for consideration of an award and whether the other agency has or has not funded the work. The purpose of this part of the certification is to ensure that two or more agencies do not fund the same or similar work.

The third certification is required for all STTR awardees that are working on an STTR award. This is referred to as the life cycle certification. It seeks to ensure that once awarded the STTR funding agreement, the small business concern continues to meet the program's requirements (*e.g.* performing the required percentage of work, employing the principal investigator). Agencies will set forth in the funding agreement those specific points in time that the small business must submit the certification during the life of the award.

Finally, this section of the directive also addresses the requirement in section 5140 of the Reauthorization Act that agencies request permission from SBCs to disclose the title and abstract of the proposed project, as well as the name and other information of the corporate official of the SBC, to appropriate local and state economic development organizations, if the proposal does not result in an STTR award. Every applicant must include this information in its proposal cover sheet.

M. Other Appendices

The remaining appendices generally set forth the data fields that will be used to collect the information from SBCs and agencies for the various databases. This information collection is further addressed in SBA's Paperwork Reduction Act submission.

IV. Request for Comments

SBA was required by the Reauthorization Act to publish the final directive within a short timeframe. As a result, SBA was unable to gather public input prior to drafting these provisions, although SBA did work with the various STTR participating agencies to gather input and feedback on these provisions. SBA therefore requests comments on all matters addressed relating to implementation of the Reauthorization Act. SBA will review and consider all comments received to determine whether amendments are needed to improve the general conduct of the STTR Program.

Notice of Final Policy Directive; Small Business Technology Transfer Program

To: The Small Business Technology Transfer Program Managers

Subject: SBIR/STTR Reauthorization Act of 2011 (Reauthorization Act)—Amendments to the Small Business Technology Transfer Program

1. *Purpose.* The purpose of this notice is to set forth a final STTR Policy Directive, which incorporates recent amendments made to the Small Business Act by the SBIR/STTR Reauthorization Act of 2011.

2. *Authority.* Section 9(p) of the Small Business Act (15 U.S.C. 638(p)) requires the Administrator of the U.S. Small Business Administration (SBA) to issue an STTR Program Policy Directive for the general conduct of the STTR Program. Further, section 5151 of the Reauthorization Act requires the SBA to issue a final directive, incorporating the Reauthorization Act's amendments within 180 days after its enactment.

3. *Procurement Regulations.* It is recognized that the Federal Acquisition Regulations and agency supplemental regulations may need to be modified to conform to the requirements of the final Policy Directive. SBA's Administrator or designee must review and concur with any regulatory provisions that pertain to areas of SBA responsibility. SBA's Office of Technology coordinates such regulatory actions.

4. *Personnel Concerned.* This Policy Directive serves as guidance for all federal government personnel who are involved in the administration of the STTR Program, issuance and management of Funding Agreements or contracts pursuant to the STTR Program, and the establishment of goals for small business concerns in research or research and development acquisition or grants.

5. *Originator.* SBA's Office of Technology.

6. *Date.* The policy directive is effective on the date of publication in the **Federal Register**. Agencies are not required to, but can amend, an STTR solicitation that was issued on or before the date of this Policy Directive to address these new requirements. Further, public comment may be submitted for 60 days following publication in the **Federal Register**.

Authorized by:

Sean Greene,

Associate Administrator for the Office of Investment and Innovation Small Business Administration.

Dated: July 19, 2012.

Karen G. Mills,

Administrator.

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2. Summary of Statutory Provisions
3. Definitions
4. Competitively Phased Structure of the Program
5. Program Solicitation Process
6. Eligibility and Application (Proposal) Requirements
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1. Purpose

(a) Section 9(p) of the Small Business Act (Act) requires that the Small Business Administration (SBA) issue an STTR Program Policy Directive for the general conduct of the STTR Program within the Federal Government.

(b) This Policy Directive fulfills SBA's statutory obligation to provide guidance to the participating Federal agencies for the general operation of the STTR Program. Additional or modified instructions may be issued by the SBA as a result of public comment or experience. With this directive, SBA fulfills the statutory requirement to simplify and standardize the program proposal, selection, contracting, compliance, and audit procedures for the STTR program to the extent practicable, while allowing the STTR agencies flexibility in the operation of their individual STTR Program. Wherever possible, SBA has attempted to reduce the paperwork and regulatory compliance burden on SBCs applying to and participating in the STTR program, while still meeting the statutory reporting and data collection requirements.

(c) The statutory purpose of the STTR Program is to stimulate a partnership of

ideas and technologies between innovative small business concerns (SBCs) and Research Institutions through Federally-funded research or research and development (R/R&D). By providing awards to SBCs for cooperative R/R&D efforts with Research Institutions, the STTR Program assists the small business and research communities by commercializing innovative technologies.

(d) Federal agencies participating in the STTR Program (STTR agencies) are obligated to follow the guidance provided by this Policy Directive. Each agency is required to review its rules, policies, and guidance on the STTR Program to ensure consistency with this Policy Directive and to make any necessary changes in accordance with each agency's normal procedures. This is consistent with the statutory authority provided to the SBA concerning the STTR Program.

2. Summary of Statutory Provisions

(a) The Small Business Technology Transfer Program is codified at section 9 of the Small Business Act, 15 U.S.C. § 638. The STTR Program is authorized until September 30, 2017, or as otherwise provided in law subsequent to that date.

(b) Each Federal agency with an extramural budget for R/R&D in excess of $1,000,000,000 must participate in the STTR Program and reserve the following minimum percentages of their R/R&D budgets for awards to small business concerns for R/R&D:

(1) Not less than 0.3% of such budget in each of fiscal years 2004 through 2011;

(2) not less than 0.35% of such budget in fiscal years 2012 and 2013;

(3) not less than 0.40% of such budget in fiscal years 2014 and 2015; and

(4) not less than 0.45% of such budget in fiscal year 2016 and each fiscal year after.

A Federal agency may exceed these minimum percentages.

(c) In general, each STTR agency must make these awards for R/R&D through the following uniform, three-phase process:

(1) Phase I awards to determine, insofar as possible, the scientific and technical merit and feasibility of ideas that appear to have commercial potential.

(2) Phase II awards to further develop work from Phase I that meets particular program needs and exhibits potential for commercial application.

(3) Phase III awards where commercial applications of STTR-funded R/R&D are funded by non-Federal sources of capital; or where products, services or further research intended for use by the Federal Government are funded by follow-on non-STTR Federal Funding Agreements.

(d) STTR agencies must report to SBA on the calculation of the agency's extramural budget within four months of enactment of each agency's annual Appropriations Act.

(e) The Act explains that agencies are authorized and directed to cooperate with SBA in order to carry out and accomplish the purpose of the STTR Program. As a result, each STTR agency shall provide information to SBA in order for SBA to monitor and analyze each agency's STTR Program and to report these findings annually to the Senate Committee on Small Business and Entrepreneurship and to the House Committees on Science and Small Business. For more information on the agency's reporting requirements, including the frequency for specific reporting requirements, see section 10 of the Policy Directive.

(f) SBA establishes databases to collect and maintain, in a common format, information that is necessary to assist SBCs and assess the STTR Program.

(g) SBA implements the Federal and State Technology (FAST) Partnership Program to strengthen the technological competitiveness of SBCs, to the extent that FAST is authorized by law.

(h) The competition requirements of the Armed Services Procurement Act of 1947 (10 U.S.C. 2302 et seq.) and the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 3101 et seq.) must be read in conjunction with the procurement notice publication requirements of section 8(e) of the Small Business Act (15 U.S.C. § 637(e)). The following notice publication requirements of section 8(e) of the Small Business Act apply to STTR agencies using contracts as an STTR funding agreement:

(1) Any Federal executive agency intending to solicit a proposal to award a Phase I contract for property or services valued above $25,000 must transmit a notice of the impending solicitation to the Governmentwide point of entry (GPE) for access by interested sources. See FAR 5.201. The GPE, located at *https://www.fbo.gov,* is the single point where Government business opportunities greater than $25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. In addition, an agency may not issue its solicitation for at least 15 days from the date of the publication of the GPE. The agency may not establish a deadline for submission of proposals in response to a solicitation earlier than 30 days after the date on which the solicitation was issued.

(2) The contracting officer must generally make available through the GPE those solicitations synopsized through the GPE, including specifications and other pertinent information determined necessary by the contracting officer. See FAR 5.102.

(3) Any executive agency awarding a contract for property or services valued at more than $25,000 must submit a synopsis of the award through the GPE if a subcontract is likely to result from such contract. See FAR 5.301.

(4) The following are exemptions from the notice publication requirements:

(i) In the case of agencies intending to solicit Phase I proposals for contracts in excess of $25,000, the head of the agency may exempt a particular solicitation from the notice publication requirements if that official makes a written determination, after consulting with the Administrator of the Office of Federal Procurement Policy and the SBA Administrator, that it is inappropriate or unreasonable to publish a notice before issuing a solicitation.

(ii) The STTR Phase II award process.

(iii) The STTR Phase III award process.

3. Definitions

(a) *Act.* The Small Business Act (15 U.S.C. 631 et seq.), as amended.

(b) *Applicant.* The organizational entity that qualifies as an SBC at all pertinent times and that submits a contract proposal or a grant application for a funding agreement under the STTR Program.

(c) *Affiliate.* This term has the same meaning as set forth in 13 CFR part 121—Small Business Size Regulations, § 121.103, What is affiliation? (available at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=03878acee7c064a02cac0d870e00ef43;rgn=div6;view=text;node=13%3A1.0.1.1.17.1;idno=13;cc=ecfr*). Further information about SBA's affiliation rules and a guide on affiliation is available at *www.SBIR.gov* and *www.SBA.gov/size.*

(d) *Alaska Native-Serving Institution (ANSI).* As defined by 20 U.S.C. 1059d, it is an institution of higher education that is an eligible institution that at the time of application, has an enrollment of undergraduate students that is at least 20 percent Alaska Native students;

(e) *Awardee.* The organizational entity receiving an STTR Phase I, Phase II, or Phase III award.

(f) *Commercialization.* The process of developing products, processes, technologies, or services and the production and delivery (whether by the originating party or others) of the products, processes, technologies, or services for sale to or use by the Federal government or commercial markets.

(g) *Cooperative Agreement.* A financial assistance mechanism used when substantial Federal programmatic involvement with the awardee during performance is anticipated by the issuing agency. The Cooperative Agreement contains the responsibilities and respective obligations of the parties.

(h) *Essentially Equivalent Work.* Work that is substantially the same research, which is proposed for funding in more than one contract proposal or grant application submitted to the same Federal agency or submitted to two or more different Federal agencies for review and funding consideration; work where a specific research objective and the research design for accomplishing the objective are the same or closely related to another proposal or award, regardless of the funding source.

(i) *Extramural Budget.* The sum of the total obligations for R/R&D minus amounts obligated for R/R&D activities by employees of a Federal agency in or through Government-owned, Government-operated facilities. For the Agency for International Development, the ''extramural budget'' must not include amounts obligated solely for general institutional support of international research centers or for grants to foreign countries. For the Department of Energy, the ''extramural budget'' must not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs. (Also see section 7(i) of this Policy Directive for additional exemptions related to national security.)

(j) *Feasibility.* The practical extent to which a project can be performed successfully.

(k) *Federal Agency.* An executive agency as defined in 5 U.S.C. § 105, and a military department as defined in 5 U.S.C. 102 (Department of the Army, Department of the Navy, Department of the Air Force), except that it does not include any agency within the Intelligence Community as defined in Executive Order 12333, § 3.4(f), or its successor orders.

(l) *Federal Laboratory.* As defined in 15 U.S.C. 3703, means any laboratory, any federally funded research and development center, or any center established under 15 U.S.C. 3705 & 3707 that is owned, leased, or otherwise used by a Federal agency and funded by the Federal Government, whether operated by the Government or by a contractor.

(m) *Funding Agreement.* Any contract, grant, or cooperative agreement entered into between any Federal agency and any SBC for the performance of experimental, developmental, or research work, including products or services, funded in whole or in part by the Federal Government.

(n) *Funding Agreement Officer.* A contracting officer, a grants officer, or a cooperative agreement officer.

(o) *Grant.* A financial assistance mechanism providing money, property, or both to an eligible entity to carry out an approved project or activity. A grant is used whenever the Federal agency anticipates no substantial programmatic involvement with the awardee during performance.

(p) *Hispanic-Serving Institutions* (HSI). Pursuant to 20 U.S.C. 1101(5), a non-profit institution that has at least 25% Hispanic full-time equivalent (FTE) enrollment, and of the Hispanic student enrollment at least 50% are low income.

(q) *Historically Black College or University (HBCU).* Pursuant to 20 U.S.C. 1061(2), a black college or university that was established prior to 1964, whose principle mission was, and is, the education of Black Americans, and that is accredited by a nationally recognized agency or association determined by the Secretary of Education to be a reliable authority as to the quality of training offered or is, according to such an agency or association is making reasonable progress toward accreditation, with certain exceptions noted in statute.

(r) *Innovation.* Something new or improved, having marketable potential, including: (1) Development of new technologies; (2) refinement of existing technologies; or (3) development of new applications for existing technologies.

(s) *Intellectual Property.* The separate and distinct types of intangible property that are referred to collectively as ''intellectual property,'' including but not limited to: (1) Patents; (2) trademarks; (3) copyrights; (4) trade secrets; (5) STTR technical data (as defined in this section); (6) ideas; (7) designs; (8) know-how; (9) business; (10) technical and research methods; (11) other types of intangible business assets; (12) and all types of intangible assets either proposed or generated by an SBC as a result of its participation in the STTR Program.

(t) *Key Individual.* The principal investigator/project manager and any other person named as a ''key'' employee in a proposal submitted in response to a program solicitation.

(u) *Joint Venture.* See 13 CFR 121.103(h).

(v) *Native Hawaiian-Serving Institutions (NHSI).* Pursuant to 20 U.S.C. 1059(d) is an institution of higher education which is an eligible institution under 20 U.S.C. 1058(b) at the time of application, and has an enrollment of undergraduate students that is at least 10 percent Native Hawaiian students.

(w) *Principal Investigator/Project Manager.* The one individual designated by the applicant to provide the scientific and technical direction to a project supported by the funding agreement.

(x) *Program Solicitation.* A formal solicitation for proposals issued by a Federal agency that notifies the small business community of its R/R&D needs and interests in broad and selected areas, as appropriate to the agency, and requests proposals from SBCs in response to these needs and interests. Announcements in the **Federal Register** or the GPE are not considered an STTR Program solicitation.

(y) *Prototype.* A model of something to be further developed, which includes designs, protocols, questionnaires, software, and devices.

(z) *Research or Research and Development (R/R&D).* Any activity that is:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

(aa) *Research Institution.* One that has a place of business located in the United States, which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor, and is:

(1) A non-profit institution as defined in section 4(5) of the Stevenson-Wydler Technology Innovation Act of 1980 (that is, an organization that is owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual) and includes non-profit medical and surgical hospitals; or

(2) A Federally-funded R&D center as identified by the National Science Foundation in accordance with the Government-wide Federal Acquisition Regulation issued in accordance with section 35(c)(1) of the Office of Federal Procurement Policy Act (or any successor regulation thereto).

(bb) *Small Business Concern.* A concern that meets the requirements set forth in 13 CFR 121.702 (available at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=03878acee7c064a02cac0d870e00ef43;rgn=div8;view=text;node=13%3A1.0.1.1.17.1.273.45;idno=13;cc=ecfr*).

(cc) *Socially and Economically Disadvantaged SBC (SDB).* See 13 CFR part 124, Subpart B.

(dd) *Socially and Economically Disadvantaged Individual.* See 13 CFR 124.103 & 121.104.

(ee) *STTR Participants.* Business concerns that have received STTR awards or that have submitted STTR proposals/applications.

(ff) *STTR Technical Data.* All data generated during the performance of an STTR award.

(gg) *STTR Technical Data Rights.* The rights an STTR awardee obtains in data generated during the performance of any STTR Phase I, Phase II, or Phase III award that an awardee delivers to the Government during or upon completion of a Federally-funded project, and to which the Government receives a license.

(hh) *Subcontract.* Any agreement, other than one involving an employer employee relationship, entered into by an awardee of a funding agreement calling for supplies or services for the performance of the original funding agreement.

(ii) *Tribal-Serving Institution (TSI).* Those institutions defined under section 532 of the Equity in Educational Land-Grants Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualified for funding under the Tribally Controlled Community College Assistance Act of 1978, (25 U.S.C. 1801 *et seq.*) which is also known as tribally controlled colleges or universities and the Navajo Community College Assistance Act of 1978, Public Law 95–471, Title II (25 U.S.C. 640a note).

(jj) *United States.* Means the 50 states, the territories and possessions of the Federal Government, the Commonwealth of Puerto Rico, the District of Columbia, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(kk) *Women-Owned SBC (WOSB).* An SBC that is at least 51% owned by one or more women, or in the case of any publicly owned business, at least 51% of the stock is owned by women, and women control the management and daily business operations.

4. Competitively Phased Structure of the Program

The STTR Program is a phased process, uniform throughout the Federal Government, of soliciting proposals and awarding funding agreements for R/R&D, production, services, or any combination, to meet stated agency needs or missions. Agencies must issue STTR awards pursuant to competitive and merit-based selection procedures. Agencies may not use investment of venture capital or investment from hedge funds or private equity firms as a criterion for an STTR award. Although matching funds are not required for Phase I or Phase II awards, agencies may require a small business to have matching funds for certain special awards (e.g., to reduce the gap between a Phase II and Phase III award). In order to stimulate and foster scientific and technological innovation, including increasing commercialization of Federal R/R&D, the program must follow a uniform competitive process of the following three phases, unless an exception applies:

(a) *Phase I.* Phase I involves a solicitation of contract proposals or grant applications to conduct feasibility-related experimental or theoretical R/R&D related to described agency requirements. These requirements, as defined by agency topics contained in a solicitation, may be general or narrow in scope, depending on the needs of the agency. The object of this phase is to determine the scientific and technical merit and feasibility of the proposed effort and the quality of performance of the SBC with a relatively small agency investment before consideration of further Federal support in Phase II.

(l) Several different proposed solutions to a given problem may be funded.

(2) Proposals will be evaluated on a competitive basis. Agency criteria used to evaluate STTR proposals must give consideration to the scientific and technical merit and feasibility of the proposal along with its potential for commercialization. Considerations may also include program balance with respect to market or technological risk or critical agency requirements.

(3) *Agency benchmarks for progress towards commercialization.* Agencies must determine whether an applicant has met the agency's benchmark requirements for progress towards commercialization. For Phase I eligibility purposes, agencies will establish a threshold for the application of these benchmarks where they are applied only to Phase I applicants that have received more than 20 Phase I awards over the prior 5, 10 or 15 fiscal years (excluding the most recently completed fiscal year) or has received more than 15 Phase II awards over that period (excluding the most recently completed two fiscal years). Agencies must base these benchmarks on the SBC's STTR awards across all STTR agencies.

(i) Agencies must apply two benchmark rates addressing an applicant's progress towards commercialization—the Phase I–Phase II Transition Rate and the Commercialization Rate.

(A) The Phase I–Phase II Transition Rate benchmark sets the minimum required number of Phase II awards the applicant must have received for a given number of Phase I awards during a specified period.

(B) The Commercialization Rate benchmark sets the minimum Phase III commercialization results a Phase I applicant must have realized from its prior Phase II awards.

(ii) An applicant that does not meet either of these benchmarks at the time it submits its application to the agency is not eligible for that particular STTR Phase I award and any other new STTR Phase I awards (and any Phase II awards issued pursuant to paragraph (b)(1)(ii) below) of that agency for a period of one year from the date of the proposal or application submission. The agency must provide written notification of its determination and the one year restriction on Phase I awards to the applicant and to SBA. See section 9(b) for further information about how an agency establishes these benchmarks.

(iii) *Establishing the Phase I–Phase II Transition Rate.* Beginning October 1, 2012, each agency must establish an SBA-approved Phase I–Phase II Transition Rate benchmark. The agency must report any subsequent change in the benchmark rate to SBA for approval.

(A) The benchmark will establish the number of Phase II awards a small business concern must have received for a given number of Phase I awards over the prior 5, 10, or 15 fiscal years, excluding the most recently completed fiscal year. For example, if a SBC submits its application on January 2012, the agency may require that the SBC have received at least one Phase II award for every 10 Phase I awards it received during fiscal years 2001 through 2010.

(B) Agencies must set the benchmark as appropriate for their programs and industry sectors. When setting this benchmark, agencies should consider

that Phase I is designed and intended to explore high-risk, early-stage research and, as a result, a significant share of Phase I awards will not result in a Phase II award.

(iv) *Establishing the Commercialization Rate.* Beginning October 1, 2013, each agency must establish an SBA-approved Commercialization Rate benchmark that establishes the level of Phase III commercialization results a SBC must have received from work it performed under prior Phase II awards, over the prior 5, 10 or 15 fiscal years, excluding the most recently completed two fiscal years. The agency must report any subsequent change in the benchmark rate to SBA for approval. Agencies may define this benchmark:

(A) In financial terms, such as by using the ratio of the dollar value of revenues and additional investment resulting from prior Phase II awards relative to the dollar value of the Phase II awards received over the prior 5, 10 or 15 fiscal years, excluding the most recently completed two fiscal years; or

(B) In terms of the share of Phase II awards that have resulted in the introduction of a product to the market relative to the number of Phase II awards received over the prior 5, 10, or 15 fiscal years, excluding the most recently completed two fiscal years; or

(C) By other means such as using a commercialization scoring system that rates awardees on their past commercialization success.

(v) Agencies must submit these benchmarks to SBA for approval. SBA will publish the benchmark and seek public comment. The benchmark will become effective when SBA publishes the final, approved benchmark on www.SBIR.gov. If SBA approves a benchmark for a fiscal year, then the agency must report any subsequent change in the benchmark to SBA for approval.

(vi) SBA will maintain a system that records all Phase I and Phase II awards and calculates the Phase I–II Transition Rates for all Phase I awardees and the Commercialization Rates for all Phase II awardees. The small business will then be required to provide this information to the agency as part of its application.

(vii) If the applicant meets these benchmarks, the agency must still evaluate the commercial potential of the specific application and can base this evaluation on agency-specific criteria.

(4) Agencies may require the submission of a Phase II proposal as a deliverable item under Phase I.

(b) *Phase II.*

(1) The object of Phase II is to continue the R/R&D effort from the completed Phase I. Unless the exception set forth in paragraph (i) applies, only STTR Phase I awardees are eligible to participate in Phases II and III. This includes those awardees identified via a ''novated'' or ''successor in interest'' or similarly-revised funding agreement, or those that have reorganized with the same key staff, regardless of whether they have been assigned a different tax identification number. Agencies may require the original awardee to relinquish its rights and interests in an STTR project in favor of another applicant as a condition for that applicant's eligibility to participate in the STTR Program for that project.

(i) A Federal agency may issue an STTR Phase II award to an SBIR Phase I awardee to further develop the work performed under the SBIR Phase I award. The agency must base its decision upon the results of work performed under the Phase I award and the scientific and technical merit, and commercial potential of the Phase II proposal. The SBIR Phase I awardee must meet the eligibility and program requirements of the STTR Program in order to receive the STTR Phase II award.

(2) Funding must be based upon the results of work performed under a Phase I award and the scientific and technical merit, feasibility and commercial potential of the Phase II proposal. Phase II awards may not necessarily complete the total research and development that may be required to satisfy commercial or Federal needs beyond the STTR Program. The Phase II funding agreement with the awardee may, at the discretion of the awarding agency, establish the procedures applicable to Phase III agreements. The Government is not obligated to fund any specific Phase II proposal.

(3) The STTR Phase II award decision process requires, among other things, consideration of a proposal's commercial potential. Commercial potential includes the potential to transition the technology to private sector applications, Government applications, or Government contractor applications. Commercial potential in a Phase II proposal may be evidenced by:

(i) The SBC's record of successfully commercializing STTR or other research;

(ii) The existence of Phase II funding commitments from private sector or other non-STTR funding sources;

(iii) The existence of Phase III, follow-on commitments for the subject of the research; and

(iv) Other indicators of commercial potential of the idea.

(4) Agencies may not use an invitation, pre-screening, or pre-selection process for eligibility for Phase II. Agencies must note in each solicitation that all Phase I awardees may apply for a Phase II award and provide guidance on the procedure for doing so.

(5) A Phase II awardee may receive one additional, sequential Phase II award to continue the work of an initial Phase II award.

(6) Agencies may issue Phase II awards for testing and evaluation of products, services, or technologies for use in technical weapons systems.

(c) *Phase III.* STTR Phase III refers to work that derives from, extends, or completes an effort made under prior STTR funding agreements, but is funded by sources other than the STTR Program. Phase III work is typically oriented towards commercialization of STTR research or technology.

(l) Each of the following types of activity constitutes STTR Phase III work:

(i) Commercial application (including testing and evaluation of products, services or technologies for use in technical or weapons systems) of STTR-funded R/R&D financed by non-Federal sources of capital (Note: The guidance in this Policy Directive regarding STTR Phase III pertains to the non-STTR federally-funded work described in (ii) and (iii) below. It does not address private agreements an STTR firm may make in the commercialization of its technology, except for a subcontract to a Federal contract that may be a Phase III);

(ii) STTR-derived products or services intended for use by the Federal Government, funded by non-STTR sources of Federal funding;

(iii) continuation of R/R&D that has been competitively selected using peer review or merit-based selection procedures, funded by non-STTR Federal funding sources.

(2) A Phase III award is, by its nature, an STTR award, has STTR status, and must be accorded STTR data rights. If an STTR awardee receives a funding agreement (whether competed, sole sourced or a subcontract) for work that derives from, extends, or completes efforts made under prior STTR funding agreements, then the funding agreement for the new work must have all STTR Phase III status and data rights.

(3) The competition for STTR Phase I and Phase II awards satisfies any competition requirement of the Armed Services Procurement Act, the Federal Property and Administrative Services Act, and the Competition in Contracting Act. Therefore, an agency that wishes to

fund an STTR Phase III project is not required to conduct another competition in order to satisfy those statutory provisions. As a result, in conducting actions relative to a Phase III STTR award, it is sufficient to state for purposes of a Justification and Approval pursuant to FAR 6.302–5, that the project is an STTR Phase III award that is derived from, extends, or completes efforts performed under prior STTR funding agreements and is authorized under 10 U.S.C. 2304(b)(2) or 41 U.S.C. 3303(b).

(4) Phase III work may be for products, production, services, R/R&D, or any combination thereof.

(5) There is no limit on the number, duration, type, or dollar value of Phase III awards made to a business concern. There is no limit on the time that may elapse between a Phase I or Phase II award and Phase III award, or between a Phase III award and any subsequent Phase III award. A Federal agency may enter into a Phase III STTR agreement at any time with a Phase II awardee. Similarly, a Federal agency may enter into a Phase III STTR agreement at any time with a Phase I awardee. A subcontract to a Federally-funded prime contract may be a Phase III award.

(6) The small business size limits for Phase I and Phase II awards do not apply to Phase III awards.

(7) To the greatest extent practicable, agencies or their Government-owned, contractor-operated facilities, Federally-funded research and development centers, or Government prime contractors that pursue R/R&D or production developed under the STTR Program, shall issue Phase III awards relating to technology, including sole source awards, to the STTR awardee that developed the technology. Agencies shall document how they provided this preference to the STTR awardee that developed the technology. In fact, the Act requires that SBA report all instances in which an agency pursues research, development, or production of a technology developed by an STTR awardee, with a business concern or entity other than the one that developed the STTR technology. (See section 4(c)(8) immediately below for agency notification to SBA prior to award of such a funding agreement and section 10(h)(4) regarding agency reporting of the issuance of such award.) SBA will report such instances, including those discovered independently by SBA, to Congress.

(8) Agencies, their Government-owned, contractor-operated facilities, or Federally-funded research and development centers, that intend to pursue R/R&D, production, services or any combination thereof of a technology developed under an STTR award, with an entity other than that STTR awardee, must notify SBA in writing prior to such an award. This notification must include, at a minimum:

(i) The reasons why the follow-on funding agreement with the STTR awardee is not practicable;

(ii) the identity of the entity with which the agency intends to make an award to perform research, development, or production; and

(iii) a description of the type of funding award under which the research, development, or production will be obtained. SBA may appeal an agency decision to pursue Phase III work with a business concern other than the STTR awardee that developed the technology to the head of the contracting activity. If SBA decides to appeal the decision, it must file a notice of intent to appeal with the funding agreement officer no later than 5 business days after receiving the agency's notice of intent to make award. Upon receipt of SBA's notice of intent to appeal, the funding agreement officer must suspend further action on the acquisition until the head of the contracting activity issues a written decision on the appeal. The funding agreement officer may proceed with award if he or she determines in writing that the award must be made to protect the public interest. The funding agreement officer must include a statement of the facts justifying that determination and provide a copy of its determination to SBA. Within 30 days of receiving SBA's appeal, the head of the contracting activity must render a written decision setting forth the basis of his or her determination. During this period, the agency should consult with SBA and review any case-specific information SBA believes to be pertinent.

5. Program Solicitation Process

(a) At least annually, each agency must issue a program solicitation that sets forth a substantial number of R/R&D topics and subtopic areas consistent with stated agency needs or missions. Agencies may decide to issue joint solicitations. Both the list of topics and the description of the topics and subtopics must be sufficiently comprehensive to provide a wide range of opportunities for SBCs to participate in the agency R&D programs. Topics and subtopics must emphasize the need for proposals with advanced concepts to meet specific agency R/R&D needs. Each topic and subtopic must describe the needs in sufficient detail to assist in providing on-target responses, but cannot involve detailed specifications to prescribed solutions of the problems.

(b) The Act requires issuance of STTR Phase I Program solicitations in accordance with a Master Schedule coordinated between SBA and the STTR agency. The SBA office responsible for coordination is: Office of Technology, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416. Phone: (202) 205–6450. Fax: (202) 205–7754. Email: *technology@sba.gov.* Internet site: *www.SBIR.gov.*

(c) For maximum participation by interested SBCs, it is important that the planning, scheduling and coordination of agency program solicitation release dates be completed as early as practicable to coincide with the commencement of the fiscal year on October 1. Bunching of agency program solicitation release and closing dates may prohibit SBCs from preparation and timely submission of proposals for more than one STTR project. SBA's coordination of agency schedules minimizes the bunching of proposed release and closing dates. STTR agencies may elect to publish multiple program solicitations within a given fiscal year to facilitate in-house agency proposal review and evaluation scheduling.

(d) SBA will post an electronic Master Schedule of release dates of program solicitations with links to Internet Web sites of agency solicitations. For more information see section 10(g).

(e) *Simplified, Standardized, and Timely STTR Program Solicitations*

(1) The Act requires ''simplified, standardized and timely STTR solicitations'' and for STTR agencies to use a ''uniform process'' minimizing the regulatory burden for SBCs. Therefore, the instructions in Appendix I to this Policy Directive purposely depart from normal Government solicitation format and requirements.

(2) Agencies must provide SBA's Office of Technology with an electronic version of each solicitation and any modifications no later than 5 days after the date of release of the solicitation or modification to the public. Agencies that issue program solicitations in electronic format only must provide the Internet site at which the program solicitation may be accessed no later than the date of posting at that site of the program solicitation.

(3) SBA does not intend that the STTR Program solicitation replace or be used as a substitute for unsolicited proposals for R/R&D awards to SBCs. In addition, the STTR Program solicitation procedures do not prohibit other agency R/R&D actions with SBCs that are

carried on in accordance with applicable statutory or regulatory authorizations.

6. Eligibility and Application (Proposal) Requirements

(a) *Eligibility Requirements:*

(1) To receive STTR funds, each awardee of a STTR Phase I or Phase II award must qualify as an SBC at the time of award and at any other time set forth in SBA's regulations at 13 CFR 121.701–121.705. Each Phase I and Phase II awardee must submit a certification stating that it meets the size, ownership and other requirements of the STTR Program at the time of award, and at any other time set forth in SBA's regulations at 13 CFR 121.701–705.

(2) NIH, Department of Energy and National Science Foundation may award not more than 25% of the agency's SBIR funds to SBCs that are owned in majority part by multiple venture capital operating companies, hedge funds, or private equity firms through competitive, merit-based procedures that are open to all eligible small business concerns. All other SBIR agencies may award not more than 15% of the agency's SBIR funds to such SBCs. At their discretion, if the agency has not exceeded these maximum statutory percentages, the agency may make STTR awards to small businesses that are majority-owned by multiple VCOCs, hedge funds or private equity firms through competitive, merit-based procedures that are open to all eligible small business concerns under the STTR Program and using STTR funds. If an agency exceeds this maximum statutory percentage of awards, it must transfer this excess amount from its non-SBIR and non-STTR funds to the SBIR funds.

(i) Before permitting participation in the STTR program by SBCs that are owned in majority part by multiple venture capital operating companies, hedge funds, or private equity firms:

(A) SBA's regulations at 13 CFR part 121 must set forth the eligibility criteria for STTR applicants that are owned in majority part by multiple venture capital operating companies, hedge funds, or private equity firms.

(B) The STTR agency must submit a written determination at least 30 calendar days before it begins making awards to SBCs that are owned in majority part by multiple venture capital operating companies, hedge funds, or private equity firms to SBA, the Senate Committee on Small Business and Entrepreneurship, the House Committee on Small Business and the House Committee on Science, Space, and Technology. The determination must be made by the head of the Federal agency or designee and explain how awards to SBCs that are owned in majority part by multiple venture capital operating companies, hedge funds, or private equity firms will:

(I) Induce additional venture capital, hedge fund, or private equity firm funding of small business innovations;

(II) substantially contribute to the mission of the Federal agency;

(III) address a demonstrated need for public research; and

(IV) otherwise fulfill the capital needs of small business concerns for additional financing for STTR projects.

(ii) The SBC that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms must register with SBA in the Company Registry Database, at *www.SBIR.gov,* prior to the date it submits an application for an STTR award.

(iii) The SBC that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms must submit a certification with its proposal stating, among other things, that it has registered with SBA.

(iv) Any agency that makes an award under this paragraph during a fiscal year shall collect and submit to SBA data relating to the number and dollar amount of Phase I awards, Phase II awards, and any other category of awards by the Federal agency under the STTR program during that fiscal year. See section 10 of the directive for the specific reporting requirements.

(3) For both Phase I and Phase II, not less than 40 percent of the R/R&D work must be performed by the SBC, and not less than 30 percent of the R/R&D work must be performed by the single, partnering Research Institution. Occasionally, deviations from these requirements may occur, and must be approved in writing by the funding agreement officer after consultation with the agency STTR Program Manager/Coordinator. An agency can measure this research or analytical effort using the total contract dollars or labor hours, and must explain to the small business in the solicitation how it will be measured.

(4) For both Phase I and Phase II, the primary employment of the principal investigator must be with the SBC or the research institution at the time of award and during the conduct of the proposed project. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC or the research institution. This precludes full-time employment with another organization aside from the SBC or the research institution. Occasionally, deviations from this requirement may occur, and must be approved in writing by the funding agreement officer after consultation with the agency STTR Program Manager/Coordinator. An SBC may replace the principal investigator on an STTR Phase I or Phase II award, subject to approval in writing by the funding agreement officer. For purposes of the STTR Program, personnel obtained through a Professional Employer Organization or other similar personnel leasing company may be considered employees of the awardee. This is consistent with SBA's size regulations, 13 CFR 121.106—Small Business Size Regulations.

(5) For both Phase I and Phase II, the R/R&D work must be performed in the United States. However, based on a rare and unique circumstance, agencies may approve a particular portion of the R/R&D work to be performed or obtained in a country outside of the United States, for example, if a supply or material or other item or project requirement is not available in the United States. The funding agreement officer must approve each such specific condition in writing.

(b) *Proposal (Application) Requirements.*

(1) *Registration and Certifications for Proposal and Award.*

(i) Each Phase I and Phase II applicant that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms must register with SBA in the Company Registry Database at *www.SBIR.gov* and submit a certification with its STTR application to the STTR agency (see Appendix I for the required text of the certification).

(ii) Each applicant must register in SBA's Company Registry Database (see Appendix IV) and submit a .pdf document of the registration with its application if the agency is otherwise unable to obtain this information via Tech-Net. The agency will notify the applicants in the STTR solicitation as to whether it must submit a .pdf document with the application.

(iii) Agencies may request the STTR applicant to submit a certification at the time of submission of the application or offer, which requires the applicant to state that it intends to meet the size, ownership and other requirements of the STTR Program at the time of award of the funding agreement, if recommended for award. See Appendix I for the required text of the certification.

(2) *Commercialization Plan.* A succinct commercialization plan must be included with each proposal for an STTR Phase II award moving toward commercialization. Elements of a commercialization plan will include the following, as applicable:

(i) *Company information:* Focused objectives/core competencies; specialization area(s); products with significant sales; and history of previous Federal and non-Federal funding, regulatory experience, and subsequent commercialization.

(ii) *Customer and Competition:* Clear description of key technology objectives, current competition, and advantages compared to competing products or services; description of hurdles to acceptance of the innovation.

(iii) *Market:* Milestones, target dates, analyses of market size, and estimated market share after first year sales and after 5 years; explanation of plan to obtain market share.

(iv) *Intellectual Property:* Patent status, technology lead, trade secrets or other demonstration of a plan to achieve sufficient protection to realize the commercialization stage and attain at least a temporal competitive advantage.

(v) *Financing:* Plans for securing necessary funding in Phase III.

(vi) *Assistance and mentoring:* Plans for securing needed technical or business assistance through mentoring, partnering, or through arrangements with state assistance programs, SBDCs, Federally-funded research laboratories, Manufacturing Extension Partnership centers, or other assistance providers.

(3) *Data Collection:* Each Phase I and II applicant will be required to provide information in *www.SBIR.gov* (see Appendix IV) as well as the other information required by Appendices V–VI to the agency or *www.SBIR.gov.* Each SBC applying for a Phase II award is required to update the appropriate information in the database for any of its prior Phase II awards (see Appendix VI).

7. STTR Funding Process

Because the Act requires a ''simplified, standardized funding process,'' specific attention must be given to the following areas of STTR Program administration:

(a) *Timely Receipt of Proposals.* Program solicitations must establish proposal submission dates for Phase I and may establish proposal submission dates for Phase II. However, agencies may also negotiate mutually acceptable Phase II proposal submission dates with individual Phase I awardees.

(b) *Review of STTR Proposals.* SBA encourages STTR agencies to use their routine review processes for STTR proposals whether internal or external evaluation is used. A more limited review process may be used for Phase I due to the larger number of proposals anticipated. Where appropriate, ''peer'' reviews external to the agency are authorized by the Act. SBA cautions STTR agencies that all review procedures must be designed to minimize any possible conflict of interest as it pertains to applicant proprietary data. The standardized STTR solicitation advises potential applicants that proposals may be subject to an established external review process and that the applicant may include company designated proprietary information in its proposal.

(c) *Selection of Awardees.*

(1) *Time period for decision on proposals.*

(i) The National Institutes of Health (NIH) and the National Science Foundation (NSF) must issue a notice to an applicant for each proposal submitted stating whether it was recommended or not for an award no more than one year after the closing date of the solicitation. NIH and NSF agencies should also issue the award no more than 15 months after the closing date of the solicitation. Pursuant to paragraph (iii) below, NIH and NSF are encouraged to reduce these timeframes.

(ii) All other agencies must issue a notice to an applicant for each proposal submitted stating whether it was recommended or not for an award no more than 90 calendar days after the closing date of the solicitation. Agencies should issue the award no more than 180 calendar days after the closing date of the solicitation.

(iii) Agencies are encouraged to develop programs or measures to reduce the time periods between the close of an STTR Phase I solicitation/receipt of a Phase II application and notification to the applicant as well as issuance of the STTR Phase I and Phase II awards. As appropriate, agencies should adopt accelerated proposal, evaluation, and selection procedures designed to address the gap in funding these competitive awards to meet or reduce the timeframes set forth above. With respect to Phase II awards, SBA recognizes that Phase II arrangements between the agency and applicant may require more detailed negotiation to establish terms acceptable to both parties; however, agencies must not sacrifice the R/R&D momentum created under Phase I by engaging in unnecessarily protracted Phase II proceedings.

(iv) *Request for Waiver.*

(A) If the agency determines that it requires additional time between the solicitation closing date and notification of recommendation for award, it must submit a written request for an extension to SBA. The written request must specify the number of additional calendar days needed to issue the notice for a specific applicant and the reasons for the extension. If an agency believes it will not meet the timeframes for an entire solicitation, the request for an extension must state how many awards will not meet the statutory timeframes, as well as the number of additional calendar days needed to issue the notice and the reasons for the extension. The written request must be submitted to the SBA at least 10 business days prior to when the agency must issue its notice to the applicant. Agencies must send their written request to: Office of Technology, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416. Phone: (202) 205–6450. Fax: (202) 205–7754. Email: *technology@sba.gov.*

(B) SBA will respond to the request for an extension within 5 business days, as practicable. SBA may authorize an agency to issue the notice up to 90 calendar days after the timeframes set forth in paragraphs (c)(1)(i) and (ii).

(C) Even if SBA grants an extension of time, the STTR agency is required to develop programs or measures to reduce the timeframe between the close of an SBIR Phase I solicitation/receipt of a Phase II application and notification to the applicant as well as the time to the issuance of the Phase I and Phase II awards as set forth in paragraph (c)(1)(3) above.

(D) If an STTR agency does not receive an extension of time, it may still proceed with the award to the small business.

(2) *Standardized solicitation.*

(i) The standardized STTR Program solicitation must advise Phase I applicants that additional information may be requested by the awarding agency to evidence applicant responsibility for project completion and advise applicants of the proposal evaluation criteria for Phase I and Phase II.

(ii) The STTR agency will provide information to each Phase I awardee considered for a Phase II award regarding Phase II proposal submissions, reviews, and selections.

(d) *Essentially Equivalent Work.* STTR participants often submit duplicate or similar proposals to more than one soliciting agency when the work projects appear to involve similar topics or requirements, which are within the expertise and capability levels of the applicant. However, ''essentially equivalent work'' must not be funded in

the STTR or other Federal programs, unless an exception to this rule applies. Agencies must verify with the applicant that this is the case by requiring them to certify at the time of award and during the lifecycle of the award that essentially equivalent work has not been funded by another Federal agency.

(e) *Management of the STTR Project.* The SBC, and not the single, partnering Research Institution, is to provide satisfactory evidence that it will exercise management direction and control of the performance of the STTR funding agreement. Regardless of the proportion of the work or funding allocated to each of the performers under the funding agreement, the SBC is to be the primary party with overall responsibility for performance of the project. All agreements between the SBC and the Research Institution cooperating in the STTR funding agreement, or any business plans reflecting agreements and responsibilities between the parties during performance of STTR Phase I or Phase II funding agreement, or for the commercialization of the resulting technology, should reflect the controlling position of the SBC.

(f) *Cost Sharing.* Cost sharing can serve the mutual interests of the STTR agencies and certain STTR awardees by assuring the efficient use of available resources. However, cost sharing on STTR projects is not required, although it may be encouraged. Therefore, cost sharing cannot be an evaluation factor in the review of proposals. The standardized STTR Program solicitation (Appendix I) will provide information to prospective STTR applicants concerning cost sharing.

(g) *Payment Schedules and Cost Principles.*

(1) STTR awardees may be paid under an applicable, authorized progress payment procedure or in accordance with a negotiated/definitive price and payment schedule. Advance payments are optional and may be made under appropriate law. In all cases, agencies must make payment to recipients under STTR funding agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of the funding agreement requirements.

(2) All STTR funding agreements must use, as appropriate, current cost principles and procedures authorized for use by the STTR agencies. At the time of award, agencies must inform each STTR awardee, to the extent possible, of the applicable Federal regulations and procedures that refer to the costs that, generally, are allowable under funding agreements.

(3) Agencies must, to the extent possible, attempt to shorten the amount of time between the notice of an award under the STTR Program and the subsequent release of funding with respect to the award.

(h) *Funding Agreement Types and Fee or Profit.* Statutory requirements for uniformity and standardization require consistency in application of STTR Program provisions among STTR agencies. However, consistency must allow for flexibility by the various agencies in missions and needs as well as the wide variance in funds required to be devoted to STTR Programs in the agencies. The following instructions meet all of these requirements:

(1) *Funding Agreement.* The type of funding agreement (contract, grant, or cooperative agreement) is determined by the awarding agency, but must be consistent with 31 U.S.C. 6301–6308. Contracting agencies may issue STTR awards as fixed price contracts (including firm fixed price, fixed price incentive or fixed price level of effort contracts) or cost type contracts, consistent with the Federal Acquisition Regulations and agency supplemental acquisition regulations. In some cases, small businesses seek progress payments, which may be appropriate under fixed-price R&D contracts and are a form of contract financing for firm-fixed-price contracts. However, for certain agencies, in order to qualify for progress payments or an incentive type contract, the small business's accounting system would have to be audited, which can delay award, unless the contractor has an already approved accounting system. Therefore STTR agencies should consider using partial payments methods or on a deliverable item basis or consider other available options to work with the STTR awardee.

(2) *Fee or Profit.* Except as expressly excluded or limited by statute, awarding agencies must provide for a reasonable fee or profit on STTR funding agreements, consistent with normal profit margins provided to profit-making firms for R/R&D work.

(i) *Periods of Performance and Extensions.*

(1) In keeping with the legislative intent to make a large number of relatively small awards, modification of funding agreements to extend periods of performance, to increase the scope of work, or to increase the dollar amount should be kept to a minimum, except for options in original Phase I or II awards.

(2) *Phase I.* Period of performance normally should not exceed 1 year. However, agencies may provide a longer performance period where appropriate for a particular project.

(3) *Phase II.* Period of performance under Phase II is a subject of negotiation between the awardee and the issuing agency. The duration of Phase II normally should not exceed 2 years. However, agencies may provide a longer performance period where appropriate for a particular project.

(j) *Dollar Value of Awards.*

(1) Generally, a Phase I award (including modifications) may not exceed $150,000 and a Phase II award (including modifications) may not exceed $1,000,000. Agencies may issue an award that exceeds the award guideline amounts by no more than 50%.

(2) SBA will adjust these amounts every year for inflation and will post these inflation adjustments at the end of the fiscal year or soon after on www.SBIR.gov. The adjusted guidelines are effective for all solicitations issued on or after the date of the adjustment and may be used by agencies to amend the solicitation and other program literature. Agencies have the discretion to issue awards for less than the guidelines.

(3) There is no dollar limit associated with Phase III STTR awards.

(4) Agencies may request a waiver to exceed the award guideline amounts established in paragraph (j)(1) by more than 50% for a specific topic.

(5) Agencies must submit this request for a waiver to SBA prior to release of the solicitation, contract award, or modification to the award for the topic. The request for a waiver must explain and provide evidence that the limitations on award size will interfere with the ability of the agency to fulfill its research mission through the STTR Program; that the agency will minimize, to the maximum extent practicable, the number of awards that exceed the guidelines by more than 50% for the topic; and that research costs for the topic area differ significantly from those in other areas. After review of the agency's justification, SBA may grant the waiver for the agency to exceed the award guidelines by more than 50% for a specific topic. SBA will issue a decision on the request within 10 business days. The waiver will be in effect for one fiscal year.

(6) Agencies must maintain information on all awards exceeding the guidelines set forth in paragraph (j)(1), including the amount of the award, a justification for exceeding the guidelines for each award, the identity and location of the awardee, whether the awardee has received any venture capital, hedge fund, or private equity firm investment, and whether the awardee is majority-owned by multiple

VCOCs, hedge funds, or private equity firms.

(7) The award guidelines do not prevent an agency from funding STTR projects from other (non-STTR) agency funds. Non-STTR funds used on STTR efforts do not count toward the award guidelines set forth in (i)(1).

(j) *National Security Exemption*. The Act provides for exemptions related to the simplified standardized funding process ''* * * if national security or intelligence functions clearly would be jeopardized.'' This exemption should not be interpreted as a blanket exemption or a prohibition of STTR participation for acquisitions relating to national security or intelligence functions, except as specifically defined under section 9(e)(2) of the Act, 15 U.S.C. 638(e)(2). Agency technology managers directing R/R&D projects under the STTR Program, where the project subject matter may be affected by this exemption, must first make a determination on which, if any, of the standardized proceedings clearly place national security and intelligence functions in jeopardy, and then proceed with an acceptable modified process to complete the STTR action. SBA's STTR Program monitoring activities, except where prohibited by security considerations, must include a review of nonconforming STTR actions justified under this public law provision.

8. Terms of Agreement Under STTR Awards

(a) *Proprietary Information Contained in Proposals*. The standardized STTR Program solicitation will include provisions requiring the confidential treatment of any proprietary information to the extent permitted by law. Agencies will discourage SBCs from submitting information considered proprietary unless the information is deemed essential for proper evaluation of the proposal. The solicitation will require that all proprietary information be identified clearly and marked with a prescribed legend. Agencies may elect to require SBCs to limit proprietary information to that essential to the proposal and to have such information submitted on a separate page or pages keyed to the text. The Government, except for proposal review purposes, protects all proprietary information, regardless of type, submitted in a contract proposal or grant application for a funding agreement under the STTR Program, from disclosure.

(b) *Rights in Data Developed Under STTR Funding Agreement*. The Act provides for ''retention by an SBC of the rights to data generated by the concern in the performance of an STTR award.''

(1) Each agency must refrain from disclosing STTR technical data outside the Government (except reviewers) and especially to competitors of the SBC, or from using the information to produce future technical procurement specifications that could harm the SBC that discovered and developed the innovation.

(2) STTR agencies must protect from disclosure and non-governmental use all STTR technical data developed from work performed under an STTR funding agreement for a period of not less than four years from delivery of the last deliverable under that agreement (either Phase I, Phase II, or Federally-funded STTR Phase III) unless, subject to paragraph (b)(3) of this section, the agency obtains permission to disclose such STTR technical data from the awardee or STTR applicant. Agencies are released from obligation to protect STTR data upon expiration of the protection period except that any such data that is also protected and referenced under a subsequent STTR award must remain protected through the protection period of that subsequent STTR award. For example, if a Phase III award is issued within or after the Phase II data rights protection period and the Phase III award refers to and protects data developed and protected under the Phase II award, then that data must continue to be protected through the Phase III protection period. Agencies have discretion to adopt a protection period longer than four years. The Government retains a royalty-free license for Government use of any technical data delivered under an STTR award, whether patented or not. This section does not apply to program evaluation.

(3) STTR technical data rights apply to all STTR awards, including subcontracts to such awards, that fall within the statutory definition of Phase I, II, or III of the STTR Program, as described in section 4 of this Policy Directive. The scope and extent of the STTR technical data rights applicable to Federally-funded Phase III awards is identical to the STTR data rights applicable to Phases I and II STTR awards. The data rights protection period lapses only:

(i) Upon expiration of the protection period applicable to the STTR award; or

(ii) by agreement between the awardee and the agency.

(4) Agencies must insert the provisions of (b)(1), (2), and (3) immediately above as STTR data rights clauses into all STTR Phase I, Phase II, and Phase III awards. These data rights clauses are non-negotiable and must not be the subject of negotiations pertaining to an STTR Phase III award, or diminished or removed during award administration. An agency must not, in any way, make issuance of an STTR Phase III award conditional on data rights. If the STTR awardee wishes to transfer its STTR data rights to the awarding agency or to a third party, it must do so in writing under a separate agreement. A decision by the awardee to relinquish, transfer, or modify in any way its STTR data rights must be made without pressure or coercion by the agency or any other party. Following issuance of an STTR Phase III award, the awardee may enter into an agreement with the awarding agency to transfer or modify the data rights contained in that STTR Phase III award. Such a bilateral data rights agreement must be entered into only after the STTR Phase III award, which includes the appropriate STTR data rights clause, has been signed. SBA will report to the Congress any attempt or action by an agency to condition an STTR award on data rights, to exclude the appropriate data rights clause from the award, or to diminish such rights.

(c) *Allocation of Rights*.

(1) An SBC, before receiving an STTR award, must negotiate a written agreement between the SBC and the single, partnering Research Institution, allocating intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization. The SBC must submit this agreement to the awarding agency with the proposal. The SBC must certify in all proposals that the agreement is satisfactory to the SBC.

(2) The awarding agency may accept an existing agreement between the two parties if the SBC certifies its satisfaction with the agreement, and such agreement does not conflict with the interests of the Government. SBA will provide a model agreement that must be adopted by the agencies and used as guidance by the SBC in the development of an agreement with the Research Institution. The model agreement will direct the parties to, at a minimum:

(i) State specifically the degree of responsibility, and ownership of any product, process, or other invention or innovation resulting from the cooperative research. The degree of responsibility shall include responsibility for expenses and liability, and the degree of ownership shall also include the specific rights to revenues and profits.

(ii) State which party may obtain United States or foreign patents or otherwise protect any inventions resulting from the cooperative research.

(iii) State which party has the right to any continuation of research, including non-STTR follow-on awards.

(3) The Government will not normally be a party to any agreement between the SBC and the Research Institution. Nothing in the agreement is to conflict with any provisions setting forth the respective rights of the United States and the SBC with respect to intellectual property rights and with respect to any right to carry out follow-on research.

(d) *Title Transfer Agency-Provided Property*. Under the Act, the Government may transfer title to property, provided by the STTR agency to the awardee or acquired by the awardee for the purpose of fulfilling the contract, where such transfer would be more cost effective than recovery of the property.

(e) *Continued Use of Government Equipment*. The Act directs that an agency allow an STTR awardee participating in the third phase of the STTR Program continued use, as a directed bailment, of any property transferred by the agency to the Phase II awardee. The Phase II awardee may use the property for a period of not less than 2 years, beginning on the initial date of the concern's participation in the third phase of the STTR Program.

(f) *Grant Authority*. The Act does not, in and of itself, convey grant authority. Each agency must secure grant authority in accordance with its normal procedures.

(g) *Conflicts of Interest*. SBA cautions STTR agencies that awards made to SBCs owned by or employing current or previous Federal Government employees may create conflicts of interest in violation of FAR Part 3 and the Ethics in Government Act of 1978, as amended. Each STTR agency should refer to the standards of conduct review procedures currently in effect for its agency to ensure that such conflicts of interest do not arise.

(h) *American-Made Equipment and Products*. Congress intends that the awardee of a funding agreement under the STTR Program should, when purchasing any equipment or a product with funds provided through the funding agreement, purchase only American-made equipment and products, to the extent possible, in keeping with the overall purposes of this program. Each STTR agency must provide to each awardee a notice of this requirement.

(i) *Certifications After Award and During Funding Agreement Lifecycle*.

(1) A Phase I funding agreement must state that the awardee shall submit a new certification as to whether it is in compliance with specific STTR Program requirements at the time of final payment or disbursement.

(2) A Phase II funding agreement must state that the awardee shall submit a new certification as to whether it is in compliance with specific STTR Program requirements prior to receiving more than 50% of the total award amount and prior to final payment or disbursement.

(3) Agencies may also require additional certifications at other points in time during the life cycle of the funding agreement, such as at the time of each payment or disbursement.

(j) *Updating SBIR.gov*. Agencies must require each Phase II awardee to update the appropriate information on the award in the Commercialization Database upon completion of the last deliverable under the funding agreement. In addition, the awardee is requested to voluntarily update the appropriate information on that award in the database annually thereafter for a minimum period of 5 years.

9. Responsibilities of STTR Agencies and Departments

(a) *General Responsibilities*. The Act requires each agency participating in the STTR Program to:

(1) Unilaterally determine the categories of projects to be included in its STTR Program, giving consideration to maintaining a portfolio balance between exploratory projects of high technological risk and those with greater likelihood of success. Further, to the extent permitted by law, and in a manner consistent with the mission of that agency and the purpose of the STTR program, each Federal agency must:

(i) Give priority in the STTR program to manufacturing-related research and development in accordance with Executive Order 13329. In addition, agencies must develop an Action Plan for implementing Executive Order 13329, which identifies activities used to give priority in the STTR program to manufacturing-related research and development. These activities should include the provision of information on the Executive Order on the agency's STTR program Web site.

(ii) Give priority to small business concerns that participate in or conduct energy efficiency or renewable energy system research and development projects.

(iii) Give consideration to topics that further one or more critical technologies as identified by the National Critical Technologies panel (or its successor) in reports required under 42 U.S.C. 6683, or the Secretary of Defense in accordance with 10 U.S.C. 2522.

(2) Release STTR solicitations in accordance with the SBA master schedule.

(3) Unilaterally receive and evaluate proposals resulting from program solicitations, select awardees, issue funding agreements, and inform each awardee under such agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement.

(4) Require a succinct commercialization plan with each proposal submitted for a Phase II award.

(5) Collect and maintain information from applicants and awardees and provide it to SBA to develop and maintain the database, as identified in section 11(e) of this Policy Directive.

(6) Administer its own STTR funding agreements or delegate such administration to another agency.

(7) Include provisions in each STTR funding agreement setting forth the respective rights of the United States and the awardee with respect to intellectual property rights and with respect to any right to carry out follow-on research.

(8) Ensure that the rights in data developed under each Federally-funded STTR Phase I, Phase II, and Phase III award are protected properly.

(9) Make payments to awardees of STTR funding agreements on the basis of progress toward or completion of the funding agreement requirements and in all cases make payment to awardees under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements.

(10) Provide an annual report on the STTR Program to SBA, as well as other information concerning the STTR Program. See section 10 of this Policy Directive for further information on the agency's reporting requirements, including the frequency for specific reporting requirements.

(11) Include in its annual performance plan required by 31 U.S.C. 1115(a) and (b) a section on its STTR Program, and submit such section to the Senate Committee on Small Business and Entrepreneurship and to the House Committees on Science, Space and Technology and Small Business.

(12) Establish the agency's benchmarks for progress towards commercialization. See section 4(a)(3) of the directive for further information.

(13) Adopt the model agreement to be developed by SBA for use in the STTR Program that allocates between SBCs and Research Institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization.

(14) Develop, in consultation with the Office of Federal Procurement Policy and the Office of Government Ethics, procedures to ensure that Federally-funded research and development centers that participate in STTR agreements:

(i) Are free from organizational conflicts of interests relative to the STTR Program;

(ii) Do not use privileged information gained through work performed for an STTR agency or private access to STTR agency personnel in the development of an STTR proposal; and

(iii) Use outside peer review as appropriate.

(15) Implement an outreach program to Research Institutions and SBCs for the purpose of enhancing its STTR Program, in conjunction with any such outreach done for purposes of the Small Business Innovation Research (SBIR) Program.

(b) *Discretionary technical assistance to STTR awardees.*

(1) Agencies may enter into agreements with vendors to provide technical assistance to STTR awardees, which may include access to a network of scientists and engineers engaged in a wide range of technologies or access to technical and business literature available through on-line data bases. Each agency may select a vendor for a term not to exceed 5 years. The vendor must be selected using competitive and merit-based criteria.

(i) The purpose of this technical assistance is to assist STTR awardees in:

(A) Making better technical decisions on STTR projects;

(B) Solving technical problems that arise during STTR projects;

(C) Minimizing technical risks associated with STTR projects; and

(D) Commercializing the STTR product or process.

(ii) An agency may not enter into a contract with the vendor if the contract amount provided for technical assistance is based upon the total number of Phase I or Phase II awards but may enter into a contract with the vendor based upon the total amount of awards for which assistance is provided.

(2) Each agency may provide up to $5,000 of STTR funds for the technical assistance described above in (c)(1) per year for each Phase I award and each Phase II award. The amount will be in addition to the award and will count as part of the agency's STTR funding, unless the agency funds the technical assistance using non-STTR funds. The agency may not use STTR funds for technical assistance unless the vendor provides the services to the STTR awardee.

(3) An STTR applicant may acquire the technical assistance services set forth in (c)(1)(i) above itself and not through the vendor selected by the Federal agency. The applicant must request this authority from the Federal agency and demonstrate in its STTR application that the individual or entity selected can provide the specific technical services needed. If the awardee demonstrates this requirement sufficiently, the agency shall permit the awardee to acquire such technical assistance itself, in an amount up to $5,000, as an allowable cost of the STTR award. The per year amount will be in addition to the award and will count as part of the agency's STTR funding, unless the agency funds the technical assistance using non-STTR funds.

(c) Agencies must publish the information relating to timelines for awards of Phase I and Phase II funding agreements and performance start dates of the funding agreements in the agency's Annual Report (See section 10(a) of the directive). Agencies will report this information to SBA for posting on *www.SBIR.gov.*

(d) *Interagency actions.*

(1) *Joint funding.* An STTR project may be financed by more than one Federal agency. Joint funding is not required but can be an effective arrangement for some projects.

(2) *Phase II awards.* An STTR Phase II award may be issued by a Federal agency other than the one that made the Phase I award. Prior to award, the head of the Federal agency for the Phase I and Phase II awards, or designee, must issue a written determination that the topics of the awards are the same. Both agencies must submit the report to the SBA.

(3) *Participation by WOSBs and SDBs in the STTR Program.* In order to meet statutory requirements for greater inclusion, SBA and the Federal participating agencies must conduct outreach efforts to find and place innovative WOSBs and SDBs in the STTR Program. These SBCs will be required to compete for STTR awards on the same basis as all other SBCs. However, STTR agencies are encouraged to work independently and cooperatively with SBA to develop methods to encourage qualified WOSBs and SDBs to participate in the STTR Program.

(e) *Limitation on use of funds.*

(1) Each STTR agency must expend the required minimum percent of its extramural budget on awards to SBCs. Agencies may not make available for the purpose of meeting the minimum percent an amount of its extramural budget for basic research that exceeds the minimum percent. Funding agreements with SBCs for R/R&D that result from competitive or single source selections other than an STTR Program must not be considered to meet any portion of the required minimum percent.

(2) An agency must not use any of its STTR budget for the purpose of funding administrative costs of the program, including costs associated with program operations, employee salaries, and other associated expenses.

(3) *Pilot to Allow for Funding of Administrative, Oversight, and Contract Processing Costs.* Beginning on October 1, 2012 and ending on September 30, 2015, and upon establishment by SBA of the agency-specific performance criteria, SBA shall allow an SBIR Federal agency to use no more than 3% of its SBIR budget for one or more specific activities, which may be prioritized by the federal SBIR/STTR Interagency Policy Committee. The purpose of this pilot program is to assist with the substantial expansion in commercialization activities, prevention of fraud/waste/abuse, expansion of reporting requirements by agencies and other agency activities required for the SBIR and STTR Programs. Funding under this pilot is not intended to and must not replace current agency administrative funding in support of STTR activities. Rather, funding under this pilot program is intended to supplement such funds.

(i) A Federal agency may use this money to fund the following specific activities:

(A) SBIR and/or STTR program administration, which includes:

(I) Internal oversight and quality control, such as verification of reports and invoices and cost reviews, and waste/fraud/abuse prevention (including targeted reviews of SBIR or STTR awardees that an agency determines are at risk for waste/fraud/abuse);

(II) Carrying out any activities associated with the participation by small businesses that are majority-owned by multiple venture capital operating companies, hedge funds or private equity firms;

(III) Contract processing costs relating to the SBIR or STTR program of that agency, which includes supplementing the current workforce to assist solely with SBIR or STTR funding agreements;

(IV) Funding of additional personnel to work solely on the STTR Program of that agency, which includes assistance with application reviews; and

(V) Funding for simplified and standardized program proposal, selection, contracting, compliance, and

audit procedures for the STTR program, including the reduction of paperwork and data collection.

(B) STTR or SBIR Program-related outreach and related technical assistance initiatives not in effect prior to commencement of this pilot, except significant expansion or improvement of these initiatives, including:

(I) Technical assistance site visits;

(II) Personnel interviews; and

(III) National conferences.

(C) Commercialization initiatives not in effect prior to commencement of this pilot, except significant expansion or improvement of these initiatives.

(D) For DoD and the military departments, carrying out the Commercialization Readiness Program set forth in 12(b) of this directive, with emphasis on supporting new initiatives that address barriers in bringing STTR technologies to the marketplace, including intellectual property issues, sales cycle access issues, accelerated technology development issues, and other issues.

(ii) Agencies must use this money to attempt to increase participation by SDBs and WOSBs in the STTR Program, and small businesses in states with a historically low level of SBIR awards. The agency may submit a written request to SBA to waive this requirement. The request must explain why the waiver is necessary, demonstrate a sufficient need for the waiver, and explain that the outreach objectives of the agency are being met and that there has been increased participation by small businesses in states with a historically low level of SBIR awards.

(iii) SBA will establish performance criteria each fiscal year by which use of these funds will be evaluated for that fiscal year. The performance criteria will be metrics that measure the performance areas required by statute against the goals set by the agencies in their work plans. The performance criteria will be based upon the work plans submitted by each agency for a given fiscal year and will be agency-specific. SBA will work with the STTR agencies in creating a simplified template for agencies to use when making their work plans.

(iv) Each agency must submit its work plan to SBA at least 30 calendar days prior to the start of each fiscal year for which the pilot program is in operation. Agency work plans must include the following: a prioritized list of initiatives to be supported; the estimated amounts to be spent on each initiative or the estimated percentage of administrative funds to be allocated to each initiative; milestones for implementing the; the expected results to be achieved; and the assessment metrics for each initiative. The work plan must identify initiatives that are above and beyond current practice and which enhance the agency's STTR program.

(v) SBA will evaluate the work plan and provide initial comments within 15 calendar days of receipt of the plan. SBA's objective in evaluating the work plan is to ensure that overall, it provides for improvements to the STTR Program of that particular agency. If SBA does not provide initial comments within 30 calendar days of receipt of the plan, the work plan is deemed approved. If SBA does provide initial comments within 30 calendar days, agencies must amend or supplement their work plan and resubmit to SBA. Once SBA establishes the agency-specific performance criteria to measure the benefits of the use of these funds under the work plan, the agency may begin using the STTR funds for the purposes set forth in the work plan. Agencies can adjust their work plans and spending throughout the fiscal year as needed, but must notify SBA of material changes in the plan.

(vi) Agencies must coordinate any activities in the work plan that relate to fraud, waste, and abuse prevention, targeted reviews of awardees, and implementation of oversight control and quality control measures (including verification of reports and invoices and cost reviews) with the agency's Office of Inspector General (OIG). If the agency allocates more than $50,000,000 to its STTR Program for a fiscal year, the agency may share this funding with its OIG when the OIG performs the activities.

(vii) Agencies shall report to the Administrator on use of funds under this authority as part of the SBIR/STTR Annual Report. See section 10 generally and section 10(i).

(4) An agency must not issue an STTR funding agreement that includes a provision for subcontracting any portion of that agreement back to the issuing agency, to any other Federal Government agency, or to other units of the Federal Government, except as provided in paragraph (f)(5) of the STTR Policy Directive. SBA may issue a case-by-case waiver to this provision after review of an agency's written justification that includes the following information:

(i) An explanation of why the STTR research project requires the use of the Federal facility or personnel, including data that verifies the absence of non-Federal facilities or personnel capable of supporting the research effort.

(ii) Why the Agency will not and cannot fund the use of the Federal facility or personnel for the STTR project with non-STTR money.

(iii) The concurrence of the SBC's chief business official to use the federal facility or personnel.

(5) An agency may issue an STTR funding agreement to a small business concern that intends to enter into an agreement with a Federal laboratory to perform portions of the award or has entered into a cooperative research and development agreement (see 15 U.S.C. 3710a(d)) with a Federal laboratory, only if there is compliance with the following.

(i) The agency may not require the small business concern enter into an agreement with any Federal laboratory to perform any portion of an STTR award, as a condition for an STTR award.

(ii) The agency may not issue an STTR award or approve an agreement between an STTR awardee and a Federal laboratory, if the small business concern will not meet the minimum performance of work requirements set forth in section 6(a)(4) of this directive.

(iii) The agency may not issue an STTR award or approve an agreement between an STTR awardee and a Federal laboratory that violates any STTR requirement set forth in statute or the STTR Policy Directive, including any STTR data rights protections.

(iv) The agency and Federal laboratory may not require any STTR awardee that has an agreement with a Federal laboratory to perform portions of the activities under the STTR award to provide advance payment to the Federal laboratory in an amount greater than the amount necessary to pay for 30 days of such activities.

(6) No agency, at its own discretion, may unilaterally cease participation in the STTR Program. R/R&D agency budgets may cause fluctuations and trends that must be reviewed in light of STTR Program purposes. An agency may be considered by SBA for a phased withdrawal from participation in the STTR Program over a period of time sufficient in duration to minimize any adverse impact on SBCs. However, the SBA decision concerning such a withdrawal will be made on a case-by-case basis and will depend on significant changes to extramural R/R&D 3-year forecasts as found in the annual Budget of the United States Government and National Science Foundation breakdowns of total R/R&D obligations as published in the Federal Funds for Research and Development. Any withdrawal of an STTR agency from the STTR Program will be accomplished in a standardized and orderly manner in

compliance with these statutorily mandated procedures.

(7) Federal agencies not otherwise required to participate in the STTR Program may participate on a voluntary basis. Federal agencies seeking to participate in the STTR Program must first submit their written requests to SBA. Voluntary participation requires the written approval of SBA.

(f) *Preventing Fraud, Waste, and Abuse.*

(1) Agencies shall evaluate risks of fraud, waste, and abuse in each application, monitor and administer STTR awards, and create and implement policies and procedures to prevent fraud, waste and abuse in the STTR Program. To capitalize on OIG expertise in this area, agencies must consult with their OIG when creating such policies and procedures. Fraud includes any false representation about a material fact or any intentional deception designed to deprive the United States unlawfully of something of value or to secure from the United States a benefit, privilege, allowance, or consideration to which an individual or business is not entitled. Waste includes extravagant, careless, or needless expenditure of Government funds, or the consumption of Government property, that results from deficient practices, systems, controls, or decisions. Abuse includes any intentional or improper use of Government resources, such as misuse of rank, position, or authority or resources. Examples of fraud, waste, and abuse relating to the STTR Program include, but are not limited to:

(i) Misrepresentations or material, factual omissions to obtain, or otherwise receive funding under, an STTR award;

(ii) Misrepresentations of the use of funds expended, work done, results achieved, or compliance with program requirements under an STTR award;

(iii) Misuse or conversion of STTR award funds, including any use of award funds while not in full compliance with STTR Program requirements, or failure to pay taxes due on misused or converted STTR award funds;

(iv) Fabrication, falsification, or plagiarism in applying for, carrying out, or reporting results from an STTR award;

(v) Failure to comply with applicable federal costs principles governing an award;

(vi) Extravagant, careless, or needless spending;

(vii) Self-dealing, such as making a sub-award to an entity in which the PI has a financial interest;

(viii) Acceptance by agency personnel of bribes or gifts in exchange for grant or contract awards or other conflicts of interest that prevents the Government from getting the best value; and

(ix) Lack of monitoring, or follow-up if questions arise, by agency personnel to ensure that awardee meets all required eligibility requirements, provides all required certifications, performs in accordance with the terms and conditions of the award, and performs all work proposed in the application.

(2) At a minimum, agencies must:

(i) Require certifications from the STTR awardee at the time of award, as well as after award and during the funding agreement lifecycle (see section 8(h) and Appendix I for more information);

(ii) Include on their respective STTR Web page and in each solicitation, information explaining how an individual can report fraud, waste and abuse as provided by the agency's OIG (*e.g.,* include the fraud hotline number or Web-based reporting method for the agency's OIG);

(iii) Designate at least one individual in the agency to, at a minimum, serve as the liaison for the STTR Program, the OIG and the agency's Suspension and Debarment Official (SDO) and ensure that inquiries regarding fraud, waste and abuse are referred to the OIG and, if applicable, the SDO.

(iv) Include on their respective STTR Web page information concerning successful prosecutions of fraud, waste and abuse in the SBIR or STTR programs.

(v) Establish a written policy requiring all personnel involved with the STTR Program to notify the OIG if anyone suspects fraud, waste, and/or abuse and ensure the policy is communicated to all STTR personnel.

(vi) Create or ensure there is an adequate system to enforce accountability (through suspension and debarment, fraud referrals or other efforts to deter wrongdoing and promote integrity) by developing separate standardized templates for a referral made to the OIG for fraud, waste, and abuse or the SDO for other matters, and a process for tracking such referrals.

(vii) Ensure compliance with the eligibility requirements of the program and the terms of the STTR funding agreement.

(viii) Work with the agency's OIG with regard to its efforts to establish fraud detection indicators, coordinate the sharing of information between Federal agencies, and improve education and training to STTR Program officials, applicants and awardees;

(ix) Develop policies and procedures to avoid funding essentially equivalent work already funded by another agency, which could include: searching Tech-Net prior to award for the applicant (if a joint venture, search for each party to the joint venture), key individuals of the applicant, and similar abstracts; using plagiarism or other software; checking the SBC's certification prior to award and funding and documenting the funding agreement file that such certification evidenced the SBC has not already received funding for essentially equivalent work; reviewing other agency's policies and procedures for best practices; and reviewing other R&D programs for policies and procedures and best practices related to this issue; and

(x) Consider enhanced reporting requirements during the funding agreement.

(g) *Interagency Policy Committee.* The Director of the Office of Science and Technology Policy (OSTP) will establish an Interagency SBIR/STTR Policy Committee, which will include representatives from Federal agencies with an SBIR or an STTR program and the SBA. The Interagency SBIR/STTR Policy Committee shall review the following issues (but may review additional issues) and make policy recommendations on ways to improve program effectiveness and efficiency:

(1) The SBIR.gov databases described in section 9(k) of the Small Business Act (15 U.S.C. 638(k));

(2) Federal agency flexibility in establishing Phase I and II award sizes, including appropriate criteria for exercising such flexibility;

(3) Commercialization assistance best practices of Federal agencies with significant potential to be employed by other agencies and the appropriate steps to achieve that leverage, as well as proposals for new initiatives to address funding gaps that business concerns face after Phase II but before commercialization;

(4) The need for a standard evaluation framework to enable systematic assessment of SBIR and STTR, including through improved tracking of awards and outcomes and development of performance measures for the SBIR Program and STTR program of each Federal agency; and

(5) Outreach and technical assistance activities that increase the participation of small businesses underrepresented in the SBIR and STTR programs, including the identification and sharing of best practices and the leveraging of resources in support of such activities across agencies.

(h) *National Academy of Sciences Report.* The National Academy of Sciences (NAS) shall conduct a study and issue a report on the SBIR and STTR programs.

(1) Prior to issuing the report, and to ensure that the concerns of small business are appropriately considered, NAS shall consult with and consider the views of SBA's Office of Investment and Innovation and Office of Advocacy and other interested parties, including entities, organizations, and individuals actively engaged in enhancing or developing the technological capabilities of small business concerns.

(2) In addition, the head of each agency with a budget of more than $50,000,000 for its SBIR Program for fiscal year 1999 shall, in consultation with SBA, and not later than 6 months after December 31, 2011, cooperatively enter into an agreement with NAS in furtherance of the report. SBA and the agencies will work with the Interagency Policy Committee in determining the parameters of the study, including the specific areas of focus and priorities for the broad topics required by statute. The agreement will set forth these parameters, specific areas of focus and priorities.

(3) NAS shall transmit to SBA, heads of agencies entering into an agreement under this section, the Committee on Science, Space and Technology, the Committee on Small Business of the House of Representatives, and to the Committee on Small Business of the Senate a copy of the report, which includes the results and recommendations, not later than 4 years after December 31, 2011, and every subsequent four years.

10. Agency and STTR Applicant/ Awardee Reporting Requirements

(a) *General.* The Small Business Act requires agencies to collect meaningful information from SBCs and to ensure that reporting requirements are streamlined to minimize the burden on small businesses.

(1) SBA is required to collect data from agencies and report to the Congress information regarding applications by and awards to SBCs by each Federal agency participating in the STTR program. STTR agencies and SBA will report data using standardized templates that are provided, maintained, and updated by SBA.

(2) The Act requires a ''simplified, standardized and timely annual report'' from each Federal agency participating in the STTR program (see section 3 for the definition of Federal agency), which is submitted to SBA. In addition, agencies are required to report certain items periodically throughout the year to SBA. Agencies may identify certain information, such as award data information, by the various components of each agency. SBA will collect reports electronically, to the extent possible. The reports will be uploaded to databases attached to Tech-Net—located at *www.SBIR.gov.* If the databases attached to Tech-Net are unavailable, then the report must be emailed to *technology@sba.gov.*

(3) To meet these requirements, the STTR program has the following key principles:

(i) Make updating data available electronically;

(ii) Centralize and share certain data through secure interfaces to which only authorized government personnel have access;

(iii) Have small business enter the data only once, if possible; and

(iv) Provide standardized procedures.

(b) *Summary of STTR Databases.*

(1) The Act requires that SBA coordinate the implementation of electronic databases at the STTR agencies, including the technical ability of the agencies to share the data. In addition, the Act requires the reporting of various data elements, which are clustered together in the following subsections:

(i) Solicitations Database (to include the Master Schedule); and

(ii) Tech-Net, which includes the following databases:

(A) Company Registry Database;

(B) Application Information Database;

(C) Award Information Database;

(D) Commercialization Database;

(E) Annual Report Database; and

(F) Other Reporting Requirements Database.

(2) The subsections below describe the data reporting requirements, including reporting mechanisms, the frequency of data collection and reporting, and whether this information is shared publicly or is protected and only available to authorized personnel. The table below summarizes the data collection requirements for each database; however, there may be some divergences at the individual data field level. Refer to Appendices III–IX for the detailed reporting requirements at the data field level. SBA notes that not all of the information will be collected starting with fiscal year 2012. Rather, beginning in fiscal year 2012, SBA will begin a phased implementation of this data collection.

Database	Reporting mechanism	Collection/reporting frequency	Public/government
Solicitations	Agency XML or manual upload to *http://SBIR.gov*.	Within 5 business days of solicitation open date.	Public.
Company Registry	SBC reports data to Tech-Net. Agency receives .pdf from company.	Register or reconfirm at time of application.	Government only.
Application Information	Agency provides XML or manual upload to Tech-Net.	Quarterly	Government only.
Award Information	XML or manual upload to Tech-Net	Quarterly	Public.
Commercialization	Agencies + companies report to Tech-Net.	Agencies update in real time SBC updates prior to subsequent award application and voluntarily thereafter.	Government only.
Annual Report	Agency XML or manual upload to Tech-Net.	Annually	Public.
Other Reports	As set forth in the directive	As set forth in the directive	Public.

(3) STTR awardees will have user names and passwords assigned in order to access their respective awards information in the system. Award and commercialization data maintained in the database can be changed only by the awardee, SBA, or the awarding SBIR/ STTR Federal agency.

(c) *Master Schedule & the Solicitations Database.*

(1) SBA will post an electronic Master Schedule of release dates of program solicitations with links to Internet web sites of agency solicitations on *www.SBIR.gov.*

(i) On or before August 1, each agency representative must notify SBA in writing or by email of its proposed

program solicitation release and proposal due dates for the next fiscal year. SBA and the agency representatives will coordinate the resolution of any conflicting agency solicitation dates by the second week of August. In all cases, SBA will make final decisions. Agencies must notify SBA in writing of any subsequent changes in the solicitation release and close dates.

(ii) For those agencies that use both general topic and more specific subtopic designations in their STTR solicitations, the topic data should accurately describe the research solicited.

(iii) Agencies must post on their Internet web sites the following information regarding each program solicitation:

(A) List of topics upon which R/R&D proposals will be sought;

(B) Agency address, phone number, or email address from which STTR Program solicitations can be requested or obtained, especially through electronic means;

(C) Names, addresses, and phone numbers of agency contact points where STTR-related inquiries may be directed;

(D) Release date(s) of program solicitation(s);

(E) Closing date(s) for receipt of proposals; and

(F) Estimated number and average dollar amounts of Phase I awards to be made under the solicitation.

(2) SBA will manage a searchable public database that contains all solicitation and topic information from all SBIR/STTR agencies. Agencies are required to update the Solicitations Database, hosted on Tech-Net (available at *www.SBIR.gov*), within 5 business days of a solicitation's open date for applications and/or submissions for SBCs. Refer to Appendix III: Solicitations Database for detailed reporting requirements. The main data requirements include:

(i) Type of solicitation—SBIR/STTR;

(ii) Phase—I or II;

(iii) Topic description;

(iv) Sub-topic description;

(v) Web site for further information; and

(vi) Applicable contact information per topic or sub-topic, where applicable and allowed by law.

(d) *Company Registry Database.*

(1) SBA will maintain and manage a company registry to track ownership and affiliation requirements for all companies applying to the STTR Program, including participants that are majority-owned by multiple VCOCs, private equity firms, or hedge funds.

(2) Each SBC applying for a Phase I or Phase II award must register on Tech-Net prior to submitting an application. The SBC will report and/or update ownership information to SBA prior to each STTR application submission. The SBC will also be able to view all of the ownership and affiliation requirements of the program on the registry site.

(3) Data collected in the Company Registry Database will not be shared publicly. Refer to Appendix IV for details on specific data shared publicly.

(4) The SBC will save its information from the registration in a .pdf document and will append this document to the application submitted to a given agency unless the STTR agencies have a system in place where the information can be transmitted automatically from SBA's database.

(5) Refer to Appendix IV for detailed reporting requirements. The main data requirements include:

(i) Basic identifying information for the SBC;

(ii) The number of employees for the SBC;

(iii) Whether the SBC has venture capital, hedge fund or private equity firm investment and if so, include:

(A) The percentage of ownership of the awardee held by the VCOC, hedge fund or private equity firm;

(B) The registration by the SBC of whether or not it is majority-owned by VCOCs, hedge funds, or private equity firms. Please note that this may be auto-populated through the individual calculations of investments in the SBC already submitted.

(iv) Information on the affiliates of the SBC, including:

(A) The names of all affiliates of the SBC; and

(B) The number of employees of the affiliates;

(e) *Application Information Database.*

(1) SBA will manage an Application Information Database containing data from applications to the STTR program across agencies.

(2) Each agency must upload application data to the Application Database at Tech-Net at least quarterly.

(3) The data in the applicant database is only viewable to authorized government officials and not shared publicly.

(4) Refer to Appendix V for detailed reporting requirements. The main data requirements for each Phase I and Phase II application include:

(i) Name, size, and location of the applicant, and the identifying number assigned;

(ii) Name, location, responsible officer, and type for the Research Institution in the proposal;

(iii) An abstract and specific aims of the project;

(iv) Name, title, contact information, and position in the small business of each key individual that will carry out the project;

(v) Percentage of effort each key individual identified will contribute to the project; and

(vi) Federal agency to which the application is made and contact information for the person responsible for reviewing applications and making awards under the program.

(5) The Applicant Information Database connects and cross-checks information with the Company Registry and government personnel can see connected data.

(f) *Award Information Database.*

(1) SBA will manage a database to collect information from the agencies on awards made within the STTR program across agencies.

(2) Each agency must update the Award Information Database quarterly, if not more frequently.

(3) Most of the data available on the Award Information Database is viewable and searchable by the public on Tech-Net.

(4) Refer to Appendix VI for detailed reporting requirements. The main data requirements for each Phase I and Phase II award include:

(i) Information similar to the Application Information Database—if not already collected;

(ii) Name, size, location and the identifying number assigned to the small business concern;

(iii) Name, location, responsible officer, and type for the Research Institution in the proposal;

(iv) An abstract and specific aims of the project;

(v) The name, title, contact information, and position in the small business of each key individual that will carry out the project;

(vi) The percentage of effort each key individual identified will contribute to the project;

(vii) The Federal agency making the award;

(viii) Award amount;

(ix) Principal investigator identifying information—including name, email address, and demographic information;

(x) More detailed information on location of company;

(xi) Whether the SBC or the Research Institution initiated their collaboration on each assisted STTR project;

(xii) Whether the SBC or the Research Institution originated any technology relating to the assisted STTR project;

(xiii) The length of time it took to negotiate any licensing agreement between the SBC and the Research Institution under each assisted STTR project;

(xiv) Whether the awardee:

(A) Has venture capital, hedge fund or private equity firm investment and if so, the amount of such investment received by SBC as of date of award and amount of additional capital awardee has invested in STTR technology;

(B) Is a WOSB or has a woman as a principal investigator;

(C) Is an SDB or has a socially and economically disadvantaged individual as a principal investigator;

(D) Is owned by a faculty member or a student of an institution of higher education as defined in 20 U.S.C. 1001); and

(E) Has received the award as a result of the Commercialization Program—Pilot Program for Civilian Agencies set forth in § 12(c) of the directive.

(xv) An identification of any business concern or subsidiary established for the commercial application of a product or service for which an SBIR or STTR award is made.

(5) The Award Information Database connects and cross-checks information with the Company Registry and Application Information Database, and government personnel can see connected data.

(g) *Commercialization Database.*

(1) The Commercialization Database will store information reported by awardees on the commercial activity resulting from their past STTR awards.

(2) SBA and STTR agencies will have two options to collect this information from SBCs. First, SBA may collect commercialization data directly from awardees into a central commercialization database. Alternatively, agencies may collect commercialization data from awardees, and then upload the data to the central commercialization database for real-time availability for SBA and other STTR agencies. The central commercialization database may be maintained by SBA or another Federal agency, as long as there is an interagency agreement addressing the database and stating, at a minimum, that all data in the database will be available in real-time to authorized Government personnel.

(3) STTR awardees are required to update this information on their prior Phase II awards in the Commercialization Database when submitting an application for an STTR Phase II award and upon completion of the last deliverable for that award.

(4) Commercialization data at the company level will not be shared publicly. Aggregated data that maintains the confidentiality of companies may be reported in compliance with the statute.

(5) Refer to Appendix VII for detailed reporting requirements. The main data requirements include for every Phase II award:

(i) Any business concern or subsidiary established for the commercial application of a product or service for which an STTR award is made;

(ii) Total revenue resulting from the sale of new products or services, or licensing agreements resulting from the research conducted under each Phase II award;

(iii) Additional investment received from any source, other than Phase I or Phase II awards, to further the research and development conducted under each Phase II award; and

(iv) How the proceeds from commercialization, marketing or sale of technology resulting from each STTR project were allocated (by percentage) between the SBC and the Research Institution;

(v) Any narrative information that a Phase II awardee voluntarily submits to further describe the commercialization efforts of its awards and related research;

(6) The SBC may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award. Companies are requested to update their records in this database on a voluntary basis for at least 5 years following the completion of award.

(7) Awardees will update their information and add project commercialization and sales data using their user names and passwords. SBA and STTR agencies will coordinate data collection to ensure that small businesses will not need to report the same data more than once.

(8) Note that the Award Information and Commercialization Databases will contain the data necessary for agencies to determine whether an applicant meets the agency's benchmarks for progress towards commercialization.

(h) *Annual Report.*

(1) Agencies must submit their report to SBA on an annual basis and will report for the period ending September 30 of each fiscal year. The report is due to SBA by March 15 of each year. For example, the report for FY 2012 (October 1, 2011–September 30, 2012) must be submitted to SBA by March 15, 2013.

(2) SBA will provide a template for the Annual Report via Tech-Net to agencies to populate with the required information. SBA reserves the right to add further detail to the annual report data and performance metrics via the template beyond the information provided below and the appropriate appendix.

(3) After agencies submit the annual report to SBA, SBA will also calculate the required data, if the supporting data for that calculation has already been submitted to SBA (*e.g.,* total STTR dollars obligated, the percentage of extramural budget allocated to STTR, number of awards exceeding the statutory thresholds). SBA will work with the agencies to resolve any data inconsistencies.

(4) The report must include the following:

(i) Agency total fiscal year, extramural R/R&D total obligations as reported to the National Science Foundation pursuant to the annual Budget of the United States Government.

(ii) STTR Program total fiscal year dollars derived by applying the statutory per centum to the agency's extramural R/R&D total obligations.

(iii) STTR Program fiscal year dollars obligated through STTR Program funding agreements for Phase I and Phase II.

(iv) STTR Program fiscal year dollars obligated and number of awards through STTR Program funding for Phase I and Phase II further analyzed by type of Research Institution.

(v) Number of topics and subtopics contained in each program solicitation.

(vi) Number of proposals received by the agency for each topic and subtopic in each program solicitation.

(vii) For all applicants and awardees in the applicable fiscal year—where applicable, the name and address, solicitation topic and subtopic, solicitation number, project title, total dollar amount of funding agreement, and applicable demographic information. The agency is not required to re-submit applicant and award information in the annual report that it has already reported to SBA through Tech-Net as required under Appendices IV, V, and VI.

(viii) Justification for the award of any funding agreement exceeding the award guidelines set forth in section 7(h) of this directive, the amount of each award exceeding the guidelines, the identity and location of the awardee, whether the awardee has received any venture capital, hedge fund, or private equity firm investment, and whether the awardee is majority-owned by a venture capital operating company, hedge fund or private equity firm.

(ix) Justification for awards made under a topic or subtopic where the agency received only one proposal. Agencies must also provide the awardee's name and address, the topic or subtopic, and the dollar amount of

award. Awardee information must be collected quarterly—in any case, but updated in the agency's annual reports.

(x) An accounting of Phase I awards made to SBCs that have received more than 15 Phase II awards from all agencies in the preceding 5 fiscal years. Each agency must report: Name of awardee; Phase I funding agreement number and date of award; Phase I topic or subtopic title; amount and date of previous Phase II funding; and commercialization status for each prior Phase II award.

(xi) All instances in which an agency pursued R/R&D, services, production, or any combination of a technology developed by an STTR awardee and determined that it was not practicable to enter into a follow-on funding agreement with non-STTR funds with that concern. See section 9(a)(12) for minimum reporting requirements.

(xii) The number and dollar value of each STTR and non-STTR award (includes grants, contracts and cooperative agreements as well as any award issued under the Commercialization Program) over $10,000 and compare the number and amount of SBIR awards with awards to other than SBCs.

(xiii) Information relating to the pilot to allow for funding of administrative, oversight, and contract processing costs, including the money spent on each activity and any other information required in the approved work plan to measure the benefits of using these funds for the specific activities—especially, as it pertains to the goals outlined in the work plan. See section 9(e)(3) concerning the Pilot to Allow for Funding of Administrative, Oversight, and Contract Processing Costs.

(xiv) An analysis of the various activities considered for inclusion in the Commercialization Program—Pilot Program for Civilian Agencies set forth in section 12(c) of the directive and a statement of the reasons why each activity considered was included or not included.

(xv) A description and the extent to which the agency is increasing outreach and awards to SDBs and WOSBs.

(xvi) General information about the implementation of and compliance with the allocation of funds for awardees that are majority-owned by multiple VCOCs, hedge funds or private equity firms.

(xvii) A detailed description of any appeals filed on Phase III awards pursuant to section 4(c)(8) of the directive and notices of noncompliance with the policy directive filed by SBA.

(xviii) Information relating to each Phase III award made by that agency either as a prime or subcontract, including the name of the business receiving the Phase III award, the dollar amount, and the awarding agency or prime contractor.

(xix) An accounting of funds, initiatives, and outcomes under the commercialization programs set forth in section 12(b) & (c) of this directive.

(xx) By October 13, 2013, and then subsequently in each annual report, information relating to the agency's enhancement of manufacturing activities, if the agency awards more than $50,000,000 under the SBIR and STTR Programs combined in a fiscal year. The report must include:

(A) A description of efforts undertaken by the agency to enhance U.S. manufacturing activities;

(B) A comprehensive description of the actions undertaken each year by the agency in carrying out the SBIR or STTR Programs to support Executive Order 13329 (relating to manufacturing);

(C) An assessment of the effectiveness of the actions taken at enhancing the R&D of U.S. manufacturing technologies and processes;

(D) A description of efforts by vendors selected to provide discretionary technical assistance to help SBIR and STTR business concerns manufacture in the U.S.; and

(E) Recommendations from the agency's SBIR and STTR program managers of additional actions to increase manufacturing activities in the U.S.

(5) Before the end of each fiscal year, each agency must submit a report to SBA on those SBCs that submitted an application and were found to not meet the agency's benchmarks with respect to progress towards commercialization. This report must include the name and employer identification number of the SBC, the closing date of the solicitation to which it proposed, and the agency that issued the solicitation.

(6) The annual report also includes the performance metrics information set forth in the next section, Performance Metrics and Standards.

(i) Performance Areas, Metrics and Goals

(1) As part of the agency's work plans, which are submitted pursuant to section 9(e) of the directive, SBA will set performance criteria. The performance criteria will measure each agency's accomplishments in meeting certain performance areas against the agency's goals. The Small Business Act establishes broad performance areas for the program, including commercialization, streamlining, outreach, etc. The metrics used to measure the agency's accomplishments in these performance areas will be set with input from the STTR agency. Agencies must report their progress on the performance criteria at the end of the fiscal year as part of their annual report.

(2) The metrics and performance areas will evolve over time and can be found at www.SBIR.gov. Examples of performance areas and metrics can be found at Appendix IX.

(j) Other Reporting Requirements

(1) SBA will set forth a list of reports that agencies are required by statute to submit, in a table format, which will be available at *www.SBIR.gov.*

(2) The system will include a list of any individual or small business concern that has received an STTR award that has been convicted of a fraud-related crime involving STTR funds or found civilly liable for a fraud-related violation involving STTR funds.

(3) Agencies must submit to SBA's Administrator, not later than 4 months after the date of enactment of its annual Appropriations Act, a report describing the methodology used for calculating the amount of its extramural budget. The report must also include an itemization of each research program excluded from the calculation of its extramural budget and a brief explanation of why it is excluded.

(4) Agencies must provide notice to SBA of any case or controversy before any Federal judicial or administrative tribunal concerning the STTR Program of the Federal agency. This does not include agency level protests of awards unless and until the protest is before a Federal court or administrative body. The agency must provide notice to SBA within 15 business days of the agency's written notification of the case or controversy.

(5) Agencies must provide notice of all instances in which an agency pursued research, development, production, or any such combination of a technology developed by an SBC using an award made under the STTR Program of that agency, where the agency determined that it was not practicable to enter into a follow-on non-STTR Program funding agreement with that concern. The agency must provide notice to SBA within 15 business days of the agency's award. The report must include, at a minimum:

(i) The reasons why the follow-on funding agreement with the concern was not practicable;

(ii) The identity of the entity with which the agency contracted to perform the research, development, or production; and

(iii) A description of the type of funding agreement under which the research, development, or production was obtained.

(6) Agencies must provide information supporting the agency's achievement of the Interagency Policy Committee's policy recommendations on ways to improve program effectiveness and efficiency. This includes qualitative and quantitative data as appropriate, which would measure the agency's progress. The agency must provide this information to SBA at the end of each fiscal year.

(7) Agencies must provide an annual report to SBA, Senate Committee on Small Business and Entrepreneurship, House Committee on Small Business, and the House Committee on Science, Space, and Technology on SBIR and STTR programs and the benefits of these programs to the United States. Prior to preparing the report, the agency shall develop metrics to evaluate the effectiveness and benefit to the United States of the SBIR and STTR programs. The metrics must be science-based and statistically driven, reflect the mission of the agency, and include factors relating to the economic impact of the programs. The report must describe in detail the agency's annual evaluation of the programs using these metrics. The final report must be posted online so it can be made available to the public.

(8) NIH, DoD and the Department of Education must provide the written determination to SBA anytime it issues a Phase II award to a small business concern that did not receive a Phase I award for that R/R&D. The determination must be submitted prior to award.

(9) SBA will compile data and report to Congress on the Federal and State Technology (FAST) Partnership Program, described in section 12 of this Policy Directive. If required by the FAST grant, the grantees will report a comprehensive list of the companies that received assistance under FAST and if those companies received SBIR or STTR awards and any information regarding mentors and Mentoring Networks, as required in the Federal and State Technology (FAST) Partnership Program.

(k) Further Clarification on Availability of SBC Information

(1) Unless stated otherwise, the information contained in the Company Registry Database, the Application Information Database, and the Commercialization Database are solely available to authorized government officials, with the approval of SBA. This includes Congress, GAO, agencies participating in the SBIR and the STTR Programs, Office of Management and Budget, OSTP, Office of Federal Procurement Policy, and other authorized persons who are subject to a nondisclosure agreement with the Federal Government covering the use of the databases. These databases are used for the purposes of evaluating and determining eligibility for the STTR Program, in accordance with Policy Directives issued by SBA. Pursuant to 15 U.S.C. § 638(k)(4), certain information provided to those databases are privileged and confidential and not subject to disclosure pursuant to 5 U.S.C. § 552 (Government Organization and Employees); nor must it be considered to be publication for purposes of 35 U.S.C. § 102(a) or (b).

Most of the information in the Award Information and Annual Reports Databases will be available to the public. Any information that will identify the confidential business information of a given small business concern will not be disclosed to the public. Those databases are available at Tech-Net and offer a vast array of user-friendly capabilities that are accessible by the public at no charge. The Award Information Database allows for the online submission of SBIR/STTR awards data from all STTR agencies. It also allows any end-user to perform keyword searches and create formatted reports of SBIR/STTR awards information, and for potential research partners to view research and development efforts that are ongoing in the SBIR and the STTR Programs, increasing the investment opportunities of the SBIR/STTR SBCs in the high tech arena.

(l) Waivers

(1) Agencies must request an extension for additional time between the solicitation closing date and notification of recommendation for award. SBA will respond to the request for an extension within 5 business days, as practicable. See section 7(c)(1) of the directive for further information.

(2) Agencies must request a waiver to exceed the award guidelines for Phase I and Phase II awards by more than 50% for a specific topic. See section 7(i)(4) of the directive for further information.

(3) Agencies must request a waiver to not use their SBIR funds, as part of the pilot allowing for the use of such funds for certain STTR-related costs, to attempt to increase participation by SDBs and WOSBs in the STTR Program, and small businesses in states with a historically low level of SBIR awards. See section 9(e)(3)(ii) of the directive for further information.

(4) Agencies must request a waiver to issue a funding agreement that includes a provision for subcontracting a portion of that agreement back to the issuing agency if there is no exception to this requirement in the directive. See section 9(e)(4) of the directive for further information.

11. Responsibilities of SBA

(a) *Policy.*

(1) SBA will establish policy and procedures for the program by publishing and updating the STTR Policy Directive and promulgating regulations. Policy clarification of any part or provision of the directive or regulations may be provided by SBA.

(2) It is essential that STTR agencies do not promulgate any policy, rule, regulation, or interpretation that is inconsistent with the Act, this Policy Directive, or SBA's regulations relating to the STTR Program. SBA's monitoring activity will include review of policies, rules, regulations, interpretations, and procedures generated to facilitate intra- and interagency STTR Program implementation.

(3) Waivers providing limited exceptions to certain policies can be found at section 10 of the directive.

(b) *Outreach.* SBA conducts outreach to achieve a number of objectives including:

(1) Educating the public about the STTR Program via conferences, seminars, and presentations;

(2) Highlighting the successes achieved in the program by publishing (via press releases and *www.SBIR.gov*) success stories, as well as hosting awards programs;

(3) Maintaining SBIR.gov, which is an online public information resource that provides comprehensive information regarding the STTR Program. This information includes: A listing of solicitation information on currently available STTR opportunities, award information on all Phase I and Phase II awards, summary annual award information for the whole program, and contact information for SBA and agency program managers.

(c) *Collection and publication of program-wide data.* SBA collects and maintains program-wide data within the Tech-Net data system. This data includes information on all Phase I and II awards from across all STTR agencies, as well as Fiscal Year Annual Report data. See section 10 of the directive for further information about reporting and data collection requirements.

(d) *Monitoring implementation of the program and annually reporting to Congress.*

SBA is responsible for providing oversight and monitoring the implementation of the STTR Program at the agency level. This monitoring includes:

(1) *STTR Funding Allocations.* The magnitude and source of each STTR agency's annual allocation reserved for STTR awards are critical to the success of the STTR Program. The Act defines the STTR effort (R/R&D), the source of the funds for financing the STTR Program (extramural budget), and the percentage of such funds to be reserved for the STTR Program. The Act requires that SBA monitor these annual allocations.

(2) *STTR Program Solicitation and Award Status.* The accomplishment of scheduled STTR events, such as STTR Program solicitation releases and the issuance of funding agreements is critical to meeting statutory mandates and to operating an effective, useful program. SBA monitors these and other operational features of the STTR Program and publishes information relating to notice of and application for awards under the STTR Program for each STTR agency at SBIR.Gov, or Tech-Net. SBA does not plan to monitor administration of the awards except in instances where SBA assistance is requested and is related to a specific STTR project or funding agreement.

(3) *Follow-on Funding Commitments.* SBA will monitor whether follow-on non-Federal funding commitments obtained by Phase II awardees for Phase III were considered in the evaluation of Phase II proposals as required by the Act.

(4) *Fraud, Waste, and Abuse (FWA).* SBA will ensure that each STTR agency has taken steps to maintain a FWA prevention system to minimize fraud, waste and abuse in the program.

(5) *Performance Areas, Metrics, and Goals.* SBA is responsible for defining performance areas consistent with statute (e.g., reducing timelines for award, simplification) against which agencies will set goals. SBA will work with the agencies to set metrics, in order to measure an agency's accomplishments of its goals against the defined performance areas. The purpose of these metrics and goals is to assist SBA in evaluating and reporting on the progress achieved by the agencies in improving the STTR Program. For further information on Performance Areas, Metrics and Goals see section 10(i).

(e) *Additional efforts to improve the performance of the program.* SBA, in its continuing effort to improve the program, will make recommendations for improvement within the framework of the Program Managers' meetings. This may include recommending a ''best practice'' currently being utilized by an agency or business, or open discussion and feedback on a potential ''best practice'' for agency adoption. This may also involve program-wide initiatives.

(f) *Other.*

(1) *Federal and State Technology Partnership (FAST) Program.* SBA coordinates the FAST program. SBA develops the solicitation, reviews proposals, and oversees grant awards. FAST provides awardees with funding to assist in outreach, proposal preparation, and other technical assistance to developing innovation oriented SBCs.

(2) *Critical Technologies.* SBA will annually obtain available information on the current critical technologies from the National Critical Technologies panel (or its successor) and the Secretary of Defense and provide such information to the STTR agencies. SBA will request this information in June of each year. The data received will be submitted to each of the STTR agencies and will also be published in the September issue of the STTR Pre-Solicitation Announcement.

12. Supporting Programs and Initiatives

(a) *Federal and State Technology Partnership Program.* The purpose of the FAST Program is to strengthen the technological competitiveness of SBCs in the United States. Congress found that programs that foster economic development among small high-technology firms vary widely among the States. Thus, the purpose of the FAST Program is to improve the participation of small technology firms in the innovation and commercialization of new technology, thereby ensuring that the United States remains on the cutting-edge of research and development in the highly competitive arena of science and technology. SBA administers the FAST Program. Additional and detailed information regarding this program is available at *www.SBIR.gov*.

(b) *Commercialization Readiness Program—DoD*

(1) *General.* The Secretary of Defense and the Secretary of each military department is authorized to create and administer a ''Commercialization Readiness Program'' to accelerate the transition of technologies, products, and services developed under the SBIR or STTR Program to Phase III, including the acquisition process. The authority to create this Commercialization Readiness Program does not eliminate or replace any other SBIR or STTR program that enhances the insertion or transition of SBIR or STTR technologies. This includes any program in effect as of December 31, 2011.

(2) *Identification of research programs for accelerated transition to acquisition process.* The Secretary of each military department must identify research programs of the STTR Program that have the potential for rapid transitioning to Phase III and into the acquisition process and certify in writing that the successful transition of the program to Phase III and into the acquisition process is expected to meet high priority military requirements of such military department.

(3) *Limitation.* The Secretary of Defense shall identify research programs of the STTR Program that have the potential for rapid transitioning to Phase III and into the acquisition process after receiving this certification from each military department.

(4) *Funding.*

(i) Beginning with FY 2013 and ending in FY 2015, the Secretary of Defense and each Secretary of a military department is authorized to use its SBIR funds for administration of this program in accordance with the procedures and policies set forth in 9(e)(3) of this directive.

(ii) Beginning with FY 2016, the Secretary of Defense and Secretary of each military department is only authorized to use not more than an amount equal to 1% of its SBIR funds available to DoD or the military departments for payment of expenses incurred to administer the Commercialization Program. In accordance with the procedures and policies set forth in 9(e)(3) of this directive, these funds will be taken from the 3% administrative set-aside if the pilot program is extended. Such funds—

(A) Shall not be subject to the limitations on the use of funds in 9(e)(2) of this directive; and

(B) Shall not be used to make Phase III awards.

(5) *Contracts Valued at less than $1,000,000,000.* For any contract awarded by DoD valued at less than $1,000,000,000, the Secretary of Defense may:

(i) Establish goals for the transition of Phase III technologies in subcontracting plans; and

(ii) Require a prime contractor on such a contract to report the number and dollar amount of the contracts entered into by the prime contractor for Phase III STTR projects.

(6) The Secretary of Defense shall:

(i) Set a goal to increase the number of STTR Phase II contracts that lead to technology transition into programs of record of fielded systems;

(ii) Use incentives in effect as of December 31, 2011 or create new incentives to encourage agency program managers and prime contractors to meet the goal set forth in paragraph (6)(i) above; and

(iii) Submit the following to SBA, as part of the annual report:

(A) The number and percentage of Phase II STTR contracts awarded by DoD that led to technology transition into programs of record or fielded systems;

(B) Information on the status of each project that received funding through the Commercialization Program and the efforts to transition these projects into programs of record or fielded systems; and

(C) A description of each incentive that has been used by DoD and the effectiveness of the incentive with respect to meeting DoD's goal to increase the number of STTR Phase II contracts that lead to technology transition into programs of record of fielded systems.

(c) *Commercialization Program—Pilot Program for Civilian Agencies.*

(1) *General.* The Commercialization Readiness Pilot Program permits the head of any Federal agency participating in the SBIR Program (except DoD) to allocate not more than 10% of its funds allocated to the SBIR and the STTR Program—

(i) For follow-on awards to small businesses for technology development, testing, evaluation, and commercialization assistance for SBIR and STTR Phase II technologies; or

(ii) For awards to small businesses to support the progress of research, research and development, and commercialization conducted under the SBIR or STTR programs to Phase III.

(2) *Application to SBA.* Before establishing this pilot program, the agency must submit a written application to SBA not later than 90 days before the first day of the fiscal year in which the pilot program is to be established. The written application must set forth a compelling reason that additional investment in SBIR or STTR technologies is necessary, including unusually high regulatory, systems integration, or other costs relating to development or manufacturing of identifiable, highly promising small business technologies or a class of such technologies expected to substantially advance the mission of the agency.

(3) *SBA's Determination.* SBA must make its determination regarding an application submitted under paragraph (2) above not later than 30 days before the first day of the fiscal year for which the application is submitted. SBA must also publish its determination in the **Federal Register** and make a copy of the determination and any related materials available to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives.

(4) *Maximum Amount of Award.* The STTR agency may not make an award to a small business concern under this pilot program in excess of 3 times the dollar amounts generally established for Phase II awards under section 7(i)(1) of this directive.

(5) *Registration.* Any small business concern that receives an award under this pilot program shall register with the SBA in the Company Registry Database.

(6) *Award Criteria or Consideration.* When making an award under this pilot program, the agency is required to consider whether the technology to be supported by the award is likely to be manufactured in the United States.

(7) *Termination of Authority.* The authority to establish a pilot program under this section expires on September 30, 2017, unless otherwise extended.

(d) *Phase 0 Proof of Concept Partnership Pilot Program.*

(1) *General.* The Director of the National Institutes of Health (NIH) may use $5,000,000 of the funds allocated for the STTR Program set forth in section 2(b) of this directive for a Proof of Concept Partnership Pilot Program to accelerate the creation of small businesses and the commercialization of research innovations from qualifying institutions. A qualifying institution is a university or other Research Institution that participates in the NIH's STTR program. The Director shall award, through a competitive, merit-based process, grants to qualifying institutions in order to implement this program. These grants shall only be used to administer Proof of Concept Partnership awards.

(2) *Awards to Qualifying Institutions.*

(i) The Director may make awards to a qualifying institution for up to $1,000,000 per year for up to 3 years.

(ii) In determining which qualifying institutions will receive pilot program grants, the Director of NIH shall consider, in addition to any other criteria the Director determines necessary, the extent to which qualifying institutions—

(A) Have an established and proven technology transfer or commercialization office and have a plan for engaging that office in the program's implementation;

(B) Have demonstrated a commitment to local and regional economic development;

(C) Are located in diverse geographies and are of diverse sizes;

(D) Can assemble project management boards comprised of industry, start-up, venture capital, technical, financial, and business experts;

(E) Have an intellectual property rights strategy or office; and

(F) Demonstrate a plan for sustainability beyond the duration of the funding award.

(3) *Proof of Concept Partnerships.* A qualifying institution selected by NIH shall establish a Proof of Concept Partnership with NIH to award grants to individual researchers. These grants should provide researchers with the initial investment and the resources to support the proof of concept work and commercialization mentoring needed to translate promising research projects and technologies into a viable company. This work may include technical validations, market research, clarifying intellectual property rights position and strategy, and investigating commercial or business opportunities.

(4) *Award Guidelines for Small Businesses.* The administrator of a Proof of Concept Partnership program shall award grants in accordance with the following guidelines:

(i) The Proof of Concept Partnership shall use a market-focused project management oversight process, including—

(A) A rigorous, diverse review board comprised of local experts in translational and proof of concept research, including industry, start-up, venture capital, technical, financial, and business experts and university technology transfer officials;

(B) Technology validation milestones focused on market feasibility;

(C) Simple reporting effective at redirecting projects; and

(D) The willingness to reallocate funding from failing projects to those with more potential.

(ii) The Proof of Concept Partnership shall not award more than $100,000 towards an individual proposal.

(5) *Educational Resources and Guidance.* The administrator of a Proof of Concept Partnership program shall make educational resources and guidance available to researchers attempting to commercialize their innovations.

(6) *Limitations.*

(i) The funds for the pilot program shall not be used for basic research or to fund the acquisition of research equipment or supplies unrelated to commercialization activities.

(ii) The funds for the pilot program can be used to evaluate the commercial potential of existing discoveries, including proof of concept research or prototype development; and activities that contribute to determining a project's commercialization path, to include technical validations, market research, clarifying intellectual property rights, and investigating commercial and business opportunities.

(7) *Termination of Authority.* The pilot program under this subsection shall terminate on September 30, 2017, unless otherwise extended.

Appendix I: Instructions for STTR Program Solicitation Preparation

a. *General.* Section 9(p) of the Small Business Act (15 U.S.C. 638(p)) requires ''* * * simplified, standardized and timely STTR solicitations'' and for STTR agencies to utilize a ''uniform process'' minimizing the regulatory burden of participation. Therefore, the following instructions purposely depart from normal Government solicitation formats and requirements. STTR solicitations must be prepared and issued as program solicitations in accordance with the following instructions.

b. *Limitation in Size of Solicitation.* In the interest of meeting the requirement for simplified and standardized solicitations, while also recognizing that the Internet has become the main vehicle for distribution, each agency should structure its entire STTR solicitation to produce the least number of pages (electronic and printed), consistent with the procurement/assistance standing operating procedures and statutory requirements of the participating Federal agencies.

c. *Format.* STTR Program solicitations must be prepared in a simple, standardized, easy-to-read, and easy-to-understand format. It must include a cover sheet, a table of contents, and the following sections in the order listed.

1. Program Description
2. Certifications
3. Proposal Preparation Instructions and Requirements
4. Method of Selection and Evaluation Criteria
5. Considerations
6. Submission of Proposals
7. Scientific and Technical Information Sources
8. Submission Forms and Certifications
9. Research Topics

d. *Cover Sheet.*

The cover sheet of an STTR Program solicitation must clearly identify the solicitation as an STTR solicitation, identify the agency releasing the solicitation, specify date(s) on which contract proposals or grant applications (proposals) are due under the solicitation, and state the solicitation number or year.

Instructions for Preparation of STTR Program Solicitation

Sections 1 Through 9

1. *Program Description.*

(a) Summarize in narrative form the invitation to submit proposals and the objectives of the STTR Program.

(b) Describe in narrative form the agency's STTR Program, including a description of the three phases. Note in your description whether the solicitation is for Phase I or Phase II proposals. Also note in each solicitation for Phase I that all awardees may apply for a Phase II award and provide guidance on the procedure for doing so.

(c) Describe program eligibility:

(d) List the name, address and telephone number of agency contacts for general information on the STTR Program solicitation.

(e) Whenever terms are used that are unique to the STTR Program, a specific STTR solicitation or a portion of a solicitation, define them or refer them to a source for the definition. At a minimum, the definitions of ''funding agreement,'' ''R/R&D,'' ''SBC,'' ''STTR technical data,'' and STTR technical data rights'' must be included.

(f) Include information explaining how an individual can report fraud, waste and abuse (*e.g.* include the fraud hotline for the agency's Office of Inspector General);

2. *Certifications.*

(a) This section must include certifying forms required by legislation, regulation or standing operating procedures, to be submitted by the applicant to the contracting or granting agency. This would include certifying forms such as those for the protection of human and animal subjects.

(b) This section must include any certifications required concerning size, ownership and other STTR Program requirements.

(i) The agency must require any SBC that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms to submit the following certification with its STTR application:

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Certification for Applicants that are Majority-Owned by Multiple Venture Capital Operating Companies, Hedge Fund or Private Equity Firms

Any small businesses that is majority-owned by multiple venture operating companies (VCOCs), hedge funds or private equity firms and are submitting an application for and STTR funding agreement must complete this certification prior to submitting an application. This includes checking all of the boxes and having an authorized officer of the applicant sign and date the certification each time it is requested.

Please read carefully the following certification statements. The Federal government relies on the information to determine whether the business is eligible for a Small Business Technology Transfer (STTR) Program award and meets the specific program requirements during the life of the funding agreement. The definitions for the terms used in this certification are set forth in the Small Business Act, SBA regulations (13 C.F.R. Part 121), the STTR Policy Directive and also any statutory and regulatory provisions referenced in those authorities.

If the funding agreement officer believes that the business may not meet certain eligibility requirements at the time of award, they are required to file a size protest with the U.S. Small Business Administration (SBA), who will determine eligibility. At that time, SBA will request further clarification and supporting documentation in order to assist in the verification of any of the information provided as part of a protest. If the funding agreement officer believes, after award, that the business is not meeting certain funding agreement requirements, the agency may request further clarification and supporting documentation in order to assist in the verification of any of the information provided.

Even if correct information has been included in other materials submitted to the Federal government, any action taken with respect to this certification does not affect the Government's right to pursue criminal, civil or administrative remedies for incorrect or incomplete information given in the certification, each person signing this certification may be prosecuted if they have provided false information.

The undersigned has reviewed, verified and certifies that (all boxes must be checked):

(1) The applicant is NOT more than 50% owned by a single VCOC, hedge fund or private equity firm.

☐Yes ☐No

(2) The applicant is more than 50% owned by multiple domestic business concerns that are VCOCs, hedge funds, or private equity firms.

☐Yes ☐No

(3) I have registered with SBA at www.SBIR.gov as a business that is majority-owned by multiple VCOCs, hedge funds or private equity firms.

☐Yes ☐No

☐ I understand that the information submitted may be given to Federal, State and local agencies for determining violations of law and other purposes.

☐ All the statements and information provided in this form and any documents submitted are true, accurate and complete. If assistance was obtained in completing this form and the supporting documentation, I have personally reviewed the information and it is true and accurate. I understand that, in general, these statements are made for the purpose of determining eligibility for an STTR funding agreement and continuing eligibility.

☐ I understand that the certifications in this document are continuing in nature. Each STTR funding agreement for which the small business submits an offer or application or receives an award constitutes a restatement and reaffirmation of these certifications.

☐ I understand that I may not misrepresent status as small business to: 1) obtain a contract under the Small Business Act; or 2) obtain any benefit under a provision of Federal law that references the STTR Program.

☐ I am an **officer** of the business concern authorized to represent it and sign this certification on its behalf. By signing this certification, I am representing on my own behalf, and on behalf of the STTR applicant or awardee, that the information provided in this certification, the application, and all other information submitted in connection with this application, is true and correct as of the date of submission. I acknowledge that any intentional or negligent misrepresentation of the information contained in this certification may result in criminal, civil or administrative sanctions, including but not limited to: (1) fines, restitution and/or imprisonment under 18 U.S.C. §1001; (2) treble damages and civil penalties under the False Claims Act (31 U.S.C. §3729 et seq.); (3) double damages and civil penalties under the Program Fraud Civil Remedies Act (31 U.S.C. §3801 et seq.); (4) civil recovery of award funds, (5) suspension and/or debarment from all Federal procurement and nonprocurement transactions (FAR Subpart 9.4 or 2 C.F.R. part 180); and (5) other administrative penalties including termination of SBIR/STTR awards.

Signature	***Date__/__/__***
Print Name (First, Middle, Last)	
Title	
Business Name	

(ii) The agency may request the STTR applicant to submit a certification at the time of submission of the application or offer. The certification may require the applicant to state that it intends to meet the size, ownership and other requirements of the STTR Program at the time of award of the funding agreement, if selected for award.

(iii) The agency must request the STTR applicant to submit a certification at the time of award and at any other time set forth in SBA's regulations at 13 CFR §§ 121.701–121.705. The certification will require the applicant to state that it meets the size, ownership and other requirements of the STTR Program at the time of award of the funding agreement.

(iv) The agency must request the STTR awardee to submit certifications during funding agreement life cycle. A Phase I funding agreement must state

that the awardee shall submit a new certification as to whether it qualifies as a SBC and that it is in compliance with specific STTR Program requirements at the time of final payment or disbursement. A Phase II funding agreement must state that the awardee shall submit a new certification as to whether it qualifies as a SBC and that it is in compliance with specific STTR Program requirements prior to receiving more than 50% of the total award amount and prior to final payment or disbursement.

(v) Agencies may require additional certifications at other points in time during the life cycle of the funding agreement, such as at the time of each payment or disbursement.

(c) The agency must use the following certification at the time of award and upon notification by SBA, must check www.SBIR.gov for updated certifications prepared by SBA:

STTR Funding Agreement Certification

All small businesses that are selected for award of an STTR funding agreement must complete this certification at the time of award and any other time set forth in the funding agreement that is prior to performance of work under this award. This includes checking all of the boxes and having an authorized officer of the awardee sign and date the certification each time it is requested.

Please read carefully the following certification statements. The Federal government relies on the information to determine whether the business is eligible for a Small Business Technology Transfer (STTR) Program award. A similar certification will be used to ensure continued compliance with specific program requirements during the life of the funding agreement. The definitions for the terms used in this certification are set forth in the Small Business Act, SBA regulations (13 C.F.R. Part 121), the STTR Policy Directive and also any statutory and regulatory provisions referenced in those authorities.

If the funding agreement officer believes that the business may not meet certain eligibility requirements at the time of award, they are required to file a size protest with the U.S. Small Business Administration (SBA), who will determine eligibility. At that time, SBA will request further clarification and supporting documentation in order to assist in the verification of any of the information provided as part of a protest. If the funding agreement officer believes, after award, that the business is not meeting certain funding agreement requirements, the agency may request further clarification and supporting documentation in order to assist in the verification of any of the information provided.

Even if correct information has been included in other materials submitted to the Federal government, any action taken with respect to this certification does not affect the Government's right to pursue criminal, civil or administrative remedies for incorrect or incomplete information given in the certification. Each person signing this certification may be prosecuted if they have provided false information.

The undersigned has reviewed, verified and certifies that (all boxes must be checked):

(1) The business concern meets the ownership and control requirements set forth in 13 C.F.R. §121.702.

☐Yes ☐No

(2) If a corporation, all corporate documents (articles of incorporation and any amendments, articles of conversion, by-laws and amendments, shareholder meeting minutes showing director elections, shareholder meeting minutes showing officer elections, organizational meeting minutes, all issued stock certificates, stock ledger, buy-sell agreements, stock transfer agreements, voting agreements, and documents relating to

stock options, including the right to convert non-voting stock or debentures into voting stock) evidence that it meets the ownership and control requirements set forth in 13 C.F.R. §121.702.

☐Yes ☐No ☐N/A Explain why N/A:_____

(3) If a partnership, the partnership agreement evidences that it meets the ownership and control requirements set forth in 13 C.F.R. §121.702.

☐Yes ☐No ☐N/A Explain why N/A:_____

(4) If a limited liability company, the articles of organization and any amendments, and operating agreement and amendments, evidence that it meets the ownership and control requirements set forth in 13 C.F.R. §121.702.

☐Yes ☐No ☐N/A Explain why N/A:_____

(5) The birth certificates, naturalization papers, or passports show that any individuals it relies upon to meet the eligibility requirements are U.S. citizens or permanent resident aliens in the United States.

☐Yes ☐No ☐N/A Explain why N/A:_____

(6) It has no more than 500 employees, including the employees of its affiliates.

☐Yes ☐No

(7) SBA has not issued a size determination currently in effect finding that this business concern exceeds the 500 employee size standard.

☐Yes ☐No

(8) During the performance of the award, the principal investigator will spend more than one half of his/her time as an employee of the awardee or has requested and received a written deviation from this requirement from the funding agreement officer.

☐Yes ☐No ☐Deviation approved in writing by funding agreement officer: %

(9) All, essentially equivalent work, or a portion of the work proposed under this project (check the applicable line):

☐ **Has not** been submitted for funding by another Federal agency.

☐ **Has** been submitted for funding by another Federal agency **but has not** been funded under any other Federal grant, contract, subcontract or other transaction.

☐A portion has been funded by another grant, contract, or subcontract as described in detail in the proposal and approved in writing by the funding agreement officer.

(10) During the performance of award, it will perform the applicable percentage of work unless a deviation from this requirement is approved in writing by the funding agreement officer (check the applicable line and fill in if needed):

☐ STTR Phase I: at least forty percent (40%) of the research.

☐ STTR Phase II: at least forty percent (40%) of the research.

☐ Deviation approved in writing by the funding agreement officer: _%

(11) During performance of award, the research/research and development will be performed in the United States unless a deviation is approved in writing by the funding agreement officer.

☐Yes ☐No ☐Waiver has been granted

(12) During performance of award, the research/research and development will be performed at my facilities with my employees, except as otherwise indicated in the STTR application and approved in the funding agreement.

☐Yes ☐No

(13) It has registered itself on SBA's database as majority-owned by venture capital operating companies, hedge funds or private equity firms.

☐Yes ☐No ☐N/A Explain why N/A:_____

(14) The small business concern has provided satisfactory evidence that it will exercise management direction and control of the performance of the STTR funding agreement.

Yes ☐ No ☐

☐ I will notify the Federal agency immediately if all or a portion of the work proposed is subsequently funded by another Federal agency.

☐ I understand that the information submitted may be given to Federal, State and local agencies for determining violations of law and other purposes.

☐ I am an **officer** of the business concern authorized to represent it and sign this certification on its behalf. By signing this certification, I am representing on my own behalf, and on behalf of the business concern, that the information provided in this certification, the application, and all other information submitted in connection with this application, is true and correct as of the date of submission. I acknowledge that any intentional or negligent misrepresentation of the information contained in this certification may result in criminal, civil or administrative sanctions, including but not limited to: (1) fines, restitution and/or imprisonment under 18 U.S.C. §1001; (2) treble damages and civil penalties under the False Claims Act (31 U.S.C. §3729 et seq.); (3) double damages and civil penalties under the Program Fraud Civil Remedies Act (31 U.S.C. §3801 et seq.); (4) civil recovery of award funds, (5) suspension and/or debarment from all Federal procurement and nonprocurement transactions (FAR Subpart 9.4 or 2 C.F.R. part 180); and (6) other administrative penalties including termination of SBIR/STTR awards.

Signature	***Date__/__/__***
Print Name (First, Middle, Last)	
Title	
Business Name	

(d) The agency must use the following certification during the lifecycle of the funding agreement in accordance with subsection 8(h) of the directive and paragraph 2(b)(iv) of this Appendix and upon notification by SBA, must check www.SBIR.gov for updated certifications prepared by SBA:

STTR Funding Agreement Certification –Life Cycle Certification

All STTR Phase I and Phase II awardees must complete this certification at all times set forth in the funding agreement (see §8(h) of the STTR Policy Directive). This includes checking all of the boxes and having an authorized officer of the awardee sign and date the certification each time it is requested.

Please read carefully the following certification statements. The Federal government relies on the information to ensure compliance with specific program requirements during the life of the funding agreement. The definitions for the terms used in this certification are set forth in the Small Business Act, the STTR Policy Directive, and also any statutory and regulatory provisions referenced in those authorities.

If the funding agreement officer believes that the business is not meeting certain funding agreement requirements, the agency may request further clarification and supporting documentation in order to assist in the verification of any of the information provided.

Even if correct information has been included in other materials submitted to the Federal government, any action taken with respect to this certification does not affect the Government's right to pursue criminal, civil or administrative remedies for incorrect or incomplete information given in the certification. Each person signing this certification may be prosecuted if they have provided false information.

The undersigned has reviewed, verified and certifies that (all boxes must be checked):

(1) The principal investigator spent more than one half of his/her time as an employee of the awardee or the awardee has requested and received a written deviation from this requirement from the funding agreement officer.

☐Yes ☐No ☐Deviation approved in writing by funding agreement officer: _____%

(2) All, essentially equivalent work, or a portion of the work performed under this project (check the applicable line):

☐ **Has not** been submitted for funding by another Federal agency.

☐ **Has** been submitted for funding by another Federal agency **but has not** been funded under any other Federal grant, contract, subcontract or other transaction.

☐ A portion has been funded by another grant, contract, or subcontract as described in detail in the proposal and approved in writing by the funding agreement officer.

(3) Upon completion of the award it will have performed the applicable percentage of work, unless a deviation from this requirement is approved in writing by the funding agreement officer (check the applicable line and fill in if needed):

☐ STTR Phase I: at least forty percent (40%) of the research.
☐ STTR Phase II: at least forty percent (40%) of the research.
☐ Deviation approved in writing by the funding agreement officer: _%
(4) The small business concern, and not the single, partnering Research Institution, is exercising management direction and control of the performance of the STTR funding agreement.
Yes ☐ No ☐
(5) The work is completed and it has performed the applicable percentage of work, unless a deviation from this requirement is approved in writing by the funding agreement officer (check the applicable line and fill in if needed):
☐ STTR Phase I: at least forty percent (40%) of the research.
☐ STTR Phase II: at least forty percent (40%) of the research.
☐ Deviation approved in writing by the funding agreement officer: _%
☐ N/A because work is not completed
(6) The research/research and development is performed in the United States unless a deviation is approved in writing by the funding agreement officer.
☐Yes ☐No ☐Waiver has been granted
(7) The research/research and development is performed at my facilities with my employees, except as otherwise indicated in the STTR application and approved in the funding agreement.
☐Yes ☐No
☐ I will notify the Federal agency immediately if all or a portion of the work proposed is subsequently funded by another Federal agency.
☐ I understand that the information submitted may be given to Federal, State and local agencies for determining violations of law and other purposes.
☐ I am an officer of the business concern authorized to represent it and sign this certification on its behalf. By signing this certification, I am representing on my own behalf, and on behalf of the business concern, that the information provided in this certification, the application, and all other information submitted in connection with the award, is true and correct as of the date of submission. I acknowledge that any intentional or negligent misrepresentation of the information contained in this certification may result in criminal, civil or administrative sanctions, including but not limited to: (1) fines, restitution and/or imprisonment under 18 U.S.C. §1001; (2) treble damages and civil penalties under the False Claims Act (31 U.S.C. §3729 et seq.); (3) double damages and civil penalties under the Program Fraud Civil Remedies Act (31 U.S.C. §3801 et seq.); (4) civil recovery of award funds, (5) suspension and/or debarment from all Federal procurement and nonprocurement transactions (FAR Subpart 9.4 or 2 C.F.R. part 180); and (6) other administrative penalties including termination of SBIR/STTR awards.

Signature	***Date__/__/__***
Print Name (First, Middle, Last)	
Title	
Business Name	

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3. *Proposal Preparation Instructions and Requirements.* The purpose of this section is to inform the applicant on what to include in the proposal and to

set forth limits on what may be included. This section of the proposal should also provide guidance to assist applicants, particularly those that may not have previous Government experience, in improving the quality and acceptance of proposals.

(a) *Limitations on Length of Proposal.* Include at least the following information:

(1) STTR Phase I proposals must not exceed a total of 25 pages, including cover page, budget, and all enclosures or attachments, unless stated otherwise in the agency solicitation. Pages should be of standard size (8½ inches by 11 inches or 21.6 centimeters by 27.9 centimeters) and should conform to the standard formatting instructions. Margins should be 1 inch or 2.6 centimeters and type at least 10 point font.

(2) A notice that no additional attachments, appendices, or references beyond the 25-page limitation shall be considered in proposal evaluation (unless specifically solicited by an agency) and that proposals in excess of the page limitation shall not be considered for review or award.

(b) *Proposal Cover Sheet.* Every applicant is required to provide a copy of its registration information printed from the Company Registry unless the information can be transmitted automatically to STTR agencies. Each applicant must also include at least the following information on the first page of proposals.

(1) Agency and solicitation number or year.

(2) Topic Number or Letter.

(3) Subtopic Number or Letter.

(4) Topic Area.

(5) Project Title.

(6) Name and Complete Address of Firm.

(7) Disclosure permission (by statement or checkbox), such as follows, must be included at the discretion of the funding agency:

''Will you permit the Government to disclose the name, address, and telephone number of the corporate official of your concern, if your proposal does not result in an award, to appropriate local and State-level economic development organizations that may be interested in contacting you for further information? Yes— No—''

(8) Signature of a company official of the proposing SBC and that individual's typed name, title, address, telephone number, and date of signature.

(9) Signature of Principal Investigator or Project Manager within the proposing SBC and that individual's typed name, title, address, telephone number, and date of signature.

(10) Legend for proprietary information as described in the ''Considerations'' section of this program solicitation if appropriate. It may also be noted by asterisks in the margins on proposal pages.

(c) *Data Collection Requirement.*

(1) Each Phase I and Phase II applicant is required to provide information for SBA's database (*www.sbir.gov*). The following are examples of the data to be entered by applicants into the database:

(i) Any business concern or subsidiary established for the commercial application of a product or service for which an STTR award is made.

(ii) Revenue from the sale of new products or services resulting from the research conducted under each Phase II award;

(iii) Additional investment from any source, other than Phase I or Phase II awards, to further the research and development conducted under each Phase II award.

(iv) Update the information in the database for any prior Phase II award received by the SBC. The SBC may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award.

(2) Each Phase II awardee is required to update the appropriate information on the award in the database upon completion of the last deliverable under the funding agreement and is requested to voluntarily update the information in the database annually thereafter for a minimum period of 5 years.

(d) *Abstract or Summary.* Applicants will be required to include a one-page project summary of the proposed R/R&D including at least the following:

(1) Name and address of SBC.

(2) Name and title of principal investigator or project manager.

(3) Agency name, solicitation number, solicitation topic, and subtopic.

(4) Title of project.

(5) Technical abstract limited to two hundred words.

(6) Summary of the anticipated results and implications of the approach (both Phases I and II) and the potential commercial applications of the research.

(e) *Technical Content.* STTR Program solicitations must require as a minimum the following to be included in proposals submitted thereunder:

(1) *Identification and Significance of the Problem or Opportunity.* A clear statement of the specific technical problem or opportunity addressed.

(2) *Phase I Technical Objectives.* State the specific objectives of the Phase I research and development effort, including the technical questions it will try to answer to determine the feasibility of the proposed approach.

(3) *Phase I Work Plan.* Include a detailed description of the Phase I R/R&D plan. The plan should indicate what will be done, where it will be done, and how the R/R&D will be carried out. Phase I R/R&D should address the objectives and the questions cited in (e)(2) immediately above. The methods planned to achieve each objective or task should be discussed in detail.

(4) *Related R/R&D.* Describe significant R/R&D that is directly related to the proposal including any conducted by the project manager/principal investigator or by the proposing SBC. Describe how it relates to the proposed effort, and any planned coordination with outside sources. The applicant must persuade reviewers of his or her awareness of key, recent R/R&D conducted by others in the specific topic area.

(5) *Key Individuals and Bibliography of Directly Related Work.* Identify key individuals involved in Phase I including their directly-related education, experience, and bibliographic information. Where vitae are extensive, summaries that focus on the most relevant experience or publications are desired and may be necessary to meet proposal size limitation.

(6) *Relationship with Future R/R&D.*

(i) State the anticipated results of the proposed approach if the project is successful (Phase I and II).

(ii) Discuss the significance of the Phase I effort in providing a foundation for the Phase II R/R&D effort.

(7) *Facilities.* A detailed description, availability and location of instrumentation and physical facilities proposed for Phase I should be provided.

(8) *Consultants.* Involvement of consultants in the planning and research stages of the project is permitted. If such involvement is intended, it should be described in detail.

(9) *Potential Post Applications.* Briefly describe:

(i) Whether and by what means the proposed project appears to have potential commercial application.

(ii) Whether and by what means the proposed project appears to have potential use by the Federal Government.

(10) *Similar Proposals or Awards.* WARNING—While it is permissible with proposal notification to submit identical proposals or proposals containing a significant amount of

essentially equivalent work for consideration under numerous Federal program solicitations, it is unlawful to enter into funding agreements requiring essentially equivalent work. If there is any question concerning this, it must be disclosed to the soliciting agency or agencies before award. If an applicant elects to submit identical proposals or proposals containing a significant amount of essentially equivalent work under other Federal program solicitations, a statement must be included in each such proposal indicating:

(i) The name and address of the agencies to which proposals were submitted or from which awards were received.

(ii) Date of proposal submission or date of award.

(iii) Title, number, and date of solicitations under which proposals were submitted or awards received.

(iv) The specific applicable research topics for each proposal submitted or award received.

(v) Titles of research projects.

(vi) Name and title of principal investigator or project manager for each proposal submitted or award received.

(11) Prior STTR Phase II Awards. If the SBC has received more than 15 Phase II awards in the prior 5 fiscal years, the SBC must submit in its Phase I proposal: name of the awarding agency; date of award; funding agreement number; amount of award; topic or subtopic title; follow-on agreement amount; source and date of commitment; and current commercialization status for each Phase II award. (This required proposal information will not be counted toward the proposal pages limitation.)

(f) *Cost Breakdown/Proposed Budget.* The solicitation will require the submission of simplified cost or budget data.

4. *Method of Selection and Evaluation Criteria.*

(a) *Standard Statement.* Essentially the following statement must be included in all STTR Program solicitations:

''All Phase I and II proposals will be evaluated and judged on a competitive basis. Proposals will be initially screened to determine responsiveness. Proposals passing this initial screening will be technically evaluated by engineers or scientists to determine the most promising technical and scientific approaches. Each proposal will be judged on its own merit. The Agency is under no obligation to fund any proposal or any specific number of proposals in a given topic. It also may elect to fund several or none of the proposed approaches to the same topic or subtopic.''

(b) *Evaluation Criteria.*

(1) The STTR agency must develop a standardized method in its evaluation process that will consider, at a minimum, the following factors:

(i) The technical approach and the anticipated agency and commercial benefits that may be derived from the research.

(ii) The adequacy of the proposed effort and its relationship to the fulfillment of requirements of the research topic or subtopics.

(iii) The soundness and technical merit of the proposed approach and its incremental progress toward topic or subtopic solution.

(iv) Qualifications of the proposed principal/key investigators, supporting staff, and consultants.

(v) Evaluations of proposals require, among other things, consideration of a proposal's commercial potential as evidenced by:

(A) The SBC's record of commercializing STTR or other research;

(B) The existence of second phase funding commitments from private sector or non-STTR funding sources;

(C) The existence of third phase follow-on commitments for the subject of the research; and

(D) The presence of other indicators of the commercial potential of the idea.

(2) The factors in (b)(1) above and other appropriate evaluation criteria, if any, must be specified in the ''Method of Selection'' section of STTR Program solicitations.

(c) *Peer Review.* The program solicitation must indicate if the STTR agency contemplates that as a part of the STTR proposal evaluation, it will use external peer review.

(d) *Release of Proposal Review Information.* After final award decisions have been announced, the technical evaluations of the applicant's proposal may be provided to the applicant. The identity of the reviewer must not be disclosed.

5. *Considerations.* This section must include, as a minimum, the following information:

(a) *Awards.* Indicate the estimated number and type of awards anticipated under the particular STTR Program solicitation in question, including:

(i) Approximate number of Phase I awards expected to be made.

(ii) Type of funding agreement, that is, contract, grant or cooperative agreement.

(iii) Whether fee or profit will be allowed.

(iv) Cost basis of funding agreement, for example, fixed-price, cost reimbursement, or cost-plus-fixed fee.

(v) Information on the approximate average dollar value of awards for Phase I and Phase II.

(b) *Reports.* Describe the frequency and nature of reports that will be required under Phase I funding agreements. Interim reports should be brief letter reports.

(c) *Payment Schedule.* Specify the method and frequency of progress and final payment under Phase I and II agreements.

(d) *Innovations, Inventions and Patents.*

(i) *Proprietary Information.* Essentially the following statement must be included in all STTR solicitations:

''Information contained in unsuccessful proposals will remain the property of the applicant. The Government may, however, retain copies of all proposals. Public release of information in any proposal submitted will be subject to existing statutory and regulatory requirements. If proprietary information is provided by an applicant in a proposal, which constitutes a trade secret, proprietary commercial or financial information, confidential personal information or data affecting the national security, it will be treated in confidence, to the extent permitted by law. This information must be clearly marked by the applicant with the term 'confidential proprietary information' and the following legend must appear on the title page of the proposal: 'These data shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of this proposal. If a funding agreement is awarded to this applicant as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the funding agreement and pursuant to applicable law. This restriction does not limit the Government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction are contained on pages —— of this proposal.' ''

Any other legend may be unacceptable to the Government and may constitute grounds for removing the proposal from further consideration, without assuming any liability for inadvertent disclosure. The Government will limit dissemination of such information to within official channels.''

(ii) *Alternative To Minimize Proprietary Information.* Agencies may elect to instruct applicants to:

(A) Limit proprietary information to only that absolutely essential to their proposal.

(B) Provide proprietary information on a separate page with a numbering system to key it to the appropriate place in the proposal.

(iii) *Rights in Data Developed Under STTR Funding Agreements.* Agencies should insert essentially the following statement in their STTR Program solicitations to notify SBCs of the necessity to mark STTR technical data before delivering it to the Agency:

''To preserve the STTR data rights of the awardee, the legend (or statements) used in the STTR Data Rights clause included in the STTR award must be affixed to any submissions of technical data developed under that STTR award. If no Data Rights clause is included in the STTR award, the following legend, at a minimum, should be affixed to any data submissions under that award.

These STTR data are furnished with STTR rights under Funding Agreement No. ____ (and subcontract No. ____ if appropriate), Awardee Name _____, Address, Expiration Period of STTR Data Rights _____. The Government may not use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend for (choose four (4) or five (5) years). After expiration of the (4- or 5-year period), the Government has a royalty-free license to use, and to authorize others to use on its behalf, these data for Government purposes, and is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties, except that any such data that is also protected and referenced under a subsequent STTR award shall remain protected through the protection period of that subsequent STTR award. Reproductions of these data or software must include this legend.''

(iv) *Copyrights.* Include an appropriate statement concerning copyrights and publications; for example:

''With prior written permission of the contracting officer, the awardee normally may copyright and publish (consistent with appropriate national security considerations, if any) material developed with (agency name) support. (Agency name) receives a royalty-free license for the Federal Government and requires that each publication contain an appropriate acknowledgement and disclaimer statement.''

(v) *Patents.* Include an appropriate statement concerning patents. For example:

''Small business concerns normally may retain the principal worldwide patent rights to any invention developed with Government support. In such circumstances, the Government receives a royalty-free license for Federal Government use, reserves the right to require the patent holder to license others in certain circumstances, and may require that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically. To the extent authorized by 35 U.S.C. 205, the Government will not make public any information disclosing a Government-supported invention for a minimum 4-year period (that may be extended by subsequent STTR funding agreements) to allow the awardee a reasonable time to pursue a patent.''

(vi) *Invention Reporting.* Include requirements for reporting inventions. Include appropriate information concerning the reporting of inventions, for example:

''STTR awardees must report inventions to the awarding agency within 2 months of the inventor's report to the awardee. The reporting of inventions may be accomplished by submitting paper documentation, including fax.''

Note: Some agencies provide electronic reporting of inventions through the NIH iEdison Invention Reporting System (iEdison System). Use of the iEdison System satisfies all invention reporting requirements mandated by 37 CFR part 401, with particular emphasis on the Standard Patent Rights Clauses, 37 CFR 401.14. Access to the system is through a secure interactive Internet site, *http://www.iedison.gov,* to ensure that all information submitted is protected. All agencies are encouraged to use the Edison System. In addition to fulfilling reporting requirements, the Edison System notifies the user of future time sensitive deadlines with enough lead-time to avoid the possibility of loss of patent rights due to administrative oversight.

(e) *Cost-Sharing.* Include a statement essentially as follows:

Cost-sharing is permitted for proposals under this program solicitation; however, cost-sharing is not required. Cost-sharing will not be an evaluation factor in consideration of your Phase I proposal.

(f) *Profit or Fee.* Include a statement on the payment of profit or fee on awards made under the STTR Program solicitation.

(g) *Joint Ventures or Limited Partnerships.* Include essentially the following language:

Joint ventures and limited partnerships are eligible provided the entity created qualifies as a small business concern as defined in this program solicitation.

(h) *Research and Analytical Work.* Include essentially the following statement:

(1) ''For both Phase I and Phase II, not less than 40 percent of the R/R&D work must be performed by the SBC, and not less than 30 percent of the R/R&D work must be performed by the single, partnering Research Institution, as defined in this solicitation.''

(i) *Awardee Commitments.* To meet the legislative requirement that STTR solicitations be simplified, standardized and uniform, clauses expected to be in or required to be included in STTR funding agreements must not be included in full or by reference in STTR Program solicitations. Rather, applicants must be advised that they will be required to make certain legal commitments at the time of execution of funding agreements resulting from STTR Program solicitations. Essentially, the following statement must be included in the ''Considerations'' section of STTR Program solicitations:

''Upon award of a funding agreement, the awardee will be required to make certain legal commitments through acceptance of numerous clauses in Phase I funding agreements. The outline that follows is illustrative of the types of clauses to which the contractor would be committed. This list is not a complete list of clauses to be included in Phase I funding agreements, and is not the specific wording of such clauses. Copies of complete terms and conditions are available upon request.''

(j) *Summary Statements.* The following are illustrative of the type of summary statements to be included immediately following the statement in subparagraph (i). These statements are examples only and may vary depending upon the type of funding agreement used.

(1) *Standards of Work.* Work performed under the funding agreement must conform to high professional standards.

(2) *Inspection.* Work performed under the funding agreement is subject to Government inspection and evaluation at all times.

(3) *Examination of Records.* The Comptroller General (or a duly authorized representative) must have the right to examine any pertinent records of the awardee involving

transactions related to this funding agreement.

(4) *Default.* The Government may terminate the funding agreement if the contractor fails to perform the work contracted.

(5) *Termination for Convenience.* The funding agreement may be terminated at any time by the Government if it deems termination to be in its best interest, in which case the awardee will be compensated for work performed and for reasonable termination costs.

(6) *Disputes.* Any dispute concerning the funding agreement that cannot be resolved by agreement must be decided by the contracting officer with right of appeal.

(7) *Contract Work Hours.* The awardee may not require an employee to work more than 8 hours a day or 40 hours a week unless the employee is compensated accordingly (for example, overtime pay).

(8) *Equal Opportunity.* The awardee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(9) *Affirmative Action for Veterans.* The awardee will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era.

(10) *Affirmative Action for Handicapped.* The awardee will not discriminate against any employee or applicant for employment because he or she is physically or mentally handicapped.

(11) *Officials Not To Benefit.* No Government official must benefit personally from the STTR funding agreement.

(12) *Covenant Against Contingent Fees.* No person or agency has been employed to solicit or secure the funding agreement upon an understanding for compensation except bona fide employees or commercial agencies maintained by the awardee for the purpose of securing business.

(13) *Gratuities.* The funding agreement may be terminated by the Government if any gratuities have been offered to any representative of the Government to secure the award.

(14) *Patent Infringement.* The awardee must report each notice or claim of patent infringement based on the performance of the funding agreement.

(15) *American Made Equipment and Products.* When purchasing equipment or a product under the STTR funding agreement, purchase only American-made items whenever possible.

(k) *Additional Information.* Information pertinent to an understanding of the administration requirements of STTR proposals and funding agreements not included elsewhere must be included in this section. As a minimum, statements essentially as follows must be included under ''Additional Information'' in STTR Program solicitations:

(1) This program solicitation is intended for informational purposes and reflects current planning. If there is any inconsistency between the information contained herein and the terms of any resulting STTR funding agreement, the terms of the funding agreement are controlling.

(2) Before award of an STTR funding agreement, the Government may request the applicant to submit certain organizational, management, personnel, and financial information to assure responsibility of the applicant.

(3) The Government is not responsible for any monies expended by the applicant before award of any funding agreement.

(4) This program solicitation is not an offer by the Government and does not obligate the Government to make any specific number of awards. Also, awards under the STTR Program are contingent upon the availability of funds.

(5) The STTR Program is not a substitute for existing unsolicited proposal mechanisms. Unsolicited proposals must not be accepted under the STTR Program in either Phase I or Phase II.

(6) If an award is made pursuant to a proposal submitted under this STTR Program solicitation, a representative of the contractor or grantee or party to a cooperative agreement will be required to certify that the concern has not previously been, nor is currently being, paid for essentially equivalent work by any Federal agency.

6. *Submission of Proposals.*

(a) This section must clearly specify the closing date on which all proposals are due to be received.

(b) This section must specify the number of copies of the proposal that are to be submitted.

(c) This section must clearly set forth the complete mailing and/or delivery address(es) where proposals are to be submitted.

(d) This section may include other instructions such as the following:

(1) *Bindings.* Please do not use special bindings or covers. Staple the pages in the upper left corner of the cover sheet of each proposal.

(2) *Packaging.* All copies of a proposal should be sent in the same package.

7. *Scientific and Technical Information Sources.* Wherever descriptions of research topics or subtopics include reference to publications, information on where such publications will normally be available must be included in a separate section of the solicitation entitled ''Scientific and Technical Information Sources.''

8. *Research Topics.* Describe sufficiently the R/R&D topics and subtopics for which proposals are being solicited to inform the applicant of technical details of what is desired. Allow flexibility in order to obtain the greatest degree of creativity and innovation consistent with the overall objectives of the STTR Program.

9. *Submission Forms.* Multiple copies of proposal preparation forms necessary to the contracting and granting process may be required. This section may include Proposal Summary, Proposal Cover, Budget, Checklist, and other forms the sole purpose of which is to meet the mandate of law or regulation and simplify the submission of proposals.

Appendix II: Codes for Tech-Net Database Program Codes

Program	Meaning
SBIR	Small Business Innovation Research.
STTR ...	Small Business Technology Transfer.
BOTH ..	Both SBIR and STTR.

Agency Codes

Agency	Meaning
DHS	Department of Homeland Security.
DOC	Department of Commerce.
DOD	Department of Defense.
DOE	Department of Energy.
DOT	Department of Transportation.
ED	Department of Education.
EPA	Environmental Protection Agency.
HHS	Department of Health and Human Services.
NASA ..	National Aeronautics and Space Administration.
NSF	National Science Foundation.
USDA ..	U.S. Department of Agriculture.

Branch Codes

DHS Branch Codes

Branch	Meaning
ST	Science and Technology Directorate.
DNDO ..	Domestic Nuclear Detection Office.

DOC Branch Codes

Branch	Meaning
NOAA ..	National Oceanic and Atmospheric Administration.

Branch	Meaning
NIST	National Institute of Standards and Technology.

DoD Branch Codes

Branch	Meaning
AF	Department of the Air Force.
ARMY ..	Department of the Army.
CBD	Chemical and Biological Defense Program.
DARP ..	Defense Advanced Research Projects Agency.
DHP	Defense Health Program.
DLA	Defense Logistics Agency.
DMEA ..	Defense Microelectronics Activity.
DTRA ..	Defense Threat Reduction Agency.
MDA	Missile Defense Agency.
NAVY ..	Department of the Navy.
NGA	National Geospatial-Intelligence Agency.
OSD	Office of the Secretary of Defense.
SOCO ..	Special Operations Command.

DOE Branch Codes

Branch	Meaning
ARPA ..	Advanced Research Projects Agency—Energy.
DOE HQ.	Department of Energy Headquarters.

HHS Branch Codes

Branch	Meaning
ACF	Administration for Marriage and Families.
CDC	Center for Disease Control.
FDA	Food and Drug Administration.
NIH	National Institute of Health.

Research Institution Type Codes

Type code	Meaning
1	Nonprofit College or University.
2	Domestic Nonprofit Research Organization.
3	Federally Funded R&D Center (FFRDC).

Research Institution School Categories

School category	Meaning
ANSI	Alaskan Native Serving Institution.
HBCU ..	Historically Black College or University.
HSI	Hispanic Serving Institution.
TCU	Tribal College or University.
NHSI	Native Hawaiian Serving Institution.

Sales Codes

Sales Code	Meaning
SF	Sales to Federal or Prime Contractor.
SO	Sales to Other.
SP	Sales to Private Industry.
LIC	Licensing Revenue.

Additional Funding Codes

Additional funding code	Meaning
FT	Fast Track.
P2E	Phase II Enhancement.
P1B	Phase IB.
P2A	Phase IIA.
P2B	Phase IIB.
P2CC	Phase IICC.
P2REU	Phase II REU.
P2RET	Phase II RET.
P2RAHSS ...	Phase II RAHSS.
P2TECP	Phase II TECP.
P2I/UCRC ...	Phase II I/UCRC Membership Grants.
P2ERC	Phase II ERC Supplement.
P2CostMatch	Phase II Cost Match.
Phase II Commercialization Option.	Phase II Commercialization Option.

Investment Code

Investment code	Meaning
IA	Investment from Angel Investors.
IF	Investment from Federal or Prime Contractor.
IO	Investment from Other.
IS	Investment from the Small Business Concern itself.

Appendix III: Solicitations Database

Solicitation field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)	Type
Solicitation Level					
Solicitation program	Agencies report on Tech-Net.	Automatic or manual input ...	within 5 days of solicitation release date.	Y	varchar(4).
Solicitation year	Agencies report on Tech-Net.	Automatic or manual input ...	within 5 days of solicitation release date.	Y	int(11).
Solicitation number	Agencies report on Tech-Net.	Automatic or manual input ...	within 5 days of solicitation release date.	Y	varchar(25).
Solicitation release	Agencies report on Tech-Net.	Automatic or manual input ...	within 5 days of solicitation release date.	Y	varchar(20).
Solicitation open date	Agencies report on Tech-Net.	Automatic or manual input ...	within 5 days of solicitation release date.	Y	varchar(20).
Solicitation close date ...	Agencies report on Tech-Net.	Automatic or manual input ...	within 5 days of solicitation release date.	Y	varchar(20).
Solicitation title	Agencies report on Tech-Net.	Automatic or manual input ...	within 5 days of solicitation release date.	Y	longtext.
Solicitation body	Agencies report on Tech-Net.	Automatic or manual input ...	within 5 days of solicitation release date.	Y	longtext.
Solicitation phase	Agencies report on Tech-Net.	Automatic or manual input ...	within 5 days of solicitation release date.	Y	int(11).
Solicitation occurrence number.	Agencies report on Tech-Net.	Automatic or manual input ...	within 5 days of solicitation release date.	Y	int(11).
Solicitation url	Agencies report on Tech-Net.	Automatic or manual input ...	within 5 days of solicitation release date.	Y	varchar(2048).
Solicitation url title	Agencies report on Tech-Net.	Automatic or manual input ...	within 5 days of solicitation release date.	Y	varchar(255).
Solicitation url attributes	Agencies report on Tech-Net.	Automatic or manual input ...	within 5 days of solicitation release date.	Y	mediumtext.

Solicitation field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)	Type
Topic Level					
Topic title	Agencies report on Tech-Net.	Automatic or manual input	within 5 days of solicitation release date.	Y	longtext.
Topic number	Agencies report on Tech-Net.	Automatic or manual input	within 5 days of solicitation release date.	Y	varchar(30).
Associated solicitation	Agencies report on Tech-Net.	Automatic or manual input	within 5 days of solicitation release date.	Y.	

Appendix IV: Company Registry Database

Company registry field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)
Agency Tracking #	Company reports data to SBA	Receives pdf from Company	Register or reconfirm at time of application.	N
SBA Firm ID	Company reports data to SBA	Receives pdf from Company	Register or reconfirm at time of application.	N
Company URL	Company reports data to SBA	Receives pdf from Company	Register or reconfirm at time of application.	N
HQ Address 1	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
HQ Address 2	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
HQ City	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
HQ Zip Code	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
HQ Zip Code +4	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
HQ State	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
Company Name	Company reports data to SBA	Receives pdf from Company	Register or reconfirm at time of application.	N
Number of Employees	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA. Also updated as a part of commercialization information.*	*Register or reconfirm at time of application.*	*N*
Flag for External Funding	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
Investment Ownership Percentage.	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
Majority-Owned by External Funding Firms.	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
Affiliate Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Register or reconfirm at time of application.*	*N*
Affiliate Address 1	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Register or reconfirm at time of application.*	*N*
Affiliate Address 2	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Register or reconfirm at time of application.*	*N*
Affiliate City	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Register or reconfirm at time of application.*	*N*
Affiliate Zip Code	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Register or reconfirm at time of application.*	*N*
Affiliate Zip Code + 4	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Register or reconfirm at time of application.*	*N*
Affiliate Number of Employees	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Register or reconfirm at time of application.*	*N*
Additional Funding Type	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Register or reconfirm at time of application.*	*N*
Additional Funding Amount	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Register or reconfirm at time of application.*	*N*
Investment Type [VC, Hedge, PE].	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
Investment Firm Name	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*
Investment Not U.S.–Based	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*

Company registry field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)
Investment Amount	*Company reports data to SBA*	*Receives pdf from Company*	*Register or reconfirm at time of application.*	*N*

Appendix V: Application Information Database

Application info field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)	Type
Company Name	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Program [SBIR/STTR]	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Agency Tracking #	XML or manual upload to Tech-Net.	Agency creates this number for tracking—not submitted by SBC.	Quarterly	N	
SBA Firm ID	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Agency	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Solicitation Number	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Solicitation Topic Number	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Contact First Name	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Contact Middle Name	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Contact Last Name	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Contact Title	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Contact Phone	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Contact Email	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Phase Number	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Solicitation Close Date	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Solicitation Year	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Company URL	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Solicitation Topic	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Address 1	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Address 2	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
City	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Zip Code	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Zip Code +4	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
State	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
HubZone Certified	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
SDB	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Women-Owned	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Women PI	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Socially and Economically Disadvantaged PI.	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	

Application info field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)	Type
Student/Faculty Owned	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
FAST Assistance	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Allow EDO's to Have Contact Info.	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Agency Contact First Name.	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Agency Contact Middle Name.	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Agency Contact Last Name.	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Agency Contact Title	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Agency Contact Phone #	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	
Agency Contact Email	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	int(10) unsigned.
Key Individual Percentage of Effort.	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	varchar(4).
Project Aims	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	varchar(50).
Abstract	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	int(10) unsigned.
Key Individual Name	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	int(10) unsigned.
Key Individual Position/Title.	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	int(10) unsigned.
Key Individual Email	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	varchar(20).
Key Individual Phone	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Quarterly	N	varchar(25).
RIName	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	60 days from time of solicitation close.	N	varchar(1).
RIType	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	60 days from time of solicitation close.	N	varchar(35).
RIAddress 1	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	60 days from time of solicitation close.	N	varchar(40).
RIAddress 2	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	60 days from time of solicitation close.	N	varchar(255).
RICity	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	60 days from time of solicitation close.	N	varchar(255).
RIZip Code	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	60 days from time of solicitation close.	N	int(11).
RIZip Code +4	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	60 days from time of solicitation close.	N	varchar(20).
RIState	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	60 days from time of solicitation close.	N	int(11).
RI_Officer_First_Name	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	60 days from time of solicitation close.	N	varchar(255).
RI_Officer_Middle_Name	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	60 days from time of solicitation close.	N	int(10) unsigned.
RI_Officer_Last_Name	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	60 days from time of solicitation close.	N	
RI_Officer_Phone	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	60 days from time of solicitation close.	N	

Appendix VI: Award Information Database

Award field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)	Type
Phase	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Monthly*	*Y*	*int(11).*
Phase II # [if 1st or 2nd]	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	
Contract #/Grant #	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(255).*

Award field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)	Type
Amount	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*decimal(20,2).*
SBC_Proceeds	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Monthly	Y	int(11).
RI_Proceeds	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Monthly	Y	int(11).
Third_Party_Proceeds	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Monthly	Y	int(11).
SttrInitiatedCollaboration	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Monthly	Y	
SttrInitiatedTechnology	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Monthly	Y	
SttrMonthstoAgreement	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Monthly	Y	
Year	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*int(11).*
First Date of PoP	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(20).*
Notification of Selection Date.	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(20).*
Award Title	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*longtext.*
Last Day of PoP	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(20).*
Associated Applicant/Proposal #.	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*int(10) unsigned.*
PI First Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(25).*
PI Middle Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(1).*
PI Last Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(35).*
PI Title	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(40).*
PI Phone	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(255).*
PI Email	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(255).*
ITAR Controlled	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(1).*
Manufacturing	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*longtext.*
Renewable Energy	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(1).*
Comments [Free Text Field for Notes].	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*longtext.*
CAGE #	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(5).*
DUNS #	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*Y*	*varchar(9).*
EIN	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	*varchar(10).*
RI_EIN	XML or manual upload to Tech-Net.	Agency collects data, provides to SBA.	Monthly	Y	varchar(10).
Award Amount Justification, if Limit Exceeded.	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*Quarterly*	*N*	
Convicted or Civilly Liable Flag.	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*At time of application*	*N*	
CL First Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*At time of application*	*N*	
CL Middle Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*At time of application*	*N*	
CL Last Name	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*At time of application*	*N*	
CL Company Associated	*XML or manual upload to Tech-Net.*	*Agency collects data, provides to SBA.*	*At time of application*	*N*	

* Award data is inclusive of ''Applicant'' data fields.

Appendix VII: Commercialization Database

Commercialization field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)	Type
Firm Level Commercialization					
Company Name	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(10) unsigned.*
Agency Tracking #	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(10) unsigned.*
SBA Firm ID	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(10) unsigned.*
IPO	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*YES/NO.*
IPO Value	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
IPO Amount	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*decimal(20,2).*
IPO Year	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Merger/Acquired	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*YES/NO.*
M&A Value	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*decimal(20,2).*
M&A Year	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Narrative	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*longtext.*
Comm Contact First Name.	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*varchar(25).*
Comm Contact Middle Name.	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*varchar(1).*
Comm Contact Last Name.	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*varchar(35).*
Comm Contact Title	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*varchar(50).*
Comm Contact Phone	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*varchar(255).*

Commercialization field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)	Type
Comm Contact Email	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*varchar(255).*
Sales Amount	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*decimal(20,2).*
SttrPercentSbc	Agencies + companies report to Tech-Net.	XML or manual upload to Tech-Net.	1) In real time 2) SBC updates prior to subsequent award application.	N	int(11).
SttrPercentRi	Agencies + companies report to Tech-Net.	XML or manual upload to Tech-Net.	1) In real time 2) SBC updates prior to subsequent award application.	N	int(11).
Investment Amount	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*decimal(20,2).*
Patent #'s	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Number of Patents	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*decimal(10,2).*
Investment Types	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	
Sales Type	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	
Award Level Commercialization					
Product Launched	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Names of Company Established for Product/ Commercialization.	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Sales Amount	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(10) unsigned.*
Investment Amount	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Patent #'s	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*longtext.*
Number of Patents	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Investment Types	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Sales Type	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*

Commercialization field name	Reporting mechanism	Agency interaction	Collection frequency	Public data (Y/N)	Type
Phase III Value	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(10) unsigned.*
Phase III Launched/Implemented [CRP].	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*
Phase III Narrative [CRP]	*Agencies + companies report to Tech-Net.*	*XML or manual upload to Tech-Net.*	*1) In real time 2) SBC updates prior to subsequent award application.*	*N*	*int(11).*

Appendix VIII: Annual Report Database

Annual report field name	Reporting mechanism	Collection frequency	Public data	Type
agency code	XML or manual upload to Tech-Net	Annually	Y	int(11).
Program	XML or manual upload to Tech-Net	Annually	Y	char(4).
Year	XML or manual upload to Tech-Net	Annually	Y	char(4).
reporting unit	XML or manual upload to Tech-Net	Annually	Y	varchar(255)
submitted by	XML or manual upload to Tech-Net	Annually	Y	varchar(100).
phone number	XML or manual upload to Tech-Net	Annually	Y	varchar(255).
Agency Extramural Budget	XML or manual upload to Tech-Net	Annually	Y	varchar(100).
Agency SBIR Budget	XML or manual upload to Tech-Net	Annually	Y	varchar(100).
Number of Solicitations Released	XML or manual upload to Tech-Net	Annually	Y	int(6).
Number of Research Topics in Solicitations	XML or manual upload to Tech-Net	Annually	Y	
Number of Phase I Proposals Received	XML or manual upload to Tech-Net	Annually	Y	int(6).
Total Phase I Awards	XML or manual upload to Tech-Net	Annually	Y	int(6).
Total Phase I Dollars Awarded ($)	XML or manual upload to Tech-Net	Annually	Y	varchar(25).
Total Phase I Dollars to SBCs	XML or manual upload to Tech-Net	Annually	Y	int(6).
Total Phase I Dollars to RIs	XML or manual upload to Tech-Net	Annually	Y	int(6).
Total Phase I Dollars to RI—Universities	XML or manual upload to Tech-Net	Annually	Y	int(6).
Total Phase I Awards to RI—Universities	XML or manual upload to Tech-Net	Annually	Y	int(6).
Total Phase I Dollars to RI—FFRDCs	XML or manual upload to Tech-Net	Annually	Y	int(6).
Total Phase I Awards to RI—FFRDCs	XML or manual upload to Tech-Net	Annually	Y	int(6).
Total Phase I Dollars to RI—Non-Profit R&D	XML or manual upload to Tech-Net	Annually	Y	int(6).
Total Phase I Awards to RI—Non-Profit R&D	XML or manual upload to Tech-Net	Annually	Y	int(6).
Minority/Disadvantaged Phase I Awards	XML or manual upload to Tech-Net	Annually	Y	int(6).
Minority/Disadvantaged Phase I Dollars Awarded ($).	XML or manual upload to Tech-Net	Annually	Y	varchar(25).
HUBZone Phase I Awards	XML or manual upload to Tech-Net	Annually	Y	int(6).
HUBZone Phase I Dollars Awarded ($)	XML or manual upload to Tech-Net	Annually	Y	int(6).
phase1 hubzone dollars obligated	XML or manual upload to Tech-Net	Annually	Y	varchar(25).
phase1 manufacturing awards	XML or manual upload to Tech-Net	Annually	Y	int(6).
phase1 manufacturing dollars obligated	XML or manual upload to Tech-Net	Annually	Y	varchar(25).
Number of Phase II Proposals Received	XML or manual upload to Tech-Net	Annually	Y	int(6).
Total Phase II Awards	XML or manual upload to Tech-Net	Annually	Y	int(6).
Total Phase II Dollars Awarded ($)	XML or manual upload to Tech-Net	Annually	Y	varchar(25).
Total Phase II Dollars to SBCs	XML or manual upload to Tech-Net	Annually	Y	int(6).
Total Phase II Dollars to RIs	XML or manual upload to Tech-Net	Annually	Y	int(6).
Total Phase II Dollars to RI—Universities	XML or manual upload to Tech-Net	Annually	Y	int(6).
Total Phase II Awards to RI—Universities	XML or manual upload to Tech-Net	Annually	Y	int(6).
Total Phase II Dollars to RI—FFRDCs	XML or manual upload to Tech-Net	Annually	Y	int(6).
Total Phase II Awards to RI—FFRDCs	XML or manual upload to Tech-Net	Annually	Y	int(6).
Total Phase II Dollars to RI—Non-Profit R&D	XML or manual upload to Tech-Net	Annually	Y	int(6).
Total Phase II Awards to RI—Non-Profit R&D.	XML or manual upload to Tech-Net	Annually	Y	int(6).
Minority/Disadvantaged Phase II Awards	XML or manual upload to Tech-Net	Annually	Y	int(6).
Minority/Disadvantaged Phase II Dollars Awarded ($).	XML or manual upload to Tech-Net	Annually	Y	varchar(25).
HUBZone Phase II Awards	XML or manual upload to Tech-Net	Annually	Y	int(6).
HUBZone Phase II Dollars Awarded ($)	XML or manual upload to Tech-Net	Annually	Y	int(6).
phase2 hubzone dollars obligated	XML or manual upload to Tech-Net	Annually	Y	varchar(25).
phase2 manufacturing awards	XML or manual upload to Tech-Net	Annually	Y	int(6).
phase2 manufacturing dollars obligated	XML or manual upload to Tech-Net	Annually	Y	varchar(25).
new phase2 with dollars obligated	XML or manual upload to Tech-Net	Annually	Y	int(6).
new phase2 dollars obligated	XML or manual upload to Tech-Net	Annually	Y	varchar(25).

Annual report field name	Reporting mechanism	Collection frequency	Public data	Type
old phase2 with dollars obligated	XML or manual upload to Tech-Net	Annually	Y	int(6).
old phase2 dollars obligated	XML or manual upload to Tech-Net	Annually	Y	varchar(25).
number amount modified	XML or manual upload to Tech-Net	Annually	Y	int(6).
amount modified	XML or manual upload to Tech-Net	Annually	Y	varchar(25).
agency obligations	XML or manual upload to Tech-Net	Annually	Y	varchar(50).
phase1 success rate	XML or manual upload to Tech-Net	Annually	Y	varchar(3).
phase2 success rate	XML or manual upload to Tech-Net	Annually	Y	varchar(3).
overall success rate	XML or manual upload to Tech-Net	Annually	Y	varchar(3).
The percentage of new phase 1 awards where difference between Solicitation Close Date and Proposal Award Date is less than 180 days (ProposalAwardDate—SolicitationCloseDate).	XML or manual upload to Tech-Net	Annually	Y	varchar(3).
The average of the number of days between Solicitation Close Date and Proposal Award Date for all the new phase 1 awards (ProposalAwardDate—SolicitationCloseDate).	XML or manual upload to Tech-Net	Annually	Y	varchar(50).
The average of the number of days between the Contract End Date for the related phase 1 award and the Proposal Award Date for all the new phase 2 awards (P2 Proposal Award Date—P1 ContractEndDate).	XML or manual upload to Tech-Net	Annually	Y	varchar(50).
The average number of days between Proposal Selection Date and Proposal Award Date for all the new phase 2 awards (ProposalAwardDate—ProposalSelectionDate).	XML or manual upload to Tech-Net	Annually	Y	varchar(50).
The percentage of new phase 2 awards where the number of days between Proposal Selection Date and Proposal Award Date was less than 60 (ProposalAwardDate—ProposalSelectionDate).	XML or manual upload to Tech-Net	Annually	Y	varchar(3).
sbcname changed	XML or manual upload to Tech-Net	Annually	Y	text.
one proposal per solicitation	XML or manual upload to Tech-Net	Annually	Y	text.
more than 15 awards	XML or manual upload to Tech-Net	Annually	Y	text.
justification	XML or manual upload to Tech-Net	Annually	Y	text.
submitted	XML or manual upload to Tech-Net	Annually	Y	timestamp.
confirmed_by_uid	XML or manual upload to Tech-Net	Annually	Y	int(10) unsigned.
	XML or manual upload to Tech-Net	Annually	Y	
Annual Report calculations based on above fields				
Dollars Obligated	XML or manual upload to Tech-Net	Annually	Y	
Percent of SBIR to Extramural Budget	XML or manual upload to Tech-Net	Annually	Y	
Deficit/Surplus	XML or manual upload to Tech-Net	Annually	Y	
Exceeding award size threshold of 150%	XML or manual upload to Tech-Net	Annually	Y	
Award cross btwn SBIR and STTR programs	XML or manual upload to Tech-Net	Annually	Y	
	XML or manual upload to Tech-Net	Annually	Y	
Additions to Annual Report tracking compliance grievance.	XML or manual upload to Tech-Net	Annually	Y	
grievance tracking for data rights	XML or manual upload to Tech-Net	Annually	Y	
-track deficit/surplus of budgets, esp. VC, etc. backed.	XML or manual upload to Tech-Net	Annually	Y	
Track data at component level	XML or manual upload to Tech-Net	Annually	Y	

Appendix IX—Performance Areas, Metrics and Goals

(a) Examples of performance areas include:

(1) company and agency-level commercialization of awards (see commercialization section for detail);

(2) repeat-award winners;

(3) outreach to first time SBIR/STTR applicants, WOSBs, SDBs—including percentage of new applicants from those demographics that have applied to the agency, and other goals and metrics established by the agency and the interagency policy committee;

(4) shortening review and award timelines for small businesses (collected annually in annual report).

(b) Examples of metrics relating to timelines for awards of Phase I funding agreements and performance start dates of the funding agreements, include:

(1) The percentage of Phase I awards where the duration between the closing date of the solicitation and the first date of the period of performance on the funding agreement is less than 180 calendar days.

(2) The average duration of time between a Phase I solicitation closing date and the first day of the period of performance on the funding agreement.

(3) The percentage of Phase I awards where the duration between the closing date of the solicitation and the notification of recommendation of award is not more than one year for NIH or NSF and not more than 90 calendar days for all other agencies.

(4) The average duration of time between a Phase I solicitation closing date and the notification of recommendation for award.

(c) Examples of metrics relating to timelines for awards of Phase II funding agreements and performance start dates of the funding agreements, include:

(1) The percentage of Phase II awards where the duration between the closing date of the solicitation, or the applicable date for receiving the Phase II application, and the first date of the period of performance on the funding agreement is the less than 180 calendar days.

(2) The average duration of time between a Phase II solicitation close dating and the first day of the period of performance on the funding agreement.

(3) The percentage of Phase II awards where the duration between the closing date of the solicitation, or the applicable date for receiving the Phase II application, and the notification of recommendation of award is not more than one year for NIH or NSF and not more than 90 calendar days for all other agencies.

(4) The average duration of time between a Phase II solicitation closing date, or the applicable date for receiving the Phase II application—and the notification of recommendation for award.

(5) The average duration of time between the end of the period of performance on a Phase I funding agreement and the closing date for a Phase II solicitation for the same work.

(6) The number of awardees for whom the Phase I process exceeded 6 months, starting from the closing date of the STTR solicitation to award of the funding agreement.

(7) Metrics with respect to each STTR agency's adherence to Policy Directive and implementation.

(8) Metrics with respect to agencies' measures to reduce fraud, waste and abuse within the STTR Program and coordination with the STTR agency's OIG.

Appendix X—National Academy of Sciences Study

(a) The purpose of the study is to:

(1) Continue the most recent study relating to the following issues:

(i) a review of the value to the Federal research agencies of the research projects being conducted under the STTR Program, and of the quality of research being conducted by small businesses participating under the program, including a comparison of the value of projects conducted under the STTR Program to those funded by other Federal research and development expenditures;

(ii) to the extent practicable, an evaluation of the economic benefits achieved by the STTR Program, including the economic rate of return, and a comparison of the economic benefits, including the economic rate of return, achieved by the STTR Program with the economic benefits, including the economic rate of return, of other Federal research and development expenditures;

(iii) an evaluation of the noneconomic benefits achieved by the STTR Program over the life of the program;

(iv) an analysis of whether Federal agencies, in fulfilling their procurement needs, are making sufficient effort to use small businesses that have completed a second phase award under the STTR Program; and

(2) Conduct a comprehensive study of how the STTR program has stimulated technological innovation and technology transfer, including—

(i) a review of the collaborations created between small businesses and Research Institutions, including an evaluation of the effectiveness of the program in stimulating new collaborations and any obstacles that may prevent or inhibit the creation of such collaborations;

(ii) an evaluation of the effectiveness of the program at transferring technology and capabilities developed through Federal funding;

(iii) to the extent practicable, an evaluation of the economic benefits achieved by the STTR program, including the economic rate of return;

(iv) an analysis of how Federal agencies are using small businesses that have completed Phase II under the STTR program to fulfill their procurement needs;

(v) an analysis of whether additional funds could be employed effectively by the STTR program; and

(vi) an assessment of the systems and minimum performance standards relating to commercialization success established under section 9(qq) of the Small Business Act;

(3) Make recommendations with respect to—

(i) measures of outcomes for strategic plans submitted under 5 U.S.C. 306 and performance plans submitted under 31 U.S.C. 1115, of each Federal agency participating in the STTR Program;

(ii) how to increase the use by the Federal Government in its programs and procurements of technology-oriented small businesses;

(iii) improvements to the STTR Program, if any are considered appropriate; and

(iv) how the STTR program can further stimulate technological innovation and technology transfer.

(4) Estimate the number of jobs created by the SBIR or STTR program of the agency, to the extent practicable.

[FR Doc. 2012–18120 Filed 8–3–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program Policy Directives

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Webinars

SUMMARY: The U.S. Small Business Administration (SBA) announces that it will be holding public Webinars regarding the recent amendments to the Small Business Innovation Research (SBIR) and Small Business Technology Transfer Program (STTR) Policy Directives. These amendments implement provisions of the National Defense Authorization Act for Fiscal Year 2012. The Defense Authorization Act contained the SBIR/STTR Reauthorization Act of 2011 (Reauthorization Act), which made several key changes to the programs relating to eligibility, the SBIR award process, program administration, and fraud, waste and abuse. SBA has addressed these changes in the directives. The Webinar will provide a basic overview of and respond to questions regarding the changes to the Policy Directives. Although SBA published the directives as final, it is requesting comments on the various amendments made.

DATES: The Webinars are scheduled for August 23rd and August 29th. The Webinars will be conducted by SBA's Office of Investment and Innovation. For additional information, see Section II.

ADDRESSES: The phone number and corresponding web address for the Webinar will be provided to participants upon registration.

FOR FURTHER INFORMATION CONTACT: Office of Investment and Innovation at *technology@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

SBA is publishing Policy Directives for the SBIR and STTR Programs. These directives are an integral part of the implementation of the Reauthorization Act. In order to familiarize the public with the content of the directives, SBA will host two Webinars listed below. Interested parties may choose to attend and participate in these Webinars.

II. Webinar Schedule

	Date and time	Registration closing date
Webinars:	August 23, 2012, 2 p.m.–4 p.m. EST	August 22, 2012, 11:59 p.m. EST.
	August 29, 2012, 2 p.m.–4 p.m. EST	August 28, 2012, 11:59 p.m. EST.

III. Registration

If you are interested in attending one of the Webinars, you must pre-register by sending an email to *technology@sba.gov.* You must include in the subject line the date of the Webinar for which you wish to participate, and in the body of the email, please provide the following: Participant's Name, Title, Organization Affiliation, Address, Telephone Number, Email Address, and Fax Number. You must submit your email by the applicable registration closing date listed in Section II of this notice. Due to technological constraints, participation is limited to 125 registrants for each of the two Webinars. If demand exceeds capacity for the two Webinars, SBA may consider holding additional Webinars. SBA will announce any additional Webinars through a **Federal Register** notice and on its web site for the SBIR and STTR Programs at *www.sbir.gov.*

SBA will confirm the registration via email along with instructions for participation. SBA will post any presentation materials associated with the Webinars on the day of the Webinars at *www.sbir.gov.* Participants are responsible for ensuring their computer systems are compatible with the Webinar software.

If there are specific questions you would like SBA to address during the Webinars, please send your question(s) to SBA no later than the registration closing date listed in Section II. All participants are encouraged to submit comments regarding the directives at *http://www.regulations.gov* or hand delivery/courier to Edsel Brown, Assistant Director, Office of Technology, U.S. Small Business Administrator, 409 Third Street SW., Washington, DC 20416. The Webinar will be summarized and become part of the administrative record.

Harry E. Haskins,

Deputy Associate Administrator for Investment and Innovation.

[FR Doc. 2012–18118 Filed 7–27–12; 11:15 am]

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Part III

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0954; FRL–9709–1]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and a limited disapproval of a revision to the Michigan State Implementation Plan (SIP) submitted by the State of Michigan on November 5, 2010, that addresses regional haze for the first implementation period ending in 2018. EPA is proposing limited approval of this submittal for meeting requirements of the regional haze program relating to setting reasonable progress goals, providing reductions for meeting those goals, and for mandating best available retrofit technology (BART) for most sources in the State. EPA is proposing limited disapproval of the State's submittal for failing to satisfy BART for two sources. EPA is proposing a Federal Implementation Plan (FIP) including nitrogen oxide (NO_X) emission limits on these two sources to satisfy these requirements.

EPA has already published a separate action in relation to Michigan's plan to address BART for electric generating units. In a June 7, 2012, action, EPA published a limited disapproval of the regional haze plans for Michigan and other states due to their reliance on the Clean Air Interstate Rule (CAIR), but EPA also promulgated a FIP relying on EPA's Cross-State Air Pollution Rule (CSAPR) to address these requirements. EPA is also taking separate action on BART requirements for one source, a taconite plant owned by Tilden Mining, in conjunction with action on several taconite plants in Minnesota. These three actions combined represent complete action on Michigan's regional haze plan for the first implementation period.

DATES: Comments must be received on or before September 5, 2012. Upon request, a public hearing for this proposal will be held on September 19, 2012, at the Traverse Area District Library at 610 Woodmere Avenue, Traverse City, Michigan. Requests for a public hearing must be submitted by September 5, 2012 and shall be submitted to Pamela Blakley at *blakley.pamela@epa.gov* or by any of the other means for submitting comments given in the addressee section below. The public hearing, if requested, will be held from 9 a.m. until 11 a.m. or until all parties present have had the opportunity to speak. EPA shall maintain a Web site at *http://www.epa.gov/region5/mihaze/index.html* at which EPA will report whether a hearing has been requested and will be held. Interested parties may also call Charles Hatten, at 312–886–6031, to inquire whether a hearing will be held.

The public hearing will provide interested parties the opportunity to present information and opinions to EPA concerning our proposal. Interested parties may also submit written comments, as discussed in the proposal. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. We will not respond to comments during the public hearing. When we publish our final action, we will provide written responses to all oral and written comments received on our proposal.

At the public hearing, the hearing officer may limit the time available for each commenter to address the proposal to 5 minutes or less if the hearing officer determines it to be appropriate. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations. Any person may provide written or oral comments and data pertaining to our proposal at the Public Hearing. Verbatim transcripts, in English, of the hearing and written statements will be included in the rulemaking docket.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0954, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies 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 No. EPA–R05–OAR–2010–0954. 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 instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

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 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 Charles Hatten at (312) 886–6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, at 312–886–6031, *hatten.charles@epa.gov,* regarding all elements of the action, or John Summerhays, Environmental Scientist, Attainment Planning and Maintenance Section, at 312–886–6067, *summerhays.john@epa.gov,* regarding issues relating to BART. Both contacts may be reached by mail at Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION:

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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 for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and that emit fine particles ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, organic particles, elemental carbon, and soil dust) and their precursors—sulfur dioxide (SO_2), NO_X, and in some cases ammonia (NH_3) and volatile organic compound (VOCs). $PM_{2.5}$ precursors react in the atmosphere to form fine particulate matter. Aerosol $PM_{2.5}$ impairs visibility by scattering and absorbing light. Visibility impairment reduces clarity and the distance one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range, the distance at which an object is barely discernable, in many Class I areas [1] in the western United States is 100–150 kilometers. That is about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In the eastern and midwestern Class I areas of the United States, the average visual range is generally less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. See 64 FR 35715 (July 1, 1999).

B. Regional Haze Requirements

In section 169A of the Clean Air Act as amended in 1977, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the Clean Air Act establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources known as, ''reasonably attributable visibility impairment'' (RAVI). 45 FR 80084. These regulations, codified at 40 CFR part 50, subpart P, represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the Clean Air Act in 1990 to address regional haze issues, and EPA promulgated the regional haze rule on July 1, 1999 (64 FR 35713). The regional haze rule, which amended 40 CFR part 50, subpart P, integrated provisions addressing regional haze impairment into the existing visibility regulations and established a comprehensive visibility protection program for Class I areas. The regional haze requirements, found at 40 CFR 51.308 and 51.309, are a part of EPA's subpart P visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section III of this preamble. The requirement to submit a regional haze plan applies to all 50 states, the District of Columbia, and the Virgin Islands. The first regional haze plans were due December 17, 2007.

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

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long term regional coordination among states, tribal governments, and various Federal agencies. Pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, effectively addressing the problem of visibility impairment in Class I areas means that states need to develop coordinated strategies that take into account the effect of emissions from one jurisdiction on the air quality in another.

EPA has encouraged the states and tribes to address visibility impairment from a regional perspective because the pollutants that lead to regional haze can originate from sources located across broad geographic areas. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country and then pursued the development of regional strategies to reduce emissions of $PM_{2.5}$ and other pollutants that lead to regional haze.

The Midwest RPO (MRPO) is a collaborative effort of state governments and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the Midwest. The member states are Illinois, Indiana, Michigan, Ohio, and Wisconsin.

III. What are the requirements for regional haze SIPs?

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the Clean Air Act and EPA's implementing regulations require states to establish long term strategies for making reasonable progress toward meeting this goal. States must also give specific attention in their plans to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require those sources to install BART for reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

A. Determination of Baseline, Natural, and Current Visibility Conditions

The regional haze rule establishes the deciview (dv) as the principal metric or unit for expressing visibility impairment. The deciview is used in expressing reasonable progress goals, defining baseline, current, and natural conditions, and tracking changes in visibility. This visibility metric expresses uniform proportional changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview. The preamble to the regional haze rule provides additional details about the deciview. 64 FR 35714 (July 1, 1999).

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437) and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP is submitted and at the progress review every five years, midway through each 10-year implementation period. The regional haze rule requires states with Class I areas (Class I states) to determine the degree of impairment in deciviews for the average of the 20 percent least impaired (best) and 20 percent most impaired (worst) visibility days over a specified time period at each of its Class I areas. Each state must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to states regarding how to calculate baseline, natural, and current visibility conditions in documents titled *Guidance for Estimating Natural Visibility Conditions under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*) (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance'') and *Guidance for Tracking Progress Under the Regional Haze Rule* (EPA–454/B–03–004 September 2003 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*)) (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze plans, the ''baseline visibility conditions'' are the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent best days and 20 percent worst days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while comparisons of subsequent conditions against baseline conditions will indicate the amount of progress made. In general, the 2000 to 2004 baseline period is considered the time from which improvement in visibility is measured.

B. Determination of Reasonable Progress Goals

The national goal of the regional haze rule is a return to natural conditions such that anthropogenic sources of air pollution would no longer impair visibility in Class I areas. The regional haze plans must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic air pollution. The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze plans that for each approximately 10-year implementation period establish two distinct reasonable progress goals: one for the best days and one for the worst days for every Class I area. The regional haze rule does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural visibility conditions. In setting reasonable progress goals, a state with a mandatory Class I area (Class I state) must provide for an improvement in visibility for the worst days over the approximately 10-year period of the SIP and ensure no degradation in visibility for the best days.

Class I states have significant discretion in establishing reasonable progress goals, but in establishing a reasonable progress goal for any mandatory Class I area are required to consider the following factors

established in section 169A of the Clean Air Act and in EPA's regional haze rule at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. The Class I states must demonstrate in their plans how they considered these factors when selecting the reasonable progress goals for the best and worst days for each Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in EPA's *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* (''EPA's Reasonable Progress Guidance''), July 1, 2007 memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, Regions 1–10 (pp.4–2, 5–1). In setting the reasonable progress goals, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (''uniform rate of progress'' or ''glide path'') and the emissions reduction needed to achieve that rate of progress over the approximately 10-year period of the regional haze plan. In setting reasonable progress goals, each Class I state must also consult with potentially contributing states, *i.e.* those states that may affect visibility impairment at its Class I state's areas. 40 CFR 51.308(d)(1)(iv).

C. BART

Section 169A of the Clean Air Act directs states to evaluate the use of retrofit controls at certain types of major stationary sources to address visibility impacts from these sources. Specifically, Clean Air Act section 169A(b)(2) and EPA's implementing regulations at 40 CFR 51.308(e) require states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate BART as determined by the state. The set of ''major stationary sources'' potentially subject to BART is listed in Clean Air Act section 169A(g)(7).

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR Part 51 (BART Guidelines) to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. Section IV(F)(1) of the BART Guidelines provides that a state must use the approach in the BART Guidelines in making a BART determination for a fossil fuel-fired electric generating unit (EGU) with total generating capacity in excess of 750 megawatts. States are encouraged, but not required, to follow the BART Guidelines in making BART determinations for other sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NOx, and PM. EPA has stated that states should use their best judgment in determining whether VOC or NH_3 emissions impair visibility in Class I areas.

States may select de minimis impact levels under the BART Guidelines, below which a BART-eligible source may be considered to have a small enough contribution to visibility impairment in any Class I area to warrant being exempted from the BART requirement. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. The exemption threshold set by the state should not be higher than 0.5 dv. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of each source's impact.

The state must document its BART control determination analyses. In making BART determinations, section 169A(g)(2) of the Clean Air Act requires the state to consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. The plan must require that BART controls be installed and placed in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the state's regional haze SIP. Clean Air Act section 169A(g)(4); 40 CFR 51.308(e)(1)(iv). In addition to what is required by the regional haze rule, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source.

The regional haze rule also allows states to implement an alternative program in lieu of BART if a state can demonstrate that the alternative program will achieve greater progress toward the national visibility goal than implementing BART controls. EPA made such a demonstration for CAIR in regulations issued in 2005 which revised the regional haze program. 70 FR 39104 (July 6, 2005). EPA's regulations provided that states participating in the CAIR trading program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR FIP in 40 CFR part 97 need not require affected BART-eligible EGUs to install, operate, and maintain BART for emissions of SO_2 and NO_X. 40 CFR 51.308(e)(4). CAIR is not applicable to emissions of PM, so states were required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant.

However, in 2008, the United States Court of Appeals for the District of Columbia Circuit held that CAIR was inconsistent with the requirements of the Clean Air Act and remanded the rule to EPA. See *North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. 2008). The Court left CAIR in place until the Agency replaced it. *Id.* EPA replaced CAIR with CSAPR in August 2011.

On June 7, 2012, EPA found that the trading programs in CSAPR would achieve greater reasonable progress towards the national goal than would be obtained by implementing BART for SO_2 and NO_X for BART-subject EGUs in the area subject to the Transport Rule. 77 FR 33642. Based on this finding, EPA revised the regional haze plans of Michigan and other states to meet the requirements of BART for SO_2 and NO_X for EGUs by participation in the trading programs under the Transport Rule.

D. Long Term Strategy

Consistent with the requirement in section 169A(b) of the Clean Air Act that states include in their regional haze SIP a 10- to 15-year strategy for making reasonable progress, 51.308(d)(3) requires that states include a long term strategy in their regional haze SIPs. The long term strategy is the compilation of all control measures a state will use during the implementation period of the specific SIP submission to meet applicable reasonable progress goals. The long term strategy must include enforceable emissions limitations,

compliance schedules, and other measures as necessary to achieve the reasonable progress goals for all Class I areas within or affected by emissions from the state. 40 CFR 51.308(d)(3).

The regional haze rule requires that, when a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the impacted state must coordinate with the contributing states to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the reasonable progress goals for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to address interstate visibility issues sufficiently.

States should consider all types of anthropogenic sources of visibility impairment in developing their long term strategies, including stationary, minor, mobile, and area sources. At a minimum, states must describe how they have taken each of the seven factors listed below into account in developing their long term strategies. The seven factors are: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the reasonable progress goal; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long term strategy. 40 CFR 51.308(d)(3)(v).

E. Coordinating Regional Haze and RAVI

As part of the regional haze rule, EPA revised 40 CFR 51.306(c), regarding the long term strategy for RAVI, to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment in accordance with 40 CFR 51.308(b) and (c). The state must revise its plan to provide for review and revision of a coordinated long term strategy for addressing RAVI and regional haze on or before this date. It must also submit the first such coordinated long term strategy with its first regional haze SIP. Future coordinated long term strategies, and periodic progress reports evaluating progress towards reasonable progress goals, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's long term strategy must be submitted to EPA as a SIP revision and report on both regional haze and RAVI impairment.

F. Monitoring Strategy and Other Implementation Plan Requirements

The regional haze rule at 40 CFR 51.308(d)(4) includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the state. The strategy must be coordinated with the monitoring strategy required in 40 CFR 51.305 for RAVI. Compliance with this requirement may be met through participation in the IMPROVE network, meaning that the state reviews and uses monitoring data from the network. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether reasonable progress goals will be met. The monitoring strategy is due with the first regional haze SIP and it must be reviewed every five years.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within that state to regional haze visibility impairment at Class I areas in other states;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible in electronic format;
- A statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year with available data, and future projected emissions. A state must also make a commitment to update the inventory periodically; and
- Other elements including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The regional haze rule at 40 CFR 51.308(f) requires that states submit control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision addressing the core requirements of section 51.308(d) (not including BART) every 10 years thereafter. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e). Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

G. Consultation With States and Federal Land Managers

The regional haze rule requires that states consult with Federal Land Managers (FLMs) before adopting and submitting their SIPs. 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the reasonable progress goals and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

IV. What is EPA's analysis of Michigan's regional haze plan?

Michigan submitted its regional haze plan on November 5, 2010, which included requested revisions to the Michigan SIP to address regional haze.

A. Class I Areas

States are required to address regional haze affecting Class I areas within a

state and in Class I areas outside the state that may be affected by that state's emissions. 40 CFR 51.308(d). Michigan has two Class I areas, Isle Royal National Park and the Seney Wilderness Area, within the state. Michigan is responsible for developing a regional haze plan that addresses these Class I areas and for consulting with states that affect its areas as well as for addressing its impact on Class I areas in other states.

Michigan reviewed technical analyses conducted by MRPO and other RPOs to determine what Class I areas outside the state are affected by Michigan emission sources. MRPO conducted both a back trajectory analysis and modeling to determine the effects of its states' emissions. Michigan also used assessments by MANE–VU, the regional planning organization for Northeastern and Mid-Atlantic states. The conclusion from these technical analyses is that Michigan emissions affect five Class I areas outside Michigan. These affected Class I areas are: Acadia National Park and Moosehorn Wilderness Area in Maine; Great Gulf Wilderness Area in New Hampshire; Brigantine Wilderness Area in New Jersey; and the Lye Brook Wilderness Area in Vermont. Michigan has thereby satisfied the requirement to identify the Class I areas it affects.

B. Baseline, Current, and Natural Conditions

The regional haze rule requires Class I states to determine the baseline, current, and natural conditions for their Class I areas. This information defines the rate of visibility improvement that would represent linear progress toward elimination of anthropogenic visibility impairment by 2064, also known as the uniform rate of progress, and helps the states define their reasonable progress goals.

Natural background visibility is estimated by calculating the expected light extinction using estimates of natural concentrations of pollutants adjusted by an estimate of humidity. EPA allows states to use either an original IMPROVE algorithm or a refined IMPROVE algorithm. Michigan used the refined IMPROVE algorithm.

Data from 2000 to 2004 were used to calculate the impairment on the 20 percent best and 20 percent worst visibility days at Isle Royale National Park and Seney Wilderness Area. The goal of the regional haze program is to achieve natural conditions by 2064. Table 1 shows the baseline conditions and natural conditions that Michigan determined for both Isle Royale and Seney for both the 20 percent most impaired days and the 20 percent least impaired days, as well as showing the calculation of the visibility that would be achieved by 2018 under the scenario of achieving the targeted uniform rate of progress.

TABLE 1—BASELINE, NATURAL, AND LINEAR PROGRESS VISIBILITY VALUES

20 percent most impaired visibility	Isle Royale	Seney
Baseline conditions	21.59 dv	23.37 dv.
Natural conditions	12.36 dv	12.65 dv.
Difference	9.23 dv	11.50 dv.
Annual difference with linear progress	0.15 dv	0.19 dv.
2018 value with linear progress	19.43 dv	21.64 dv.
20 percent least impaired days		
Baseline conditions	6.77 dv	7.14 dv.
Natural conditions	3.72 dv	3.73 dv.

Michigan does not expect degradation of the visibility on 20 percent best days, so no calculation is needed as the 2018 goals match the baseline. EPA's Reasonable Progress Guidance states that the uniform rate of progress is not a presumptive target for the reasonable progress goal. Class I states can set the reasonable progress goal at the uniform rate of progress or it can set the reasonable progress goal at greater or lesser visibility impairment.

C. Reasonable Progress Goals

Class I states must set reasonable progress goals that achieve reasonable progress toward achieving natural visibility conditions. Michigan consulted with Class I states on the development of reasonable progress goals through its participation in MRPO. MRPO facilitated consultations with other Midwest states and with states in other regions through inter-RPO process. By coordinating with the MRPO and other RPOs, Michigan has worked to ensure that it achieves its fair share of overall emission reductions necessary to achieve the reasonable progress goals of Class I areas that it affects, including Isle Royale and Seney Wilderness Area.

Michigan, the MRPO, and the Northern Class I consultation group worked together to establish reasonable progress goals. These groups first identified and prioritized sources that contribute to the worst visibility days and to establish the relative visibility impairment affects. The group determined that the priority emission sources are SO_2 point sources, NO_X from both point and mobiles sources, and ammonia from agricultural operations. EC/R, Incorporated (ECR), a contractor for the MRPO, further evaluated these sources on a three-state and nine-state basis. Michigan identified regional SO_2 emissions from EGUs as a key contributor to visibility impairment for Isle Royale National Park and Seney Wilderness Area. Michigan's regional haze plan identified the top ten contributing in-state sources to visibility impairment at Isle Royale and at Seney based on modeling and on the ratio of emissions to distance (''Q/d''). (See Tables 10.3.2.a and 10.3.2.b in Michigan's submittal, addressing Isle Royale and Seney, respectively.) Michigan also provided list of the top 30 facilities, including facilities both within and outside the state, ranked according to their impacts on Isle Royale and Seney. (See Tables 10.3.2.c and 10.3.2.d in Michigan's submittal, addressing Isle Royale and Seney, respectively.)

The second step of the process was to identify control options for the priority sources. Michigan, the MRPO, and the Northern Class I consultation group identified existing control measures including CAIR, BART, Maximum Achievable Control Technology (MACT) standards, on-road mobile source programs, and non-road mobile source programs. MRPO examined different potential control scenarios, including two control levels for EGUs and two control levels for industrial, commercial, and institutional (ICI) boilers.

The third step of the process was to assess the effect of existing control programs on priority sources. The impact of existing programs is discussed

in the ECR report. Table 2, below, replicated from Table 10.3.2.e. of Michigan's haze plan, which in turn used results from the ECR report, indicates results of the four factors for already existing controls.

TABLE 2—SUMMARY OF MICHIGAN'S FOUR-FACTOR ANALYSIS OF ON-THE-BOOKS CONTROLS

	Factor 1	Factor 2				Factor 3		Factor 4
Control strategy	Cost effectiveness ($/ton)	Percent emission reductions from 2002 baseline in 2018		Percent emission reductions from 2002 baseline at full implementation		Energy	Solid waste produced (1000 tons/yr)	Remaining useful life
CAIR and other cap-trade programs (e.g., acid rain, NO_X SIP call.	$720–$2,600	3-state SO_2: NO_X: 9-state SO_2: NO_X:	13% 75% 34% 79%	3-state SO_2: NO_X: 9-state SO_2: NO_X:	47% 75% 48% 80%	4.5% of total energy consumed.	2,383	The IPM model projects that 53 units will retire by 2018.
BART: Based on Company BART analyses from MN and ND for non-EGUs.	$248–$1,770.							
Combustion MACTs	$1,477–$7,611	9-state SO_2: NO_X:	10% 5%	9-state SO_2: NO_X:	10% 5%.			
Highway vehichle programs	$1,300–$2,300	3-state NO_X: 9-state SO_2:	83% 80%	3-state NO_X: 9-state SO_2:	83%. 80%.			
Nonroad mobile sources	($1,000)–$1,000	3-state NO_X: 9-state SO_2:	39% 27%	3-state NO_X: 9-state SO_2:	39% 27%.	350 MM gallons of fuel saved.		

Table 3, replicated from Table 10.3.2.f of Michigan's submittal, shows the change in deciview predicted from already existing controls, including CAIR.

TABLE 3—COMPARISON OF THE UNIFORM RATE OF PROGRESS (URP) IN 2018 WITH PROJECTED IMPACTS FOR EXISTING CONTROLS

	Estimated visibility impairment on the 20% worst visibility days (deciviews) [a]			
	Boundary waters	Voyageurs	Isle Royale Nat'l Park	Seney Wilderness
Baseline conditions (2000–2004)	19.86	19.48	21.62	24.48
Projected conditions in 2018 with on-the-books controls [b]	18.94	19.18	20.04	22.38
Net change	0.92	0.30	1.58	2.1
Glide path/URP	17.7	17.56	19.21	21.35

[a] The baseline condition values reflect the recent adjustments proposed by the Midwest RPO to include several missing days. The adjusted values are, on average, less than 0.5 dv greater than those provided on the IMPROVE Web site.

[b] Based on CAMX modeling by the MRPO. These modeling analyses used preliminary estimates of the impacts of BART controls, which are generally larger than the impacts estimated in industry BART analyses.

The fourth step of the process is to evaluate which control options may be reasonable for priority sources. Again, many of the sources were evaluated in the ECR report. The northern Class I areas Consultation Group further considered the MRPO EGU scenario with limits on EGU emissions of 0.15 pounds per million British Thermal Units (#/MMBTU) for SO_2 and 0.10 #/MMBTU for NO_X by 2013 and the ICI boiler option with a 40 percent reduction in SO_2 emissions and a 60 percent reduction in NO_X emissions by 2013. In order to realize significant visibility improvement at Michigan's two Class I areas, EGUs are clearly the top priority source category for both NO_X and SO_2 control. Since all EGUs were subject to CAIR, Michigan concluded that no further controls on EGUs should be considered reasonable for purposes of reasonable progress at this time. By separate rulemaking, published June 7, 2012, at 77 FR 33642, EPA has promulgated a revision to Michigan's plan to include the reductions of CSAPR in the state's long term strategy, for reasonable progress as well as for BART purposes.

A number of non-EGU facilities also have significant impact on Michigan's two Class I areas, as identified in its plan. These facilities are subject to BART analysis, and Michigan has evaluate them to determine if additional controls represent BART. Those ICI boilers not addressed by BART may eventually be controlled further. Michigan, in conjunction with other MRPO states and a number of Northeast states, evaluated reasonable control levels for ICI boilers but concluded that regulation of these sources by individual states would be relatively ineffective in the absence of a regional program addressing the emissions of ICI boilers across much of the eastern United States. However, Michigan's plan takes into account the reductions anticipated from other Federal control measures such as Tier II mobile source standards, heavy-duty diesel engine standards, low sulfur fuel, and non-road mobile sources control programs.

The final step of the process to determine the reasonable progress goals was to compare the control strategies to the uniform rate of progress. The computation of visibility levels that would be achieved by 2018 with linear progress toward the goal of no anthropogenic visibility impairment by 2064 is described above. Michigan included all control measures believed to be reasonable and compared the resulting visibility improvement to the uniform rate of progress. Michigan set the reasonable progress goals for Isle Royale at 20.86 dv for the worst 20 percent of days and 6.76 dv for the best 20 percent of days in 2018. This annual 0.05 dv improvement rate would lead to achieving natural conditions on the worst 20 percent of days by 2181. The 2018 reasonable progress goal for Isle Royale provides less improvement than the linear progress benchmark of 19.21

dv. Michigan determined that the reasonable progress goals for Seney Wilderness Area are 23.58 dv for the worst 20 percent of days and 7.78 dv for the best 20 percent of days in 2018. Projecting this 0.06 dv per year improvement into the future yields Voyageurs reaching natural conditions on the worst 20 percent of days in 2209. As was the case for Seney Wilderness Area, the 2018 reasonable progress goal for Voyageurs provides less improvement than the linear progress benchmark of 21.35 dv. Nevertheless, Michigan considers the reasonable progress goals to reflect an appropriate visibility improvement based on implementation of a reasonable set of measures. Michigan detailed potential controls in Chapter 10 of its regional haze plan.

Michigan consulted with other states to determine which other states' emissions contribute to visibility impairment in Michigan's Class I areas. The consultation also allowed Michigan to determine that in addition to contributions from its own sources, emissions from sources in Wisconsin, Illinois, Iowa, Missouri, and North Dakota contribute to visibility impairment at Michigan's Class I areas, Isle Royale National Park and Seney Wilderness Area. Michigan identified the contributing states from MRPO's 2018 modeling-based source apportionment analysis. Other analyses from CENRAP and MRPO support the contribution determination. The pollutants and sources affecting Isle Royale National Park and Seney Wilderness Area are detailed in Chapter 10 of the Michigan's regional haze plan.

Michigan consulted with the FLMs during the development of its regional haze plan. Michigan sent several drafts of its regional haze SIP for comments to the FLMs between 2007 and May 2010, prior to the public hearing held on June 29, 2010. In response to this solicitation, Michigan received comments from the FLMs and from EPA Region 5. A summary of the comments and Michigan's responses are included in Appendix 2A of its submittal. Michigan has committed to continue to consult with the FLMs as it develops future SIP revisions and progress reports.

Michigan participated in meetings and conference calls with affected Class I states and RPOs. Michigan consulted with Minnesota on their Class I areas. Michigan also participated in MRPO's inter-RPO consultations and MANE–VU. MANE–VU, the RPO for the northeastern states, facilitated consultation between Michigan and Maine, New Hampshire, New Jersey, and Vermont.

Michigan also participated in the northern Class I area consultation process as part of the process to establish a long term strategy for regional haze. This consultation process included the states of Michigan, Minnesota, North Dakota, Wisconsin, Iowa, Illinois, Indiana, and Missouri and representatives from other governments, such as the Ontario Ministry of Environment and tribes including the Leech Lake Band of Ojibwe, Mille Lacs Band of Ojibwe, Fond du Lac Band of Lake Superior Chippewa, Grand Portage Band of Chippewa, Upper/Lower Sioux, and Huron Potawatomi. The consultation process also included representatives from federal agencies, such as the U.S. Department of the Interior National Park Service and the U.S. Department of Agriculture Forest Service, as well as representatives from the EPA.

Michigan included the MRPO regional haze technical support document (TSD) in its submission. In Section 5 of the TSD, MRPO assessed the reasonable progress using the four factors required by 40 CFR 51.308(d) the regional haze rule, specifically, the cost of compliance, time needed for compliance, energy and non-air impacts, and remaining useful life.

In analyzing the visibility benefits of existing programs, MRPO considered existing on-highway mobile source, off-highway mobile source, area source, power plant, and other point source programs. MRPO also included reductions from the since vacated CAIR in its analysis. Following the court vacatur of CAIR, MRPO performed an additional analysis intended to project air quality in the absence of CAIR. MRPO projected visibility in 2018 under three scenarios in this analysis. The first scenario reflected simple emissions growth from a baseline that reflects power plant emissions in 2007, prior to most of the emission controls pursuant to CAIR being installed. The second scenario added reductions for power plants controls that are enforceable under federal or state consent decrees, permits, or rules. The final scenario also added power plant controls that the utilities anticipated installing, presumably under the expectation that EPA would issue a rule to replace CAIR, plus power plant controls representing BART where applicable.

Michigan believes that implementation of the existing control measures listed in section 10 of its regional haze plan is expected to provide its fair share of emission reductions that should allow affected Class I areas to meet the reasonable progress goals. However, CAIR is one of the existing control measures and the MRPO analysis shows emission reductions equivalent to the scale of CAIR are needed to meet reasonable progress goals. On the other hand, EPA rulemaking published June 7, 2012, at 77 FR 33642, EPA promulgated provisions incorporating CSAPR into Michigan's SIP. EPA believes that with CSAPR providing the reductions that Michigan expects to obtain from CAIR, Michigan's long term strategy can in fact be expected to achieve the state-adopted reasonable progress goals that Michigan established. Furthermore, EPA proposes to agree with Michigan's conclusion, based on a review of the four factors, that the state's plan includes a reasonable set of measures that provide its appropriate share of reductions toward achieving reasonable progress goals.

D. BART

Michigan developed rules that describe the process for determining BART and the applicability provisions. See Appendix 9A of regional haze plan. Michigan conducted a BART analysis using the criteria in the BART Guidance at 40 CFR 51.308(e) and 40 CFR 51 appendix Y to identify all of the BART-eligible sources, assess whether the BART-eligible sources are subject to BART and determine the BART controls. These criteria to determine BART eligibility are: (1) The emissions unit fits within one of the 26 categories listed in the BART Guidelines; (2) the emissions unit was in existence prior to August 7, 1962, but was not in operation before August 7, 1962; and (3) the total potential emissions of any visibility-impairing pollutant from the subject units at a stationary source are 250 tons or more per year.

Michigan relied on CAIR to satisfy BART requirements for EGUs for SO_2 and NO_X. Furthermore, a modeling analysis demonstrated that particulate matter impacts from EGUs at Class I areas were insignificant and did not warrant further control. Therefore, Michigan's assessment of sources subject to BART focused on non-EGUs. Using available source emissions and construction date information, Michigan identified 35 non-EGU facilities that were potentially subject to BART.

Michigan worked with MRPO to perform source-specific analyses with CALPUFF model to determine the sources subject to BART. MRPO conferred with its states, EPA, and the FLMs in developing its BART modeling protocol. Consistent with EPA guidance, the state used a 0.5 dv impact (98th percentile) as the threshold for a source to contribute to visibility impairment,

concluding that such a threshold provided an appropriate means of identifying which sources cause sufficient visibility impairment to warrant being subject to BART. By this means, Michigan identified the following six non-EGU sources subject to BART: Lafarge Midwest, Inc.; Smurfit Stone Container Corp.; St. Mary's Cement; New Page Paper; Tilden Mining Co.; and Empire Mining Company. More detail on Michigan's BART determinations is provided in appendix 9 of Michigan's regional haze plan.

Subsequent to Michigan's identification of sources subject to BART requirements, Empire Mining provided new information that it had permanently shut down one furnace. With the resulting lower emissions, modeling for Empire Mining showed that the facility does not exceed the 0.5 dv threshold BART level. Therefore, Michigan concluded that this facility is no longer subject to BART.

EPA's review of Michigan's analysis concluded that Michigan applied appropriate analyses based on appropriate criteria for identifying sources subject to BART.

The five non-EGU BART-eligible sources include two Portland cement plants, one taconite plant, and two paper products plants. Table 9.2.d of Michigan's regional haze plan includes a summary of the BART analysis submitted by the sources and Michigan's evaluation of potential BART options and proposed BART control strategies. More detailed information of BART controls and analysis submitted by the sources can be found in appendices 9C through 9J of Michigan's plan. The following discussion reviews Michigan's proposed BART determinations for these five sources.

(1) Lafarge Midwest, Inc.

Lafarge Midwest, Inc. is a cement plant located in Alpena, Michigan. The BART subject emission units include five Portland cement manufacturing kilns: EU–KILN 19, EU–KILN 20, and EU–KILN 21 are part of Kiln Group 5 (KG 5); EU–KILN 22 and EU–KILN 23 are part of Kiln Group 6 (KG 6).

On March 18, 2010, Lafarge entered into a Global Settlement/Consent Decree (hereinafter Consent Decree) with the EPA and Michigan to reduce NO_X and SO_2 emissions at the Alpena facility along with other Lafarge facilities in the United States.

The emission controls required by the Consent Decree include selective noncatalytic reduction (SNCR) for Kiln Groups KG 5 and KG 6 for NO_X control. For SO_2 control, wet scrubbers for kiln group KG 6 and a Dry Absorption Addition system for Kiln Group KG 5 are required. These controls are consistent with the BART Guidelines to control visibility impairing pollutants (NO_X and SO_2) emissions. An additional control not included in the BART analysis but agreed to in the Consent Decree is the Dry Absorption Addition system for SO_2 controls on KG 5. Michigan includes all controls contained in the Consent Decree, including the Dry Absorption Addition system, as part of the BART controls.

The Lafarge Alpena facility will reduce NO_X and SO_2 according to the schedule and conditions given in the Consent Decree (see Appendix 9D). Beginning January 1, 2011, Lafarge was required to maintain an interim, facility-wide, 12-month rolling tonnage limit for NO_X of 8,650 tons per year and SO_2 at 13,100 tons per year. The final emission limits will be established according to the Consent Decree ''Control Technology Demonstration Requirements,'' as given in the Appendix of the Consent Decree. The control technology demonstration describes in detail a stepwise emission control optimization program to establish the 30-day rolling average emission limits for NO_X and SO_2 at individual affected kilns. Additional requirements include a demonstration phase, facility-wide, 12-month rolling average NO_X emission limit of 4.89 pounds of NO_X per ton of clinker and an SO_2 emission limit of 3.68 pounds of SO_2 per ton of clinker. The demonstration phase limit will be followed by a period of testing of control efficiency and subsequently establish a 30-day rolling average limit for both NO_X and SO_2 to be calculated at the end of each 24-hour period.

In accordance with Regional Haze Rule, BART for PM emission was determined to be equivalent to the Portland Cement MACT, which regulates PM as a surrogate for hazardous air pollutants. Lafarge has emission controls (baghouses) in place to control hazardous air pollutants and thereby meets both the MACT requirements and the BART requirement for PM.

EPA is proposing to approve the requirements established in the Consent Decree, requiring reductions in NO_X and SO_2 emissions at the Lafarge Midwest, Inc. facility located in Alpena, as satisfying BART requirements for these pollutants. In addition, EPA is satisfied that the PM MACT represents BART for PM, and approves a PM limit of 0.03 pounds per ton of dry feed as BART at kilns in KG5 and KG6.

(2) Smurfit Stone Container Corporation (SSCC)

SSCC was a paper products plant located in Ontonagon, Michigan. The only BART subject emission unit at the facility was the Riley Boiler #1 (EUBR 1).

Subsequent to Michigan's determination of BART for this facility, the facility has been demolished. Any effort to reconstruct this facility would require a new source permit. Therefore, this facility cannot restart operation without implementing BART. Consequently, it is now moot whether Michigan's BART determination for this facility would have satisfied the BART requirement.

(3) St. Mary's Cement

St. Mary's Cement operates a Portland cement kiln and associated material handling equipment in Charlevoix, Michigan. In addition to operating an on-site quarry and stone crushing operation, the company operates a kiln system that includes a pre-heater and pre-calciner. In 2006, the company installed an indirect firing system to reduce fuel requirements and to reduce emissions of NO_X and SO_2.

A consultant prepared and submitted to Michigan a report analyzing several control alternatives for this facility. Based on its review of this report, provided in Appendix 9E of its submittal to EPA, Michigan concluded that BART reflected no further control of this facility. Moreover, Michigan concluded that existing limits suffice to require this level of control.

As discussed above, a full analysis of BART involves evaluation of five factors. These factors include: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

EPA has identified several deficiencies in the evaluation of BART for St. Mary's Cement in Michigan's plan, most notably with respect to the evaluation of the costs and benefits of installing equipment for SNCR. These deficiencies include:

—Use of a 10-year projection of equipment life, rather than 15 or 20 years, resulting in overly rapid amortization of the cost of control equipment;

—Inclusion of costs associated with production losses from system clogging that the company expects to

result from introduction of urea, based on a presumption that the company will fail to solve this problem;
—Underestimation of the emission reductions that can be expected from an improved SNCR;
—Overestimation of the costs of urea; and
—Overestimation of the costs of electricity.

These issues are discussed in greater length in a May 24, 2012 letter from Douglas Aburano, Chief of the Attainment Planning and Maintenance Section of EPA Region 5, to Vincent Hellwig, Chief of the Air Quality Control Division of the Michigan Department of Environmental Quality. The following table summarizes values that the consultant for St. Mary's Cement used in its cost-benefit analysis and the corresponding values that EPA used to assess whether SNCR is likely to be cost-effective at this facility.

TABLE 4—PARAMETERS FOR EVALUATING COST-EFFECTIVENESS OF SNCR AT ST. MARY'S CEMENT-CHARLEVOIX

Parameter	Consultant value	EPA value	Comments
Clean-out costs	$968,000/yr. lost production	Capital: $685,815 Labor/materials $19,458	EPA estimates 50% more capital, twice labor/materials.
Urea	$1,440,000	$458,167	Assumes 0.31 moles urea/mole NO_X, $450/ton urea.
Capital amortization	10-year life, 7% interest (0.14)	15–20 year life, 7% interest (0.11 to 0.0944) .*	
Overhead	$883,264 (60% of material, labor)	$0	EPA's Control Cost Manual finds overhead minimal.
Emission Reduction	524 tons/year (10% of baseline)	1259 tons/year (50% of 2006 to 2008 emissions).	
Electricity	$45,990 (100kW for 6570 hrs/yr)	$28,000 (Average of 100 kW for 4000 hrs/yr).	
Maintenance (Labor, materials).	$17,512	$35,540	EPA assumes twice normal maintenance.

* Letter to Michigan estimated cost effectiveness based on 15-year life of control equipment, but EPA believes that amortization over 15 to 20 years is appropriate.

In summary, the consultant for St. Mary's Cement assigned very high costs for lost production resulting from material buildup, very high costs for overhead, and low efficiency of NO_X emission control. The consultant estimated that the annualized cost of NO_X emission reduction would be $7,568 per ton. Based on the revised cost parameters summarized above, EPA finds that the annualized cost per ton of NO_X emission reduction is likely to be between $920 and $980. (This range reflects a range of estimates of equipment life, amortizing the capital expense over between 15 and 20 years.)

Much of the consultant's discussion of SNCR that is included in Michigan's plan asserts that use of SNCR at this facility would cause buildup of ammonium bisulfite scale and would cause various expenses that would make operation of SNCR overly expensive. Most notably, the consultant asserts that use of SNCR would result in material buildup that would require periodic cleaning necessitating kiln downtime and lost production. The consultant also observes that ''air cannons'' currently in use to remove buildup could be supplemented, at considerable expense, but the consultant asserts that this approach would likely have limited effectiveness in reducing the need for full kiln shutdowns for cleaning purposes.

EPA addressed these concerns in its May 24, 2012, letter to Michigan. EPA noted that ''SNCR has been successfully demonstrated at many cement plants across the country, which suggests that solutions to this problem are readily available.'' EPA listed some of the options for addressing this problem, including redesign for improved airflow, use of enhanced pneumatic cleaning or other cleaning approaches, and use of more concentrated urea (with less water content), and concluded that the success in operating SNCR at other plants indicates that SNCR can be successfully be operated at reasonable cost at this plant. Indeed, EPA's review finds that SNCR can be installed and operated at reasonable cost even if one assumes additional expense in installation and operation for addressing material buildup issues beyond the expenses currently incurred by the company addressing these issues.

EPA has reassessed the above five factors for evaluating whether SNCR constitutes BART for the St. Mary's Cement Charlevoix facility. EPA finds that the facility can install and operate SNCR at reasonable cost. No energy or non-air quality environmental impacts influence this choice of control options. The design of the kiln system, which includes an indirect firing system that reduces the NO_X emissions from the kiln, would be well complemented by installation and operation of SNCR. The facility is expected to have sufficient remaining useful life to assume that the cost of installing SNCR may be amortized over 15 to 20 years. While the Michigan plan does not estimate the visibility improvement that would result from installation and operation of SNCR, the plan estimates the overall impact of the plant is 3.8 dv, from which EPA conservatively estimates that SNCR would improve visibility by at least 0.4 dv. (This estimate reflects an assumption that half of the overall plant impact is due to NO_X emissions. This estimate also reflects an assumption that baseline NO_X emissions used in estimating the plant's impact were 5,741 tons per year, though the report in Michigan's SIP also suggests that the impact analysis may reflect a substantially lower NO_X emission rate, which would indicate that the benefits of SNCR would be much greater.)

EPA also reviewed the determination of BART for this facility with respect to SO_2. Based on CEMS data for 2006 to 2008, the average SO_2 emission rate at this facility is 3.02 pounds per ton of clinker. The Michigan SIP does not clearly limit SO_2 emissions from this facility, though a construction permit limits annual emissions to 4,404 tons per year and 550 tons per 30 days, which, at 2006 to 2008 average production rates are equivalent to 7.9 pounds and 12.0 pounds of SO_2 per ton of clinker, respectively. The company states that a lower emission limit should not be considered BART because the BART limits should accommodate higher sulfur-bearing raw materials in

the company's quarry than are presently being used.

Michigan's plan includes a consultant's analysis of both wet and dry flue gas desulfurization. This analysis fails to annualize equipment costs, and instead computes cost effectiveness by adding the entire capital costs for equipment and installation plus the costs of one year's operation, then dividing by one year's emission reduction. Using the consultant's cost estimates but amortizing the capital costs over a 20-year period (assuming an interest rate of 7 percent) suggests costs per ton of $3,500 for dry flue gas desulfurization and $4,500 per ton for wet flue gas desulfurization.

EPA proposes to find that no additional control equipment constitutes BART for SO_2 under current conditions. However, if the company, as it contemplates, uses raw materials with higher sulfur content, then the cost-benefit ratio for control would improve, potentially to the point where installation of emission control equipment is warranted.

Based on review of these factors, EPA concludes that BART at St. Mary's Cement's Charlevoix facility includes installation and operation of SNCR and a more stringent tighter limit on emissions of SO_2. EPA concludes as a result that Michigan's plan fails to require BART at this facility. Therefore, EPA proposes to disapprove Michigan's plan with respect to BART.

In a notice published January 15, 2009, at 74 FR 2392, EPA notified Michigan of a failure to submit a timely plan for regional haze. Consequently, under Clean Air Act section 110(c), in the absence of a state plan meeting pertinent requirements, EPA is to promulgate FIP provisions meeting the requirements. EPA is proposing Federal limits in this action to address the BART requirement for St. Mary's Cement's Charlevoix facility. These limits are discussed in a subsequent section of this preamble.

(4) NewPage Paper

NewPage Paper owns and operates a paper mill in Escanaba, Michigan, a facility that is permitted by the State as Escanaba Paper. The largest boiler at the facility was not constructed during the time period for BART eligibility, but several other boilers and other operations at the plant are subject to the requirement for BART. Michigan's plan includes a review prepared by the company's consultant that concluded that existing controls constitute BART and that existing limits suffice to require these controls.

EPA's review focused on the largest of these sources, namely Boiler 8 and Boiler 9. Boiler 8 has historically been fired with both natural gas and residual oil, but in the past few years the boiler has only used natural gas. Boiler 9 is a stoker boiler that predominantly fires wood bark generated at the plant. Since the fuels firing these boilers have minimal sulfur content, the SO_2 emissions from these boilers are insignificant. State rules limit the NO_X emissions of boiler 8 during the ozone season (defined as May 1 to September 30), with a limit of 0.2 #/MMBTU when firing gas and 0.40 #/MMBTU when firing residual oil. However, these rules are not part of the Michigan SIP, and Michigan did not submit these rules as part of its regional haze plan submittal. Boiler 8 has no state or Federal NO_X emission limits for the rest of the year, and Boiler 9, being predominantly wood-fired, has no state or Federal NO_X emission limits at any time.

The emission profiles of these two boilers have changed significantly since 2002. Boiler 8, besides becoming predominantly fired with natural gas, has been used much less in recent years than in prior years, which, in combination with a modest reduction in emissions per million BTU, resulted in the boiler's NO_X emissions declining from an average of 135 tons per year in 2002 to 2004 to an average of 40 tons per year in 2010 to 2011. Boiler 9 had relatively steady usage throughout this period, but modifications to the boiler's overfire air system in 2006 resulted in the boiler's NO_X emissions declining from a 2002 to 2004 average of 836 tons per year to a 2010 to 2011 average of 250 tons per year.

EPA identified several concerns with the Michigan submittal's analysis of costs and benefits of emission controls at these two boilers. The submittal, reflecting the analysis by the company's contractor, appears to overestimate likely costs of installing controls, fails to evaluate design changes such as the improved overfire air design implemented at Boiler 9, and assumes overly short control equipment life (thereby amortizing control costs over an inappropriately short period).

More importantly, as noted above, Michigan's plan includes no limits on emissions from these two boilers; indeed, the plan does not even include the limits in state rules that apply to Boiler 8 during the ozone season. Therefore, notwithstanding the emission reductions that have occurred at the key BART units at NewPage Paper's Escanaba facility, Michigan's plan does not include any limits that mandate any reductions at these boilers. Therefore, EPA believes that Michigan's plan fails to require BART for these two boilers.

Michigan identified several other units at NewPage Paper that are subject to a requirement for BART, including the Number 10 recovery furnace, a lime kiln, and the smelt dissolving tank. EPA concurs with Michigan's conclusion that these other units do not require limits to require BART controls. However, EPA finds that Michigan has failed to require BART for the facility because the state has failed to submit limits requiring appropriate control for Boilers 8 and 9.

As discussed above for St. Mary's Cement, EPA is obligated here to promulgate FIP provisions in cases where state plan provisions are inadequate. FIP provisions mandating BART for NewPage Paper's Escanaba facility are discussed in a subsequent section of this preamble.

(5) Tilden Mining

EPA is reviewing Michigan's BART determination for Tilden mining in conjunction with a review of BART for other taconite plants in Minnesota. By this means, EPA intends to ensure that the Tilden Mining taconite plant and similar facilities in Minnesota are subject to similar requirements. This review is being addressed in a separate rulemaking action that EPA plans to conduct on the same timetable as this Michigan rulemaking.

E. Long Term Strategy

Under section 169A(b)(2) of the Clean Air Act and 40 CFR 51.308(d), states' regional haze programs must include a long term strategy for making reasonable progress toward meeting the national visibility goal. Michigan's long term strategy must address visibility improvement for the Class I areas in and out of Michigan that are affected by Michigan sources. Section 51.308(d)(3) requires that Michigan consult with the affected states in order to develop a coordinated emission management strategy. Michigan must demonstrate that its plan includes all measures necessary to obtain its share of the emissions reductions needed to meet the reasonable progress goals for the Class I areas affected by Michigan sources. As described in section III.D of this proposal, the long term strategy is the compilation of all control measures Michigan will use to meet applicable reasonable progress goals. The long term strategy must include enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals for all Class I areas affected by Michigan emissions.

At 40 CFR 51.308(d)(3)(v), the regional haze rule identifies seven factors that a state must consider in developing its long term strategy: (A) Emission reductions due to ongoing air pollution control programs, (B) measures to mitigate impacts from construction, (C) emission limits and schedules for compliance to achieve the reasonable progress goal, (D) replacement and retirement of sources, (E) smoke management techniques, (F) federally enforceable emission limits and control measures, and (G) the anticipated net effect on visibility due to projected emission changes over the long term strategy period.

Michigan relied on MRPO's modeling and analysis along with its emission information in developing a long term strategy. Michigan consulted with Class I states through its participation in MRPO. MRPO facilitated consultations with other midwest states and with states in other regions through inter-RPO processes. Michigan considered the factors set out in 51.308(d)(3)(v) in developing its long term strategy. Based on these factors and the MRPO's technical analysis, in conjunction with reasonable progress goals that were set by the pertinent states in consultation with Michigan and other states, Michigan concludes that existing control programs adequately address Michigan's impact on Class I areas and suffice to meet their reasonable progress goals by 2018 by implementing the control programs already in place. These existing control programs include federal motor vehicle emission control program, reformulated gasoline, emission limits for area sources of VOCs, Title IV, the NO_X SIP Call, MACT requirements, and Federal non-road standards for construction equipment and vehicles. These programs are fully enforceable, provide for the mitigation of new source impacts through new source permitting programs, and reflect appropriate consideration of current programs and prospective changes in emissions.

As noted in a separate EPA rule (June 7, 2012, at 77 FR 33642), a number of states, including Michigan, fully consistent with EPA's regulations at the time, relied on the trading programs of CAIR to satisfy the BART requirement and the requirement for a long term strategy sufficient to achieve the state-adopted reasonable progress goals. In that rulemaking, we promulgated a limited disapproval of Michigan's long term strategy based on its reliance on CAIR, and promulgated a FIP to replace reliance on CAIR requirements with reliance on the trading programs of CSAPR to satisfy BART requirements for NO_X and SO_2 emissions from EGUs in various states including Michigan. We are now proposing to find that the remaining elements of Michigan's long term strategy, amended further to include the BART limitations that EPA is proposing for St. Mary's Cement and for NewPage Paper in this action, meet the requirements of the regional haze rule.

F. Monitoring Strategy

Michigan's monitoring strategy relies on participation in the IMPROVE network. There is an IMPROVE Protocol monitoring site in Quaker City, Michigan. Michigan also runs a network of criteria pollutant monitors that provides data to analyze air quality problems including regional haze. Class I states like Michigan are required under 40 CFR 51.308(d)(4) to have procedures for using the monitoring data to determine the contribution of emissions from within the state to affected Class I areas. Michigan developed procedures in conjunction with the MRPO. The procedures are detailed in the MRPO TSD. EPA finds that Michigan's regional haze plan meets the monitoring requirements for the regional haze rule and that Michigan's network of monitoring sites is satisfactory to measure air quality and assess its contribution to regional haze.

G. Comments

Michigan provided a public comment period on its proposed regional haze plan. It held a public hearing on June 29, 2010, which concluded the public comment period. Michigan received comments from the FLMs as part of the consultation process as well as from EPA. Michigan submitted evidence of the public notice and public hearing to EPA.

Michigan provided the comments it received and its responses in a document within its regional haze plan. Michigan revised portions of its proposed plan in response to comments. Michigan has satisfied the requirements from 40 CFR 51 appendix V by providing evidence that it gave public notice, took comments, and that it compiled and responded to comments.

V. What are EPA's proposed BART determinations?

As noted above, in absence of a state submittal that satisfies BART requirements for St. Mary's Cement's Charlevoix facility and for NewPage Paper's Escanaba facility, EPA is under obligation to promulgate Federal provisions satisfying these requirements. The following discussion evaluates appropriate limits to satisfy the BART requirement for these facilities. As noted above, EPA is addressing Tilden Mining's facility near Ishpeming in a separate rulemaking.

A. St. Mary's Cement

As discussed in section IV.E., EPA proposes to find that SNCR represents BART on the kiln at St. Mary's Cement's Charlevoix facility. The following discussion describes EPA's assessment of the appropriate emission limit for mandating BART-level control at this facility.

The most relevant information concerning potential effectiveness of SNCR at this facility is from testing at St. Mary's Cement's facility in Dixon, Illinois. A set of tests, lasting 1 to 3 days each, injected urea at a rate equal to a stoichiometric ratio of 0.6 of the rate of uncontrolled NO_X emissions. (That is, the ratio of the moles of ammonia produced by the injected urea to the moles of uncontrolled NO_X emissions was 0.6.) These tests showed an average of 46 percent NO_X emission reduction. Shorter term tests at the Dixon facility showed that injection of urea at a stoichiometric ratio of 1.2 achieved an average of 83 percent reduction in NO_X emissions.

Several other reviews have also found SNCR to be effective at controlling NO_X emissions from cement kilns, commonly achieving 50 percent NO_X control. EPA has conducted a recent review of options for controlling emissions for Portland cement plants, in developing new source performance standards for these facilities. EPA proposed these new source performance standards on June 16, 2008, at 73 FR 34072, and published final standards on September 9, 2010, at 75 FR 54970. These standards included a new standard for NO_X emissions, set at 1.5 pounds per ton of clinker on a 30-day average basis.

Other reviews similar to EPA's review for its new source performance standards have also found SNCR to be an effective means of controlling NO_X emissions from existing cement kilns. EPA made similar findings in an earlier review, given in a report published in 2000 entitled, ''NO_X Control Technologies in the Cement Industry: Final Report'' (EPA–457/R–00–002, September 2000, available at *http://_www.epa.gov/_ttnnaaqs/_ozone/ctg_act/200009_nox_epa457_r-00-002_cement_industry.pdf*). Although application of NO_X control technology was relatively rare in the United States at the time (*i.e.,* before the NO_X SIP Call required control), EPA found SNCR to be an effective means of reducing NO_X emissions, commonly achieving 50 percent or more reduction. Regional

planning organizations evaluating options for BART also made similar findings. (See, for example, ''Identification and Evaluation of Candidate Control Measures—Phase II Final Report,'' June 2006, available at *http://www.ladco.org/reports/control/final_reports/identification_and_evaluation_of_candidate_control_measures_ii_june_2006.pdf.*)

EPA determined baseline emissions at St. Mary's Cement from continuous emission monitoring data for 2006 to 2008 reported by the company. These data indicated that NO_X emissions from the kiln average 4.52 pounds per ton of clinker. This is quite similar to the representative emission factors for similar Portland cement manufacturing facilities given in the EPA emission factor guidance document known as AP–42, which is 4.2 pounds of NO_X per ton of clinker for preheater/precalciner kilns and 4.8 pounds of NO_X per ton of clinker for preheater process kilns. The St. Mary's Cement data for 2006 to 2008 also indicate that the 95th percentile value among 30-day average NO_X emission rates was 5.78 pounds per ton of clinker. For SO_2, the St. Mary's Cement data indicate an average emission rate of 3.02 pounds per ton of clinker, and the 95th percentile value among 30-day averages was 7.19 pounds per ton of clinker.

EPA believes that the most appropriate form for a limit on emissions from St. Mary's Cement is a 30-day rolling average of emissions per ton of clinker. This reflects the form of the standard used in the new source performance standards for Portland cement kilns.

EPA believes that the appropriate limit for NO_X emissions from the kiln at St. Mary's Cement would reflect a 50 percent reduction from the average emissions. Thus, rounding to two significant figures, EPA proposes to establish a limit on NO_X emissions from the St. Mary's Cement kiln at 2.30 pounds per ton of clinker, set as a 30-day rolling average. According to 2006 to 2008 data from the facility, this limit would require slightly under 60 percent control from St. Mary's Cement's 95th percentile 30-day average emission rate, which the evidence from tests at St. Mary's Cement's Dixon facility indicates is readily achievable, particularly since a limit of 2.30 pounds per ton of clinker would only occasionally require this level of control.

EPA is also proposing to establish a limit on SO_2 emissions per ton of clinker. The purpose of this limit is not to require emission controls to achieve emissions below current levels. Instead, EPA intends this limit to assure that emissions do not increase significantly above current levels. While EPA has concluded that installation and operation of SO_2 emission control equipment is not cost effective at current SO_2 emission rates, such control equipment would be cost effective at higher SO_2 emission rates. That is, EPA is proposing to establish a limit reflecting its view that BART reflects no further control under current circumstances with current raw material sulfur contents but the BART reflects achievement of an SO_2 emission rate that would involve emission control if the raw material contained significantly more sulfur.

As noted above, the average SO_2 emission rate at St. Mary's Cement from 2006 to 2008 was 3.02 pounds per ton of clinker, and the 95th percentile 30-day average over this period was 7.19 pounds per clinker. Since most emission rates are well below 7.19 pounds per ton of clinker, EPA is proposing to set a limit that reflects a 5 percent compliance margin relative to this emission rate. That is, EPA is proposing to set a limit of 7.5 pounds of SO_2 emissions per ton of clinker as a 30-day rolling average.

This facility currently operates a continuous emission monitoring system that measures NO_X and SO_2 emissions from the kiln, and EPA envisions using data from this system to evaluate compliance with the NO_X and SO_2 limits it is proposing.

Under 40 CFR 51.308(e)(1)(iv), BART controls must be installed and operated as expeditiously as practicable. EPA believes that Saint Mary's Cement may reasonably be required to conduct the engineering, design, installation, and trial operation of the SNCR to be able to meet this limit within about three years from the expected effective date of final promulgation of these limits. Therefore, EPA is proposing a compliance date for the NO_X limit of January 1, 2016. That is, under this proposal, the first 30-day period that would be required to achieve an average NO_X emission rate of 2.3 #/MMBTU would be from January 1, 2016 to January 30, 2016. EPA is proposing that the SO_2 limit apply upon the effective date of the final promulgation of the limit, because the company is already complying with the limit.

B. NewPage Paper

The first step in determining BART for boilers 8 and 9 at NewPage Paper's Escanaba facility is to review information relevant to the five factors used in evaluating BART determinations. First, for Boiler 8, EPA reevaluated costs based on the information provided in Michigan's submittal, but replaced the capital cost estimate with an updated estimate that NewPage provided in a June 20, 2012 email from Todd Schmidt to Douglas Aburano, EPA Region 5. This information suggests that NewPage could install low NO_X burners at a total capital cost of $797,000, which, amortized at 7 percent interest over 20 years, represents an annualized capital cost of $75,200. With the additional estimated annual operating cost of $12,000, the total estimated annualized cost is $87,200. EPA estimates baseline emissions for this boiler to be 143.2 tons per year, and EPA believes that low NO_X burners would achieve a 40 percent reduction of NO_X emissions, which, at baseline operating rates, would reduce emissions by 57.3 tons per year. This suggests that low NO_X burners would reduce NO_X emissions with a cost effectiveness of $1,500 per ton.

There are no non-air quality-related impacts have been identified that affect the BART determination. The company has installed flue gas recirculation to help meet state limits that apply during the ozone season, although the company assumes significant costs for year-round operation of this design feature and argues that it achieves only a 12 percent reduction relative to ''current baseline emissions.'' The remaining useful life of the facility is unknown, but EPA assumed it to be sufficient to amortize any capital costs of control equipment over 15 to 20 years.

The Michigan plan includes the results of modeling, conducted by the consultant for NewPage Paper, that is based on a worst-case NO_X emission rate of 1,300 tons per year, indicating an impact on average visibility (from both NO_X and SO_2 emissions) of 0.4 dv. Thus, a reduction of NO_X emissions from 143.2 tons per year to 85.9 tons per year would be estimated to reduce average visibility by no more than about 0.02 dv.

An important consideration in determining BART for Boiler 8 is the fact that the company has already reduced emissions from this boiler. According to information provided to the Michigan Air Emissions Reporting System, the average emission factor has declined somewhat, and usage has declined sufficiently that emissions in 2010 and 2011 averaged 40 tons per year of NO_X. Furthermore, the boiler is subject to a State rule that limits emissions during the ozone season (May to September) from this boiler to 0.20 #/MMBTU while firing natural gas and 0.40 #/MMBTU while firing residual oil. To meet this rule, the company has

installed flue gas recirculation, although usage of this system is limited. Michigan did not submit this rule for inclusion in the SIP, but EPA believes that slightly higher limits can reasonably be achieved on a year-round basis. Given the decline in usage of this boiler, EPA believes that imposition of limits comparable to emissions rates currently being achieved will suffice to assure an appropriate level of protection from visibility impacts from this boiler, comparable to the reductions that would be achieved if the boiler were operated at previous usage rates and installed a low NO_X burner. Therefore, EPA proposes to establish limits on pounds of NO_X emissions per million BTUs, to be met as a 30-day rolling average. The facility is not now burning residual oil, but EPA proposes to identify limits for NO_X emissions from combustion of both natural gas and residual oil. EPA proposes to mandate that Boiler 8 meet a limit, calculated as a 30-day rolling average, that would be computed as a weighted average based on the relative quantities of heat input from burning natural gas and from burning residual oil. EPA is proposing fuel specific limits of 0.26 #/MMBTU for combustion of natural gas and 0.50 #/MMBTU for combustion of residual oil, in each case representing approximately 10 percent above the upper end of the range of emission rates under current operation.[2] Compliance information will be obtained from a continuous emission monitoring system that the company operates on this boiler. Since the boiler is often not operating, EPA will compute 30-day averages on the basis of 30 successive operating days, not counting days in which the boiler does not operate. EPA envisions that the company will be able to meet these limits by maintaining existing operations (maintaining existing combustion improvements), but finds that the company also has the flexibility to meet these limits by installing low NO_X burners or using its flue gas recirculation equipment more frequently. These limits reflect EPA's proposed judgment that the existing emission reductions are warranted as BART but that further emission reductions are not warranted for the limited benefits they would achieve.

For Boiler 9, usage rates have remained relatively steady, but the company modified its boiler design in 2006 to incorporate overfire air. Stack tests for this boiler indicate that this modification decreased NO_X emissions from about 0.69 #/MMBTU to about 0.20 to 0.22 #/MMBTU. The company has not provided cost information regarding this modification, but maintaining this modification is clearly cost effective. Modeling in Michigan's submittal indicates that 345 tons per year of NO_X emissions from this boiler, in combination with about 50 tons per year of SO_2 emissions, have an average visibility impact of 0.2 dv. Therefore, the modification to incorporate overfire air, with which Boiler 9 NO_X emissions have decreased from an estimated average of 840 tons per year in 2002 to 2004 to an estimated average of 240 tons per year in 2009 to 2011, is estimated to have yielded a visibility improvement of 0.4 dv. No non-air quality related environmental impacts have been identified to influence the choice of BART, and remaining useful life of the facility is also not a significant factor. From its consideration of these factors, EPA concludes that the overfire air modifications that the company has made are included in BART for this boiler. At the same time, based on information in Michigan's submittal, EPA agrees with the conclusion in Michigan's submittal that no further control of this boiler constitutes BART.

Therefore, EPA is proposing limits to mandate the continued operation of the overfire air system that the company has installed on Boiler 9. Since no system for continuous emission monitoring is operating on this boiler, EPA is proposing a limit that would be enforced by stack tests. As noted above, the most recent stack tests for this boiler indicated NO_X emission rates of 0.22 #/MMBTU and 0.20 #/MMBTU, respectively. To accommodate a modest degree of stack test variability, EPA is proposing to set a limit with a 25 percent compliance margin. That is, EPA is proposing a NO_X emission limit for Boiler 9 of 0.27 #/MMBTU. (This emission rate also is about 10 percent higher than the highest single run test result reported by the company.)

NewPage Paper has already implemented measures to meet these limits on Boilers 8 and 9. Therefore, EPA is proposing that these limits take effect upon the effective date of the rulemaking promulgating these limits.

VI. What actions is EPA proposing?

EPA is proposing limited approval of revisions to the Michigan SIP, submitted on November 5, 2010, addressing regional haze for the first implementation period. The revisions seek to satisfy Clean Air Act and regional haze rule requirements for states to remedy any existing anthropogenic and prevent future impairment of visibility at Class I areas.

EPA finds that Michigan's submission satisfies BART requirements for some of the non-EGUs, most notably based on a Federal consent decree requiring new controls for SO_2 and NO_X emissions for the Lafarge plant. On the other hand, EPA proposes to conclude that Michigan's submittal does not require BART at St. Mary's Cement's facility in Charlevoix or at NewPage Paper's facility in Escanaba. Specifically, we are proposing limited disapproval of the NO_X and SO_2 BART determination for the cement kiln and associated equipment at the St. Mary's Cement facility and of the NO_X BART determination for Boiler 8 and 9 of the NewPage Paper Company. Further, we propose a FIP that specifically imposes NO_X and SO_2 limits mandating BART for the cement kiln and associated equipment for the St. Mary's Cement facility, and NO_X limits mandating BART for Boilers 8 and 9 of the NewPage Paper Company.

EPA is also reviewing Michigan's BART determination for Tilden Mining taconite plant. EPA plans to take action on this BART determination in a separate action that includes similar facilities in Minnesota.

Michigan's submission provides an approvable analysis of the emission reductions needed to satisfy reasonable progress and other regional haze planning requirements, and Michigan's submission meets other regional haze planning requirements such as identification of affected Class I areas and provision of a monitoring plan.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). The proposed Virgin Islands Regional Haze FIP requires implementation of existing emissions controls and emission reduction strategies on one facility and is not a rule of general applicability.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Under the Paperwork Reduction Act, a ''collection of information'' is defined as

[2] Operation in 2010 and 2011, during which the boiler was gas-fired, yielded a 30-day average emission factor of up to about 0.24 #/MMBTU. Operation in 2008 and 2009, during which the boiler was often oil-fired, yielded emission factors up to about 0.45 #/MMBTU.

a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *.'' 44 U.S.C. 3502(3)(A). Because the proposed FIP applies to just one facility, the Paperwork Reduction Act does not apply. See 5 CFR 1320(c).

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; 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. 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 Office of Management and Budget (OMB) control number. The OMB control numbers for our regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The Regional Haze FIP that EPA is proposing for purposes of the regional haze program consists of imposing existing Federal controls to meet the BART requirement for SO_2, NO_X, and PM emissions on specific units at one facility in the Virgin Islands. The net result of this FIP action is that EPA is proposing existing direct emission controls on selected units at only one facility. The facility in question is a large petroleum refinery that is not owned by a small entity, and therefore is not a small entity.

D. Unfunded Mandates Reform Act (UMRA)

This rule does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by State, local, or Tribal governments or the private sector in any 1 year. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

The proposed Virgin Islands Regional Haze FIP does not have federalism implications. This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. In this action, EPA is fulfilling its statutory duty under Clean Air Act section 110(c) to promulgate a Regional Haze FIP following its finding that the Virgin Islands had failed to submit a regional haze SIP. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes. However, to the extent this proposed rule will limit emissions of SO_2, NO_X, and PM the rule will have a beneficial effect on children's health by reducing air pollution.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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

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

We have determined that this proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects

on minority or low-income populations because it limits increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

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, Volatile organic compounds.

Dated: July 13, 2012.

Susan Hedman,

Regional Administrator, Region 5.

Title 40, chapter I, of the Code of Federal regulations is proposed to be amended as follows:

PART 52—[AMENDED]

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

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

2. Section 52.1170 is amended by adding a new entry at the end of the table in paragraph (e) for ''Regional Haze Plan'' to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approved date	Comments
*	*	*	*	*
Regional Haze Plan	Statewide	11/5/2010	8/6/12, [Insert page number where the document begins].	Includes all regional haze plan elements except BART emission limitations for EGUs, St. Mary's Cement, NewPage Paper, and Tilden Mining.

3. Section 52.1183 is amended by adding paragraphs (g), (h), and (i), to read as follows:

§ 52.1183 Visibility protection.

* * * * *

(g) The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted on November 5, 2010, does not meet the best available retrofit technology requirements of 40 CFR 51.308(e) with respect to emissions of NOx and SO_2 from Saint Mary's Cement in Charlevoix and NO_X from NewPage Paper in Escanaba. These requirements for these two facilities are satisfied by 40 CFR 52.1183(h) and 40 CFR 52.1183(i), respectively.

(h)(1) For the 30-day period beginning January 1, 2016, and thereafter, Saint Mary's Cement, or any subsequent owner or operator of the Saint Mary's Cement facility located in Charlevoix, Michigan, shall not cause or permit the emission of oxides of nitrogen (expressed as NO_2) to exceed 2.30 pounds per ton of clinker as a 30-day rolling average.

(2) Saint Mary's Cement, or any subsequent owner or operator of the Saint Mary's Cement facility located in Charlevoix, Michigan, shall not cause or permit the emission of sulfur dioxide to exceed 7.50 pounds per ton of clinker as a 12-month average.

(3) Saint Mary's Cement, or any subsequent owner or operator of the Saint Mary's Cement facility located in Charlevoix, Michigan, shall operate continuous emission monitoring systems to measure NO_X and SO_2 emissions from its kiln system in conformance with 40 CFR 60 appendix B Performance Specification 2.

(4) The reference test method for assessing compliance with the limit in paragraph (h)(1) shall be use of a continuous emission monitoring system operated in conformance with 40 CFR 60 appendix B Performance Specification 2. A new 30-day average shall be computed at the end of each calendar day.

(5) The reference test method for assessing compliance with the limit in paragraph (h)(2) shall be use of a continuous emission monitoring system operated in conformance with 40 CFR 60 appendix B Performance Specification 2. A new 12-month average shall be computed at the end of each calendar month.

(6) *Recordkeeping.* Owner/operator shall maintain the following records for at least five years:

(i) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

(ii) All records of clinker production, monitored in accordance with 40 CFR 60.63.

(iii) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR part 60, appendix F, Procedure 1.

(iv) Records of all major maintenance activities conducted on emission units, air pollution control equipment, CEMS and clinker production measurement devices.

(v) Any other records required by 40 CFR part 60, Subpart F, or 40 CFR part 60, Appendix F, Procedure 1.

(7) Reporting. All reports under this section shall be submitted to Chief, Air Enforcement and Compliance Assurance Branch, U.S. Environmental Protection Agency, Region 5, Mail Code AE–17J, 77 W. Jackson Blvd., Chicago, IL 60604–3590.

(i) Owner/operator of each unit shall submit quarterly excess emissions reports for SO_2 and NO_X BART limits no later than the 30th day following the end of each calendar quarter. Excess emissions means emissions that exceed the emissions limits specified in paragraph (c) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions, specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(ii) Owner/operator of each unit shall submit quarterly CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent

recurrence, and any CEMS repairs or adjustments.

(iii) Owner/operator shall also submit results of any CEMS performance tests required by 40 CFR part 60, appendix F, Procedure 1 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).

(iv) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, such information shall be stated in the quarterly reports required by sections (7)(i) and (ii) of this section.

(i) NewPage Paper, or any subsequent owner or operator of the NewPage Paper facility in Escanaba, Michigan, shall not cause or permit the emission of oxides of nitrogen (expressed as NO_2) to exceed the following limits:

(1) For Boiler 8, designated as EU8B13, a 30-day weighted average limit on emissions per million British Thermal Units, based on a limit for natural gas firing of 0.26 pounds per million British Thermal Units (#/MMBTU) and a limit for residual oil firing of 0.50 #/MMBTU, weighted according to the heat input for each fuel, to be computed as follows:

Emission limit, in #/MMBTU = [0.26 * (heat input from firing natural gas) + 0.50 * (heat input from firing residual oil)]/(total heat input).

(2) NewPage Paper, or any subsequent owner or operator of the NewPage Paper facility located in Escanaba, Michigan, shall operate a continuous emission monitoring system to measure NO_X emissions from Boiler 8 in conformance with 40 CFR 60 appendix B Performance Specification 2.

(3) The reference test method for assessing compliance with the limit in paragraph (i)(1) shall be a continuous emission monitoring system operated in conformance with 40 CFR 60 appendix B Performance Specification 2. A new 30-day average shall be computed at the end of each calendar day in which the boiler operated. Each average shall include the most recent 30 days in which the boiler operated, and shall exclude days in which the boiler did not operate.

(4) For Boiler 9, also identified as EU9B03, a limit of 0.27 #/MMBTU.

(5) The reference test method for assessing compliance with the limit in paragraph (i)(4) shall be a test conducted in accordance with 40 CFR 60 appendix A Method 7.

(6) *Recordkeeping.* Owner/operator shall maintain the following records regarding Boiler 8 and Boiler 9 for at least five years:

(i) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

(ii) All stack test results.

(iii) Daily records of fuel usage, heat input, and data used to determine heat content.

(iv) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR part 60, appendix F, Procedure 1.

(v) Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.

(vi) Any other records identified in 40 CFR 60.49b(g) or 40 CFR part 60, Appendix F, Procedure 1.

(7) *Reporting.* All reports under this section shall be submitted to the Chief, Air Enforcement and Compliance Assurance Branch, U.S. Environmental Protection Agency, Region 5, Mail Code AE–17J, 77 W. Jackson Blvd., Chicago, IL 60604–3590.

(i) Owner/operator of Boiler 8 shall submit quarterly excess emissions reports for the limit in paragraph (i)(1) no later than the 30th day following the end of each calendar quarter. Excess emissions means emissions that exceed the emissions limit specified in paragraph (i)(1) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions, specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(ii) Owner/operator of Boiler 8 shall submit quarterly CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, and any CEMS repairs or adjustments.

(iii) Owner/operator of Boiler 8 shall also submit results of any CEMS performance tests required by 40 CFR part 60, appendix F, Procedure 1 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).

(iv) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, such information shall be stated in the quarterly reports required by sections (i)(7) of this section.

(v) Owner/operator of Boiler 9 shall submit reports of any test measuring NOx emissions from Boiler 9 within 60 days of the last day of the test. If owner/operator commences operation of a continuous NOx emission monitoring system for Boiler 9, owner/operator shall submit reports for Boiler 9 as specified for Boiler 8 in paragraphs (i)(7)(i) to (i)(7)(iv).

[FR Doc. 2012–19039 Filed 8–3–12; 8:45 am]

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